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The United States Senate

Report of Proceedings

Hearing held before

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE

U. S. Senate

and

SUBCOMMITTEE OF THE COMMITTEE ON WAYS AND MEANS

House of Representatives

January 17, 1936

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PRIVATE PENSION PLANS

—
Friday, January 17, 1936.

JOINT HEARINGS

Before a

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE, UNITED STATES

SENATE

and a

SUBCOMMITTEE OF THE COMMITTEE ON WAYS AND MEANS, HOUSE

OF REPRESENTATIVES.

—
The hearing was called to order by Senator William H. King (Chairman) at 10:15 a.m. in the Senate Finance Committee room.

Present: Senators King (Chairman), George, Clark, LaFollette, Keyes; Representatives Doughton, Cullen, Treadway, and Bacharach.

The Chairman: The committee will come to order. Are you ready to proceed, Mr. Eliot.

Mr. Leonard Calhoun: Senator, unfortunately Mr. Eliot is ill and could not be here. He asked if I would speak for him.

The Chairman: As I recall, the committee when it met charged the experts to make an examination and then report back to us what their conclusions were with respect to the

feasibility of the Clark amendment, the workability of it. Have the experts during the interim examined into this matter and have they any report to submit?

Mr. Calhoun: Senator King, the situation with respect to factual data that we were to get is that that data has not yet been obtained. Mr. Weaver and Mr. Towers, of Towers, Perrin, Forster & Crosby, were to contact various people with private annuity plans and tell us what could be done and what could not be done; in other words, how far they could travel along lines of reserves and what they wanted to do about transferring employees, and one thing and another like that. I have a letter from Mr. Weaver.

Mr. Treadway: Will you identify Mr. Weaver?

Mr. Calhoun: Mr. Weaver is with the firm of Towers, Perrin, Forster & Crosby.

Mr. Treadway: That is that Philadelphia gentleman that was here so much last summer?

Mr. Calhoun: Yes sir. On December 9 I wrote him, which was about the third letter we had had, thanking him for his letter of December 6th, in which he said they had not been able to obtain all the factual data that they needed, and I asked him:

"For guidance in tentative drafting, I should greatly appreciate any expression you might care to make at this time as to:

"1. Whether private pension systems as a condition of approval should be required to maintain reserves, and if so, should the basis of reserves be a single premium or some other basis?"

And asked him further whether "reserves should be actuarially sufficient to pay benefits promised under the private plan, the Federal benefits, or, if neither, on what bases reserves should be required?"

I asked him whether or not, "with respect to persons who were ineligible for benefits but who might become eligible, reserves in the meantime should be on the assumption that they would become eligible, or, if not, on what kind of assumption" that they thought they ought to be built.

I asked him further whether minimum benefits -

Mr. Treadway: (Interposing) Pardon me for interrupting, Mr. Chairman. Would it not be better if the witness would insert his letter and the reply, rather than comment on it as he goes along, and make it a part of the record? I see we have a reporter here, and it seems as though the letters would be valuable to have part of the record, rather than comments as he partially reads them.

The Chairman: Some of us may feel like those questions propounded to Mr. Weaver and his reply may be helpful to us now in consideration of the matter. There is no objection to them going into the record.

(Mr. Calhoun's letter to Mr. Forster, and Mr. Forster's
reply thereto appear in full as follows:)

Mr. Calhoun: I will read the last paragraph and explain the others.

"Should a person who transfers from an employer's private system thereafter be entitled only to a Federal annuity, and if so when should some amount be paid the Federal Old-Age Reserve Account, by whom, and on what basis of calculation?"

"Those of us instructed to proceed toward tentative drafting would greatly appreciate your thoughts in the premises, since any draft must of necessity be based on some conclusion with respect to these problems."

The answer to that letter is:

"I have sent copies of your letter of December 9th to the group which were consulting with you in the summer, and hope before long to give you the consensus of their opinion."

That was dated December 16.

We have not yet been able to obtain the factual data in general, nor ~~we~~ have had specific answer with respect to this matter of reserves. We are coming before you, consequently, without being able to tell you that, while this thing might be advisable, it cannot be done with respect to a different situation. We do not know, for instance, whether or not it would true encouragement for private pension plans, if there were a requirement that these pension plans should have to set up reserves to pay benefits as earned. It might

be that those requirements would be so stiff that private pension plans could not meet them.

There are many other similar situations, one is a situation with respect to transfer of reserves. I have heard informally that a great many insurance companies would probably be unwilling to write a policy if a plan might terminate at any time and if they would be required to pay over huge sums to the Government. If they are willing to do that, we have one situation. If they are unwilling or unable to do that, then the matter would have to be taken care of by a different type of drafting.

Mr. Eliot and myself prepared what you might term a questionnaire with respect to policy. Neither one of us is an insurance expert. We asked Mr. Latimer to look over it to see that we did not go too far afield or have the wrong inferences as to whether or not these were important matters of policy; for instance, with respect to reserves. The memoranda that we have submitted is more or less extensive. It is about twenty-four pages.

The Chairman: Pardon me - is ^{this} the memoranda?

Mr. Calhoun: Yes sir, that that has been handed around. This memoranda does not attempt to give any solution as to what policies the committee should follow. We certainly did not feel in any position to try to advise the committee as to what policy they should follow, but we tried to spell out

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briefly some effects that we thought would result from various policies which might be chosen by the committee.

The main things that we are interested in are information as to standards, both as to kinds of private pension systems and amounts of benefits that would be paid, and certainty of benefit payments.

We are also asking what the policy should be with respect to the method and extent of Federal encouragement of private pension systems, what the policy should be for providing for employees who shift from a private pension system to the Federal system, or vice versa.

Mr. Doughton: Right there: You say you are asking these questions. Of whom are you asking them?

Mr. Calhoun: We are asking the committee to tell us what policy they determine with respect to these standards.

Mr. Doughton: How can we know what policies to determine until we have some recommendation from you as a result of your studies you were to make during the recess.

Mr. Calhoun: We have, instead of specific recommendations, merely statements as to effects which would follow from one policy or the other.

Senator Clark: That is embodied in this document here, Mr. Calhoun?

Mr. Calhoun: Yes sir.

Senator La Follette: As I understand it, you felt that

unless certain questions of policy were determined it was impossible to proceed without drafting a suggested amendment?

Mr. Calhoun: That is right.

3 Senator La Follette: And that these questions of policy were so vitally important that you felt that the staff could not make those decisions, that it would have to be the responsibility of the committee?

Mr. Calhoun: That is right.

Mr. Treadway: Mr. Chairman, I want to see if my memory serves me rightly. We had this matter up when the Social Security Bill was in Congress for quite some time, the question of the Clark amendment.

Mr. Calhoun: Yes sir.

Mr. Treadway: There were those on the conference committee that favored it and others that did not. But if my memory serves me rightly, we left the question open in this way: Mr. Elliot said, I think at the last conference, that at the moment he could not suggest a feasible program under which the Clark amendment could be included in the law; that we thought that with proper study during the interim between our adjournment and now he could suggest something, or at least he would study it. He felt that there was reason to consider the question of whether or not private pension sys-

tem pensions should be allowed to be included in the law.

Now, as I gather from what you are telling us and the little that I have been able to glance at this report, you are not touching on that question at all as to where we left off, Mr. Calhoun. You were to be associated with Mr. Eliot and other experts, as I understood it, to see whether or not you could suggest a way in which private pension systems could be included in the law practically. Now you are not doing that. You are coming in here with a long report asking us questions, rather than answering the questions that we put to you last summer. Now if I am wrong, please correct me, but that is my definite recollection on the position we were in when the conference broke up last summer.

Senator La Follette: I think it is fair to say, however, that as I recollect Mr. Eliot did state to the committee that the matter was very complicated, and that the further they went in their attempt to draft something each time they had something worked out, they found upon further study that there was some question of policy involved and it was upon the basis that it was so complicated that we determined finally that it would be impossible to work out any kind of an amendment in any reasonable length of time that the conferees would hold the matter.

Mr. Treadway: The Senator's recollection and mind are

identical along that line, and that supplements what I said. But I do not think that changes my statement at all as to where we left Mr. Eliot, to, at our request, find if there was something feasible and practical to find it. Isn't that correct, Senator? Isn't that your recollection?

Senator La Follette: That is my recollection, but as I understand it, this report is to indicate that upon the study of this question the staff ran into a great many questions involving public policy which the staff did not naturally feel itself qualified to pass on.

The Chairman: Let me associate myself in part with Mr. Treadway. I agree with his statement of what occurred, and I am disappointed, I will/^{say}that frankly, at the suggestion which you make, Mr. Calhoun. I got the idea from our meeting that you and Mr. Eliot and the experts employed by the two committees, as well as such other experts as you might call in, plus the experts that might be brought in by those who favor the private pension plan, were to investigate the whole field and then suggest to us whether or not it was feasible to adopt that system and incorporate it in the Act; and I had supposed that you would come here with recommendations and with a plan.

Senator Clark: Mr. Chairman, if I may interrupt, I think that I can clarify the matter by reading the statement that was submitted by the experts to the conferees,

and by me insert^{ed}ing in the Record on August 9, 1935, which indicated that everything that has been said here is correct; that is, that it was expected that the experts would work the matter out. At the same time, they specifically stated that there were certain questions of policy that they would have to leave for the determination of the committee. Here is the last report to the conference, which, as I say, was inserted in the Record by me on August 9, when the conference report was agreed to. This is signed by Mr. Woodward, Mr. Eliot and Mr. Calhoun.

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"The undersigned (together with Messrs. Foster, Weaver, Turner, Latimer and Hamilton)" - which I take it represents a cross section of every opinion on the subject -

Mr. Calhoun: That is right.

Senator Clark: (continuing reading) - "have met daily, beginning July 27, and have made progress toward formulating a program which we believe might result in the preservation of private annuity plans, without containing the feature of tax exemption, which was objected to in the Clark amendment as being unconstitutional and as likely to result in financial damage to the Government old-age reserve account.

"We have gone far enough to feel reasonably sure that the device of making grants to employers maintaining such plans is a workable one. We do not present a finished

draft at this time. The great number of complicated questions involved has made it impossible for us to complete the task so quickly.

"We feel that it is fairly likely that we could produce a draft by Monday, August 19. In the meantime, we must explore a few remaining matters in policy, must do a considerable amount of drafting, and then must have the finished product examined by some other persons, both Government men and insurance men. We have concentrated so long on this question that we should have someone who is fresh on the subject check our draft closely.

"Of course, there is some likelihood that new questions will arise in this checking process, requiring re-drafting and delaying us till much later than August 19.

"After we finish our work, there will still be work to do, for our draft will contain several alternatives due to the fact that there are a number of points in policy with respect to which we feel in no position to reach a final conclusion. In the event that the committee is in sympathy with the general objectives of the draft, these points of policy should certainly be left to the judgment of the committee.

"W. H. Woodward
"Thomas H. Eliot
"Leonard Calhoun"

So that in my view, everything that has been said here is correct.

Mr. Doughton: It seems to me that if they were not in position to proceed with their study until the committee should further define its policy, that should have been done before we adjourned, according to his view of it now. All this has been just lost.

The Chairman: As I understand that statement, they wanted a little further time to submit a draft or alternative drafts which would embody possibly different policies, but I understood that they were to have a draft ready for submission, with such recommendations as they cared to submit, based upon the policies which might be adopted.

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Mr. Treadway: Mr. Chairman, just one other recollection: The letter that Senator Clark has read that was inserted in the Record refers to a meeting of August 9, and then that this committee or this group of men suggest that they might be able to have something ready by August 19. Now, did we wait until August 19?

Senator Clark: No sir. The conference report was adopted on August 9, Mr. Treadway. In other words, the experts said that if the conference was willing to hold up the matter and give them time until August 19, they would probably would be able to have the thing worked out by that time. The conferees said that they had been engaged in a

consideration of this matter for seven or eight weeks; that they were being criticized, particularly the House conferees, for not having arrived at a conference report, and might be discharged; and finally the plan was suggested of having this joint subcommittee appointed and making the conference report, and you will find in the Record that I set out in some detail this. So the chairman of the committee, Senator Harrison, and Senator George and Senator King both stated their impressions of the matter to that effect, that they felt justified in not opposing the conference report until this study was made.

Mr. Treadway: So that August 9 was the last that our conferees had anything to do with this subject?

Senator Clark: The last meeting of the conferees was on August 8. They reported on that day. The House adopted the conference report, I think, on August 8, and the Senate on August 9.

Senator La Follette: It is my recollection, however, that when this subcommittee had a meeting before we left Washington, some of the people who were present from the staff emphasized the fact that there were broad questions of policy which had to be determined prior to the time that any draft could be worked out, and that they proposed that they would go to work immediately and press along as fast as they could. It was my recollection that there was some

suggestion that perhaps it would be possible for the committee to consider those questions of policy during the adjournment.

Mr. Calhoun: That is right.

Mr. Cullen: Mr. Chairman, what has been said here with regard to it is absolutely correct, by each of the members of the committee. I left with the same understanding, that the experts would bring out something to study in so far as it related to the Clark amendment, to incorporate into the law. Now we have nothing but a report here.

Mr. Treadway: Mr. Chairman, in view of the situation as it develops, and also in view of Mr. Eliot's illness - of course not questioning Mr. Calhoun's ability to speak for him - it would seem to me that it is more or less of a waste of time for us to hear anything about this matter that is before us. We can take this and read it, but it does not seem to me, from what all the members of the committee agree was the way the matter was left, that we have before us what we supposed we were going to have, exactly as the chairman has mentioned, that we were supposed to have some kind of a report of these experts whether or not there was some way the principles in the Clark amendment could be included in the law.

The Chairman: Plus a draft. They were to submit drafts drafts of bills.

Mr. Treadway: Yes sir.

Mr. Calhoun: Mr. Chairman, might I make a statement?

The Chairman: Yes.

Mr. Calhoun: We have here a draft, a completed draft in a sense. It is the draft that we had before us essentially at the time on the ninth of August when we said that there were some further matters to be determined. That draft could be changed if we had some factual data on which to base a change. It might be determined by you as a matter of policy to make many changes in it, but that policy would partly depend on this same factual data.

For instance, you might determine it as a policy that a private pension system should be ^{as} safe from the viewpoint of paying benefits as the Government system, but you might find on examination that the cost in the initial stages of putting up such a system ^{as} that would be so high that if you set those standards you would not encourage them.

We have proceeded throughout on the assumption that the committee wanted to encourage private pensionsystems. Our memorandums to the effect of different ways of encouraging them, and the effect of change in policy. We have our private opinions as to what would be the most advisable thing, subject to correction if we knew the facts as to whether or not companies could to that. The situation that we are in is that we can hand you this draft very easily,

but this draft that we hand you presumes some policy that we do not know whether you want to follow. It presumes that insurance companies can comply with it. It presumes that trustees can comply with it. It presumes that it would encourage private pension systems.

Until we have the report that Mr. Forster was going to get after talking with insurance companies, and the people having private plans, we cannot report to you as to whether this plan is worth the paper it is written on if what you seek to do is to encourage private pension systems.

The Chairman: Let me interrupt you.

Mr. Calhoun: Yes sir.

The Chairman: We have evidence before the committee, as I recall, that there were several hundred private corporations in the United States that had pension plans.

Senator Clark: Employing something over four million employees.

Mr. Calhoun: Yes sir.

The Chairman: It seems to me your committee was to explore those various systems and see whether or not - because they were working apparently effectively in protecting the employees not only immediately ^{but} in futuro - to confer with those various organizations and determine whether there were any weaknesses in their plans, and whether their plans were so that they might be properly inte-

grated with the bill which we had under consideration at the time.

Mr. Calhoun: That was what Mr. Forster was going to do and which he has done to some extent. I have not got a final hearing from him, so I cannot tell you how far he has progressed along that line, Senator King.

Mr. Treadway: Now Mr. Chairman, in relation to Mr. Forster: I think he is that very tall gentleman, about six feet four or five inches tall.

Mr. Calhoun: Yes sir.

Mr. Treadway: He was here all last winter on this matter, interviewed us constantly, was here last summer while we were in conference - very fine, enthusiastic, and a live wire for his clients. It seems incredible to me that in all that length of time and the time that has elapsed since August 9 all the reply that comes from Mr. Forester is the brief letter that Mr. Calhoun has read. There must be something peculiar that in all that time Mr. Forster can only reply that brief note, when he was so tremendously enthusiastic in relation to this subject a few months ago.

Further than that, I do not see why we need regard Mr. Forster as the last word. There are hundreds of companies; I think Senator Clark said four million people employed by these private pension systems. Every big organization that

has a private pension system must be interested in this question. I do not know who Mr. Forster's clients are, but it does not seem to me that we must depend on Mr. Forster solely for information.

I think, Mr. Chairman, that there is more material needed before we go very much further.

Senator George: You say, gentlemen, that you have a draft of the amendment?

Mr. Calhoun: Yes, but we are unable to say whether or not following the provisions of this draft would really encourage private pension systems.

Senator George: I understand that.

Mr. Calhoun: Because Mr. Forster himself expressed doubt as to whether some of them would be able to comply with it.

Senator George: The principal question seems to be whether it would make them possible to be preserved under the Security Act.

Mr. Calhoun: Yes sir; that is the thing.

Senator George: And we were confronted by two questions: Primarily, whether economically and legally we could preserve private pension systems under Title II of the Security Act.

Mr. Calhoun: Yes sir.

Senator George: And if we had any draft of any plan

which we could really subject to scrutiny and study, we might be able to arrive at questions of policy as we went along, that is, this committee might, so as to make up its general recommendations.

Mr. Calhoun: Shall I submit this draft in the record?

The Chairman: Either in the record or furnish each member of the committee a copy of it and leave that copy with the reporter.

Let me say that during the interim I have received perhaps 50 - well, perhaps not so many, 25 or between 25 and 40 - communications from employees who were receiving annuities from private pension systems. One came to see me. He was receiving \$158 a month from some corporation, the name of which I have forgotten, but it was one of the large corporations, and he protested very vigorously against the Social Security Act and insisted that it was something very detrimental. I have received several protests to that effect. One of them came from a large organization. This is from an employees' organization, expressing the hope that something may be done to preserve the private systems that are now in vogue in many of the corporations.

Senator Clark: Mr. Chairman, I have received hundreds of letters from individual employees, all over the country, addressed along the very same lines.

The Chairman: Yes. It seems to me it was the duty of

this committee in serving ad interim, and you experts, to look into that matter of systems that were in existence and see the real weaknesses of them and their strengths, and see whether or not those systems, such as the one represented by the man from the Eastman Kodak Company, Mr. Folsom, and the system which he so fully elaborated, could be maintained and was proper and could come in under this Act, and from your investigations of those systems that are workable to determine whether they afford ample protection and would
6 in the future.

Mr. Calhoun: I could go into one or two situations, Senator, that we learned from such places as we could. We had, of course, no expense fund and no way of going around. We were relying on Mr. Forster to give us factual information.

I examined, for instance, the plan of the Pure Oil Company, which in many respects is a very fine plan. I found this to be true: With respect to people who had served ten or twelve years the benefit was considerably more liberal than under the Government plan. So with respect to those people the plan was more favorable, but when you examine what a person gets who works for them for five years, and compare it with what he would get on the Federal plan for five years employment, even that very liberal plan provides only half the benefits.

Now whether it would be the policy of the committee to make some arrangements to allow a plan like that to select old employees and have a system for them, which might be a fine way of handling the situation, or whether you are going to force them to double their benefits or short time employees, we could not even guess, and on our guess would depend our draft.

It was situations like those that had us absolutely stumped. If private pension systems reported by Mr. Forster would be willing to raise these lower benefits for short time employment and those that had, say, twenty years service, as a qualification for obtaining a pension which reduced that to five years, or the period of the Social Security Bill, then we would have a situation that we could deal with. If they could not do that though, if they said that the cost would be too high, then it might be the committee's wishes to allow them to select beneficiaries for their private systems.

There are some very fine things to be said for allowing a private pension system to select them. But the policy announced in the Clark amendment was that the employee could force himself into any system. That is the original Clark amendment - the employee himself could force himself into any system.

Senator Clark: How could he force himself into a sys-

tem?

Mr. Calhoun: He has the right under his employment to go in or stay out.

Senator Clark: He cannot force himself in. The employer has the right to put the system in and not employ him. The employer ipso facto can use a system if he desires to. That certainly does not mean that he can force his way in, since the option remains with the employer to put in the system or not put it in.

Mr. Calhoun: I expressed myself poorly, Senator Clark. I meant that the system would be discouraged because if an employer put it in he would have to take such employees as elected to go under it. Whether or not that would be necessary to preserve the liberties of the working man we would not presume to know. There are some advantages in allowing an employer to have a private pension system and say "This system is built to take care of my long time employees. I want exemption or I want a subsidy for it, because I am leaving the old-age reserve account. I cannot pay it for all the employees, because the cost is so high for those short term."

So we were up against the situation as to whether or not you are going to substantially require the modification of all existing private pension systems with respect to short term employees. It is a very fundamental proposition.

Mr. Treadway: Let me ask a question, Mr. Chairman.

The Chairman: Yes sir; Mr. Treadway.

Mr. Treadway: I would like to ask, in line with what you are saying, what is the private pension system status today in view of the passage of the Social Security Act?

Mr. Calhoun: I read from the newspapers that some people are planning on discontinuing systems.

Senator Clark: Many of them already have discontinued, have they not, Mr. Calhoun?

Mr. Calhoun: I would not say, but I have seen that indication in the paper.

Mr. Treadway: Does the law in any way say the expiration of the time of the private pension system? It does leave the choice, does it not?

Senator Clark: Under the present law, as I understand it, which goes into effect in 1937, the private pension plans are ipso facto abrogated. They can come in with a private pension system of their own. I understand that many employers who had these private pension systems - or rather some employers, and there seems to an increasing number in view of the passage of that Act - have indicated their intention or have already dropped their private pension plans.

One of the principal arguments in my mind for the amendment in the first place was because of the very doubtful constitutionality of the principal Act. It has been stated

here repeatedly by the experts before the Finance Committee and also stated in the Senate by the chairman of the committee, and without contradiction, that of course the constitutionality of the act depends on the hope that the Supreme Court will not construe Title II and Title A together.

One of the principal arguments and contentions for the so-called Clark amendment was that until the constitutionality of the main act had been passed on, it would be almost criminal to wipe out of existence the rights of some four million employees now under private pension plans, some of which are more beneficial to the employees, some in one particular and some in other particulars, than the Government plan itself.

It seems to me, that, in view of the recent decision of the Supreme Court in the AAA case and the present almost certainty that the Supreme Court will construe Title II and Title A together and therefore declare the Social Security Act unconstitutional, the necessity for some such saving proposition as was contained in the Clark amendment for protecting the rights of these four million employees becomes more pressing than ever.

Mr. Treadway: That is exactly the thought I had in mind that led up to my question. If the Social Security Act is declared unconstitutional and the private pension systems have been put out of business, out of existence,

where are the employees left that were looking for protection either from the Government or their employers? They are left high and dry. There is not any such thing.

Mr. Calhoun: Mr. Chairman, may I finish my answer to it?

The Chairman: Proceed.

Mr. Calhoun: I have spoken of some plans, and as I say, I have noticed that some plans will probably be discontinued. There are other plans, however, that you have heard of. Some of the better plans are simply determined on altering their pension systems so as to dovetail their benefits in with the Federal benefits.

Mr. Treadway: Provided the Federal benefits are allowed to stand under the Constitution.

Mr. Calhoun: I understand they are doing that tentatively. They have made arrangements; I think the Equitable particularly has made arrangements with some of its coverage to do that. I think it is a tentative arrangement, but this is all hearsay and I cannot be accurate about it.

But I will say that the Social Security Act, by providing benefits of course and requiring additional taxes, does discourage private pension systems. There is nothing in the Act itself that forbids the continuance of them.

Senator Clark: It forbids the continuance except as a supplementary program.

Mr. Calhoun: It does provide the benefits -

Senator Clark: Of course, it wipes out the existing plan and enables them to come back with a supplementary plan to the Government plan.

Mr. Calhoun: Whether it would be more serious to these companies, for instance, to alter their systems with respect to short time employees or to amend their systems to dovetail benefits, I do not know. But I do think it is a very important thing if we wish to encourage these systems, that we find out from them as to whether or not they would continue if they were allowed the right of selection. We did not feel at liberty to even intimate to them that they could put in a system and then say who would come into it and who would go out of it, because that is opposed to the direct provisions of the original Clark amendment. It might well be that on consideration you would determine that that would be advisable, but we could not even presuppose it by asking questions.

Senator George: Mr. Calhoun, if you will pardon me, I do not think it is so much a question of the Clark amendment as any other amendment. Of course, the Clark amendment was the amendment that we adopted.

Mr. Calhoun: Yes sir.

Senator George: And called it to conference and tried to get it into the bill, but we did not get it in.

The question is whether it is possible to devise a method of preserving private pension systems.

Mr. Calhoun: My private opinion is that it is, sir.

Senator Keyes: If we had a draft of anything, whether it was altogether the Clark amendment or varied from it or differed from it in some respects or whatnot, why then we would be able to proceed.

Senator Clark: I agree with Senator George that the text of the Clark amendment is not the important question we are dealing with. The important question we are trying to answer is how to preserve the rights of these four million employees, and that is very important.

Mr. Doughton: Right in that connection, Mr. Chairman, one thing that disturbed some members of the committee, according to my recollection, was that, if these private systems were preserved it would probably weaken the system -

Mr. Calhoun: That is true.

Mr. Doughton - to those who would not come in, and they would be left without protection under the general law. Now that is the point that I would like to get cleared up. What shape does it leave those in who do not become members of it?

Senator George: That is the economic side.

Mr. Doughton: That is the actual side too.

Senator George: I mean that is the economic question involved, and the other is a legal question, whether or not, by exempting anybody from the general law, you are so clearly showing that that is the intent of the tax levied in another title of this bill as to open it to a very serious constitutional question.

Mr. Calhoun: Senator George, it was proposed in this draft that I submitted that encouragement of private pension systems would be granting aid to the systems. By granting aid the way we measured it in this proposed amendment was roughly on the load that was taken off the private pension plan.

Senator George: I see.

Mr. Calhoun: The difference between that and exemption, of course, may not be important, because the Supreme Court may limit rights of grants and aid.

But following the policy of the rest of the Social Security Act, that was a device that was used to encourage them.

The tremendous difficulty that has to be met is this: If you give a grant and aid on any simple basis, for instance, on percentage of payroll, you immediately have a situation of a private pension system with a young age group. The amount that you give that private pension system will probably pay a 100 per cent, when taxes reach 8

per cent, pay a 100 per cent of the cost. You have another system where it has an old age group, and it will probably pay 30 per cent or 20 per cent, and if they are very old it may be even less.

You have a situation too that when you have a simple type grant and aid like that, if a man has some old employees on his hands he has every inducement in the world by one way or another to shuffle them on to the Federal old-age reserve account.

Mr. Treadway: Mr. Calhoun, let me interrupt you again.

Mr. Calhoun: Yes sir.

Mr. Treadway: Are you not dealing with details here that we feel, here and there an objection, or some reason or other, that really must be taken up in order? You are offering us illustrations of something that we have not gone into since we reorganized here, since we are meeting now. It would seem to me, Mr. Chairman, that ^fthis amendment that Mr. Calhoun and Mr. Eliot have prepared is the basis of further consideration on the part of this committee, there is no reason in the world why it should not be printed. We could have a heading on there that it was a tentative suggestion from the experts, nothing to do by way of expressing an opinion from them, or something of that kind. If that were printed, made public, and then the chairman called us together as a committee for a hearing, we have

something to go by. I do not think we are getting anywhere in having Mr. Calhoun offer these various ideas one by one here. We ought to have something before us, Mr. Chairman.

I move - no, I do not feel that it is my part to do it. I will make the motion if you wish me to?

The Chairman: It seems to me it is a very proper motion. Go ahead and make the motion.

Mr. Treadway: Well, I move, Mr. Chairman, that the tentative amendment submitted by Mr. Calhoun be printed as a tentative report, in no way expressing any policy on their part or ours, and that then the Chairman, if he sees fit, be authorized to call a public hearing on that tentative draft as the basis of the hearing.

The Chairman: I suppose when you say "public" you mean the experts and those working on it?

Mr. Treadway: Yes sir, and the companies affected. It will give them time - for instance, the Eastman Kodak man and all those people - give them time.

Mr. Doughton: Right there may I inquire for information?

The Chairman: Yes sir.

Mr. Doughton: These are public hearings. Would that be by this subcommittee or by a joint hearing between the Finance Committee and the Ways and Means Committee?

Mr. Treadway: I withdraw the request for a public

hearing. That is a matter of your judgment and Senator King's judgment. The rest of us would want to be present at the hearings, of course, but that will be a matter for you gentlemen to decide. So I withdraw any request of that kind and leave it to the judgment of Senator King and Chairman Doughton as to the next procedure after having this memorandum submitted to us.

The Chairman: If I may express an opinion rather without giving much thought to it, it seems to me that it is a wise thing to have this tentative draft printed and give the Senators and members of this committee a chance to examine the same, and then within a few days it would be my thought that Mr. Doughton and myself call the committee together again, with the experts, to examine it, and in the meantime ask the experts to confer with Mr. Forster and others who might be interested in this plan and get their views and get this factual data that Mr. Calhoun says has not been obtained to date, and as soon as the committee obtains that factual data then we call the committee together again for the consideration of the draft plus the factual data that you are then ready to submit.

Senator George: I think that is a sensible way to handle it and I think it is a very wise course for us to pursue.

Mr. Calhoun: Shall this memoranda be included?

The Chairman: Yes; the motion is that the tentative draft be printed at the earliest possible date for the use of the committee and -

Mr. Treadway: Right there, Mr. Chairman, would that be submitted to these outside men like the Eastman Kodak people? What is your construction on that?

The Chairman: It would seem to me our experts in conferring with those persons could tell them that there is a tentative draft the purport of which is so and so and so and so, and then receive such suggestions or criticisms or whatnot as may be offered. In their investigation they might indicate, it seems to me, with propriety, what their views in part were.

Mr. Calhoun: Senator, I think I think in view of the fact that this is rather poor from a draftsman's point of view and it might possibly reflect on some draftsmen like Mr. Beeman who never did any work on it, it might be a highly advisable, because the work was limited to the work that Mr. Eliot and I did.

Mr. Treadway: You could call it a tentative report based on our request last August.

Mr. Calhoun: This does criticize a series of compromises that were arrived at by various ones of us individually in trying to get something out for the committee. Mr. Forster was very seriously alarmed at some of the things

that I thought finally would go in. He was afraid some of his insurance companies would not agree to it. We were very seriously concerned about some of the things we compromised on, because we did not think there was enough safety left to employees. We both were wrong probably in most instances.

The Chairman: As I understand the motion, it is that this tentative draft be printed and copies furnished to members of the Committee, and that Mr. Eliot and the experts continue their investigations, particularly with a view to ascertaining the factual data referred to by Mr. Calhoun, and that as soon as they are ready to submit a report, together with the facts which they desire to submit, that they advise Mr. Doughton or myself and that we then call the committee together.

Senator George: Mr. Chairman, as I understand it, this document, the memorandum, and the draft mentioned by Mr. Calhoun are to be admitted?

The Chairman: Yes sir. If that is agreeable, the motion will be carried and the committee will adjourn.

Mr. L. H. Parker: Would there be any objection when it is printed to showing this to various people interested? For instance, would it be all right for Mr. Calhoun to show it to Mr. Forster, and so on?

The Chairman: I should think they would be permitted.

to do that with those who were considering this draft.

Mr. Doughton: Do I understand that this tentative draft comes to us in the form of a conditional suggestion or concrete recommendation?

Mr. Calhoun: It comes in the form merely of being something we worked with Mr. Forster on, and the rest of them, in an effort to try to present something in lieu of the Clark amendment. We cannot recommend it.

Mr. Doughton: Has it your recommendation?

Mr. Calhoun: No sir.

(The memorandum and draft directed to be printed appears in full as follows:)

(Whereupon, at 11:05 a.m., the hearing adjourned.)