

PRIVATE PENSION SYSTEMS

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

SEVENTY-FOURTH CONGRESS

SECOND SESSION

ON

PRIVATE PENSION SYSTEMS

PART 2

MAY 16, 1936

Printed for the use of the Committee on Finance



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

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PRIVATE PENSION SYSTEMS

SATURDAY, MAY 16, 1936

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON WAYS AND MEANS,
Washington, D. C.

The joint group met pursuant to call at 12 noon in the District of Columbia committee room in the Capitol Building, Senator William H. King presiding.

Present: Senators King (chairman), George, Clark, La Follette, and Representatives Doughton, Hill, and Cullen.

Also present: Thomas H. Eliot and Leonard Calhoun of the Social Security Board; J. H. Shreiner, of Towers, Perrin, Forster & Crosby, Inc., Philadelphia, Pa.; W. H. Woodward, attorney at law, St. Louis, Mo.; George Guth, of the Socony Vacuum Co., New York City; H. P. Weaver, of Towers, Perrin, Forster & Crosby, Inc., Philadelphia, Pa.; N. E. Horelick and G. Powell Hamilton, of the Equitable Life Assurance Society, and Murray Latimer, of the Social Security Board and the Railroad Retirement Board.

Senator KING. The committee will be in order. I will place in the record at this point the redrafted committee print of the proposal to amend the Social Security Act with reference to private annuity plans.

A BILL To amend the Social Security Act with reference to private annuity plans

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Social Security Act is hereby amended by adding after section 202 (a) (2), the following new paragraph:

"(3) The amount determined under paragraphs (1) and (2) of this subsection to be payable to him with respect to any period shall be decreased by the amount of any transfer annuity payable by an annuity carrier to him with respect to such period."

SEC. 2. Section 202 (b) of the Social Security Act is amended to read as follows:

"(b) In no case shall the monthly rate computed under subsection (a) together with the monthly rate of such transfer annuities, if any, exceed \$85."

SEC. 3. Section 203 (b) of the Social Security Act is amended to read as follows:

"(b) If the Board finds that the correct amount of the old-age benefit payable to a qualified individual during his life under section 202 together with the amount of transfer annuities, if any, paid or payable to him, was less than 3½ per centum of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which such 3½ per centum exceeds the amount (whether more or less than

the correct amount) paid to him during his life as old-age benefit, together with the amount of transfer annuities, if any, paid or payable to him."

SEC. 4. Section 203 (c) of the Social Security Act is amended to read as follows:

"(c) If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was less than the correct amount to which he was entitled under section 202, and that the correct amount of such old-age benefit, together with the amount of transfer annuities, if any, paid or payable to him was $3\frac{1}{2}$ per centum or more of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which the correct amount of the old-age benefit exceeds the amount which was so paid to him under section 202 during his life."

SEC. 5. Section 206 of the Social Security Act is amended to read as follows:

"SEC. 206. If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was more than the correct amount to which he was entitled under section 202, and, together with the amount of transfer annuities, if any, paid or payable to him, was $3\frac{1}{2}$ per centum or more of the total wages by which such old-age benefit was measurable, then upon his death there shall be repaid to the United States by his estate the amount, if any, by which such total amount together with the amount of any such transfer annuities paid or payable to him during his life exceeds whichever of the following is the greater: (1) Such $3\frac{1}{2}$ per centum, or (2) the correct amount to which he was entitled under section 202 together with the amount of any such transfer annuities."

SEC. 6. The Social Security Act is amended by inserting the following new section between sections 206 and 207:

"PAYMENT TO EMPLOYERS

"SEC. 206 $\frac{1}{2}$. (a) Every employer who maintains a private annuity plan, approved by the Board, shall be entitled to receive annually on or before March 1 of each calendar year, beginning with the calendar year commencing January 1, 1938, with respect to each individual (unless precluded by reason of age from becoming a qualified individual) covered by such plan on the preceding December 31, or who died, or who received a paid-up annuity under such plan during the preceding year, the amount of the annual transfer reserve of such individual with respect to the preceding year (with proper interest adjustments to date of payment); but no such amount shall be paid to any employer unless the Board finds (1) that such employer has previously paid to an approved annuity carrier, with respect to the preceding year, the sum required by the annuity carrier as the purchase price for an annuity equal to the increase during the preceding year in the transfer annuity for such individual, and (2) that no part of such sum has been paid by such individual, or has been deducted or is deductible from his wages.

"(b) The Board shall certify for payment the amount due to each such employer, and such amount shall be paid, in the manner provided by section 207, or, upon demand of any such employer, the Secretary of the Treasury shall, in lieu of making such payment, issue to such employer a certificate showing the amount due to him, and such certificate shall be accepted in payment of any taxes due the United States and to that extent shall be assignable.

"(c) If the Board finds at any time that more or less than the correct amount has theretofore been so paid or certified with respect to any such employer under this title, then, under regulations made by the Board, proper adjustments shall be made in connection with subsequent payments or certifications under this section to the same employer."

SEC. 7. Section 210 of the Social Security Act is amended by adding at the end thereof the following new subsections:

"(d) The term 'approved annuity carrier' means a life-insurance company or companies determined from time to time by the Board—

"(1) to have been engaged for not less than five years in the life-insurance and annuity business; and

"(2) to have admitted assets of not less than \$100,000,000; and

"(3) to be authorized to do business in a majority of the States.

"(e) The term 'covered', when used with respect to an employee and his employer's private annuity plan, refers to the period of time as determined by the Board, which begins on the effective date of whichever of the following events last occurs, preceded or accompanied by the other three events:

"(1) the approval of the plan by the Board; or

"(2) the notice by the employee to the employer, in such form as the employer may require, of the employee's election to come into the plan; or

"(3) the initial payment to the annuity carrier with respect to a prospective annuity for the employee; or

"(4) the earning of wages by the employee, which are the basis of determining such annuity, and ends upon the date of whichever of the following events first occurs:

"(5) the voluntary withdrawal of the employee from the plan; or

"(6) the termination of his employment, as of a date certified to the Board by the employer, such certification to be not later than one year after the last date on which such employee earned wages in the employment of the employer; or

"(7) the receipt of annuity benefits by the employee prior to his attaining the age of sixty-five; or

"(8) his attaining the age of sixty-five; or

"(9) the termination of the plan; or

"(10) the withdrawal of approval of the plan by the Board.

"The Board may by rules and regulations adjust the period of coverage to conform to accounting periods established by the Board.

"(f) The term 'transfer annuity' when used with respect to an individual means an annuity for life, beginning on the date he attains the age of sixty-five, at a monthly rate based upon a percentage of his wages while covered by an approved private annuity plan, such percentage to be determined as follows:

"(1) one-ninth of 1 per centum of the first \$45,000 of his total wages arising out of employment after December 31, 1936, whether or not such wages were earned while covered by a private annuity plan; plus

"(2) one twenty-fourth of 1 per centum of the amount by which such total wages exceeds \$45,000 but does not exceed \$129,000.

"(g) The term 'annual transfer reserve' when used with respect to an individual, for any calendar year, means the amount actuarially determined by the Board necessary to support on a reserve basis the increase in his transfer annuity during such calendar year. Such determination by the Board shall be based upon—

"(1) standard tables of mortality from time to time adopted by it;

"(2) interest at 3 per centum per annum compounded annually;

"(3) the transfer annuity of such individual without discount for employment after age sixty-five; and

"(4) other relevant actuarial factors."

SEC. 8. The Social Security Act is further amended by adding after section 210 the following new sections:

"EMPLOYERS' PRIVATE ANNUITY PLANS

"SEC. 211. (a) An employer's private annuity plan may be submitted by the employer to the Board for approval, but shall be approved by the Board only if (1) a statement is submitted as required by subsection (d); and (2) the Board approves the form of contract made or to be made between the employer and an approved annuity carrier; and when an authenticated copy of such contract, entered into by the employer and such annuity carrier, is filed with the Board, such approval shall become effective as of the effective date of the contract, and the Board shall forthwith issue its certificate of approval of the private annuity plan, except that it may refuse to approve any such plan if any director or officer of the employer is a director or officer of the annuity carrier: *Provided*, That an approved annuity carrier may act as annuity carrier under an approved plan covering its own employees. In the case of an approved annuity carrier submitting for approval its plan for its own employees, an instrument binding on the employer annuity carrier and containing the provisions set forth in subsection (b) of this section shall be deemed the contract and shall be approved by the Board only if the Board finds that the amounts to be allocated thereunder, during each calendar year, by the employer annuity carrier, with respect to an employee while covered by such plan, are at least equal to the

amount of the annual transfer reserve of such individual for such period, in which event any allocations made in accordance with the terms thereof with respect to any year shall be deemed payments, under this title, by the employer, to the annuity carrier with respect to such year.

"(b) Each such contract shall—

"(1) provide annuity benefits which are equal to or greater than the transfer annuity;

"(2) provide that, when an employee ceases to be covered by the private annuity plan, the annuity carrier shall issue in favor of such employee a certificate providing benefits equal to or greater than the increase in the transfer annuity during the period covered, or, when such benefits are less than \$10 per month, the annuity carrier, in lieu of issuing such certificate to the employee, may elect to pay to the employer or to the Secretary of the Treasury, subject to the conditions and limitations of paragraph (4) of this subsection, the amount of the cash withdrawal value as provided in the contract;

"(3) provide that in the event an employee attains the age of sixty-five without becoming a qualified individual, and

"(A) was covered by the private annuity plan immediately prior thereto, the annuity carrier shall pay to the employer or to the Secretary of the Treasury, subject to the conditions and limitations of paragraph (4) of this subsection, the amount of such cash withdrawal value; or

"(B) was not covered by the private annuity plan immediately prior thereto, and if such certificate has been previously issued in his favor, the annuity carrier shall (1) if the private annuity plan has not been terminated, pay to the employer or to the Secretary of the Treasury, subject to the conditions and limitations of paragraph (4) of this subsection, the amount of such cash withdrawal value; or (2) if the private annuity plan has been terminated, pay to the Secretary of the Treasury the amount of such cash withdrawal value;

"(4) provide that payment to the employer under paragraph (2) or (3) of this subsection shall not be made in excess of payments previously made, under subsection (c) of this section, to the Secretary of the Treasury by the employer on account of such employee, until the employer has paid to the Secretary of the Treasury the total amount due thereunder with respect to such employee and in the event such amount has not been paid on or before March 1 of the calendar year next succeeding that in which the employee ceased to be covered, then the annuity carrier shall pay to the Secretary of the Treasury, the amount by which such cash withdrawal value exceeds the amount of payment, if any, to the employer by the annuity carrier with respect to such employee under this paragraph; and

"(5) provide that if an employee makes contributions under the plan—

"(A) such contributions shall be confined to the purchase of such benefits for such employee as are in addition to the transfer annuity, and

"(B) with respect to such contributions there shall be available, in accordance with the terms of the contract, either a cash withdrawal value or a paid-up deferred annuity to such employee in the event he ceases to be covered by such private annuity plan prior to commencement of such benefits.

"(c) When a cash withdrawal value is conditionally payable to the employer by the annuity carrier as provided in subsection (b) (2) or (3) of this section, the employer shall pay to the Secretary of the Treasury an amount equal to the then actuarial value, as determined by the Board, of the transfer annuity with respect to such employee, the amount of such transfer annuity being computed as of the end of the last period for which transfer reserves have been paid or are payable to such employer. Such determination by the Board shall be based upon the same tables of mortality, interest, and other factors as are used in determining the annual transfer reserve with respect to such employee.

"(d) The employer shall submit to the Board for approval a statement, to be made available to employees, clearly setting forth the schedule of benefits

and containing such reasonable terms and conditions as the Board may approve as to entrance or recentrance into, or withdrawal from, such plan.

"(e) The employer shall—

"(1) make, keep, and preserve such accounts and other records with respect to such plan, and to the financial transactions in relation thereto, as the Board may require, such accounts and other records being, at all reasonable times, subject to examination by the Board; and

"(2) if a qualified individual receives wages from the employer with respect to regular employment after he attains the age of sixty-five, pay to the Secretary of the Treasury, on account of each calendar month in any part of which such regular employment occurred, the installment under the transfer annuity becoming payable in such month; and

"(3) make the approved statement specified in subsection (d) of this section available to all employees eligible to come under the plan.

"(f) If the Board, after reasonable notice to the employer and the annuity carrier and opportunity for hearing, finds that in the case of an approved private annuity plan there is any substantial failure to comply with any of the provisions of the plan as approved by the Board or of this section, the Board, unless such condition has been corrected within a reasonable time, shall withdraw its approval of the plan.

"DUTIES OF THE SECRETARY OF THE TREASURY

"Sec. 212. The Secretary of the Treasury is authorized and directed to pay the annual transfer reserve in accordance with section 206½ to the employer without requiring bond for repayment, to receive on behalf of the United States any payments made under section 211 and to credit them to the old-age reserve account, and to issue and accept certificates in lieu of cash payments, as provided in section 206½ (b)."

Senator KING. Mr. Woodward, you made a presentation at the last meeting, and you submitted at the last meeting a measure to amend the Social Security Act with reference to the private annuity plan, and you also made a statement explanatory of it. Have you anything further to add to your statement made upon that occasion?

STATEMENT OF W. H. WOODWARD

Mr. WOODWARD. Only that since the last meeting at the suggestion of some of these gentlemen we have made a slight change in the proposal.

First, I might say that the form has been changed somewhat by legislative counsel, but no change in principle or substance has been made except one, and that is that there is now a provision in there that in the case of withdrawing employees the insurance companies cannot pay any money to the employer.

Senator KING. To the employer?

Mr. WOODWARD. To the employer to the extent that the employer has previously paid the Treasury. In other words, it is a further protection for the Treasury. And if the employer does not pay these sums due the Treasury, then the proviso is that the insurance company shall pay direct to the Treasury under such circumstances. That is the only substantial change that has been made.

Senator KING. Have you had from employers or from employees, or from the Security organization any criticism of the plan which you submitted?

Mr. WOODWARD. No, sir; not of the principle of it. Of course, the present committee print has only been available since yesterday. But the typewritten draft of it has been submitted to quite a few, and we have no suggestions of change or corrections, or any criticisms of any sort from any source that I know about.

Senator KING. To what extent have corporations, so far as you know, approved this plan; to what extent have the employees of corporations signified their approval?

Mr. WOODWARD. There are about, I should say, 160 on the list of employers with plans or that are in favor of this amendment. This is only an estimate, of course. It involves probably a million and a half employees.

Senator KING. Senator George has just come in, and will you explain to him the change you just mentioned which has been made in the bill?

Mr. WOODWARD. It was thought that the original draft, perhaps, did not adequately protect the Treasury, in that it provided in the case of withdrawing employees the withdrawal value should be paid by the insurance company to the employer. We have now provided that this can only be done where the employer has previously paid the Treasury, and only to the extent that they have previously paid to the Treasury. And in the event he does not pay the Treasury, then the insurance company is obligated to pay direct to the Treasury. It is a further protection for the Government money.

Senator KING. Senator Clark, have you any suggestions to make or any questions to propound to Mr. Woodward?

Senator CLARK. I have no questions, Mr. Chairman.

Mr. CULLEN. Mr. Chairman, just for information I would like to ask Mr. Woodward, have you any knowledge or information in regard to corporations and large employers of labor liquidating their pension funds today?

Mr. WOODWARD. I do not think any of the type concerning which we are interested have started to liquidate their funds. Several feel that they are going to have to do so if some amendment such as this is not enacted into law, but I do not know of any with insured plans that have started to liquidate. Some of them who have noninsured plans have already served notice on their employees that beginning as of certain dates they will not continue their plan or would be unable to after certain dates.

Senator CLARK. I can say, Mr. Cullen, that I do not know the names of the companies, because I have not tried to tabulate them, but I have got a whole bale of letters over in my office from employees scattered all over the country who are afraid they are going to be wiped out under this thing, and whether any of them have actually been or not I do not know.

Mr. CULLEN. That was the information I had. I have no definite information.

Senator CLARK. I have understood a great many of the companies feel it is necessary to liquidate their plans when this law goes into effect, unless some provision is made in time to enable them to continue.

Mr. CULLEN. I have in mind two large employers of labor in New York State, the General Electric and Eastman Kodak.

Mr. WOODWARD. Yes, sir. The Westinghouse, a very large corporation, has already served notice they will have to liquidate unless something of this sort is done.

The Eastman Kodak plan is a rather unique plan, in that they have a noncontributory plan. The employees contribute nothing to that plan.

Mr. CULLEN. Yes; I understand that is so.

Senator KING. Senator La Follette, did you have any questions?

Senator LA FOLLETTE. I would like to ask Mr. Eliot a question after Mr. Cullen has finished with Mr. Woodward.

Mr. CULLEN. I am through.

Senator LA FOLLETTE. Mr. Eliot, have you had an opportunity to study this matter further since the 30th of March, and have you anything further to add to your statement of that time?

STATEMENT OF THOMAS H. ELIOT

Mr. ELIOT. I have nothing to add to my statement made at that time, Senator. Mr. Calhoun and myself purely as a technical matter have been connected with the draft, and our position, remains the same, except insofar as the draft has been technically improved by consultation with Mr. Wood and Mr. Boots. And my statement then as to whatever I knew about the attitude of the Board in general opposing such legislation I could not amplify at this time, but it still represents the situation.

Senator LA FOLLETTE. Mr. Latimer, have you had an opportunity to look this amendment over?

STATEMENT OF MURRAY LATIMER

Mr. LATIMER. I have looked at it very casually. I am not prepared at this moment to enter a detailed discussion.

May I add one word on this question which has just been raised? We have attempted to get a complete count on the reinsured plans. There were discontinued in the year 1935 five such plans, having a total of 371 individuals covered in the first 2 months of 1936. 1 such plan was discontinued having 46 persons covered. That is a summary of statements made by these six major insurance companies which carried group annuity business.

Mr. DOUGLASS. Mr. Chairman, I would like to ask Mr. Eliot if he would make it clear to the committee whether or not the Board, if he knows and is at liberty to state, is favorable or unfavorable, or takes a neutral position so far as this amendment is concerned?

Mr. ELIOT. It is hard for me to answer that definitely. Incidentally, again I want to emphasize the dual nature of my position as your expert on this and as counsel for the Board, and to repeat that on this matter the Board has not, and I think very wisely not, seen fit to use me as their particular adviser on old-age benefits, as they have Mr. Latimer.

So far as I know the Board would be inclined to oppose such legislation. I cannot say that with definiteness. I have not heard the matter discussed. It has not been discussed with me for a considerable period of time. I think they might also feel that the need for the amendment was very small in view of the statement just made by Mr. Latimer that very few companies were liquidating plans, but I cannot speak with personal knowledge at this time as to how strongly their opposition would be brought out.

Senator KING. Is it not a fact, and I ask for information, that a large number of corporations and firms, who have their own private systems, have been hanging on from liquidating them in anticipa-

tion of some legislation such as that proposed in the plan under consideration, but if it were definitely known that no amendment to the present law was to be accepted there would be a rather wholesale liquidation?

Mr. ELIOT. I have no information as to that, sir.

Senator KING. Have you, Mr. Latimer?

Mr. LATIMER. There has been an inquiry made by the committee of the Social Science and Research Council, which related largely to the former Clark amendment under discussion last year, and it did go out as I understand it to some 50 employers having pension plans, and they had 1,250,000 employees who were interviewed.

Senator CLARK. Interviewed by whom, Mr. Latimer?

Mr. LATIMER. By Dr. Rainerd Robbins for the Social Science and Research Council. I do not know that I should put this in the record, because I do not want to quote Dr. Robbins without knowing exactly what he would say. My understanding is, he felt that the plans would not be discontinued if the amendment were not passed, but I would not speak for him.

Senator CLARK. Who is Dr. Robbins? If he is going to testify by proxy I would like to know who he is.

Mr. LATIMER. He is secretary of the Teachers' Annuity Association, one of the leading experts on pension systems in the country.

Senator CLARK. Is he from Princeton?

Mr. LATIMER. No, sir. He is from the Teachers' Insurance Annuity Association. It is of the Carnegie Foundation.

Senator KING. I did not quite understand. Perhaps we are doing him an injustice and doing you also.

Mr. LATIMER. I should not like to be understood as speaking for Dr. Robbins, because I cannot.

Senator KING. No. Did you get the impression—of course it will be subject to further information and data—from what he said, or thought, or did, that he was in favor of this plan, or a plan that would permit this?

Mr. LATIMER. Dr. Robbins?

Senator KING. That would permit the private pension plans?

Mr. LATIMER. I think he was engaged to make an inquiry into the matter, and he did not take a personal position one way or the other. He was trying to find out what the attitude of persons concerned was, and not express an opinion of his own.

There will be a report, I am informed, by this Committee on Social Security of the Social Science and Research Council, and the Director told me on yesterday there would be a report by Dr. Robbins available before the end of the next week.

Senator LA FOLLETTE. That would show for whatever it was worth.

Senator KING. Yes. Mr. Calhoun, have you any further light to shed upon this subject?

STATEMENT OF LEONARD J. CALHOUN

Mr. CALHOUN. I think Mr. Eliot's statement covers anything I might say, Senator King.

Senator KING. Have you found on your further studies and further reflection any objections that might be regarded as difficult to

meet or insuperable to the acceptance of this plan or some other plan for the perpetuation of the private pension plan?

Mr. CALHOUN. I have not found any new difficulties.

Senator KING. My recollection is in your former testimony, and I have not read it at all, although I remember, of course, hearing it, that it was your belief that the private pension plan could be integrated with the Government plan in the sense that private pension plans could be preserved and the interests of the insured be fully protected.

Mr. CALHOUN. At considerable administrative expense.

Senator KING. At whose administrative expense?

Mr. CALHOUN. The Federal Government's.

Senator CLARK. It would be a mere bagatelle in comparison with the whole administration expense now, would it not, Mr. Calhoun?

Mr. CALHOUN. I would hesitate to estimate what the expense would be.

I am basing my statement largely on the cost of approving State plans, which are different in type of approval, but which would probably involve the same administrative difficulty on a much larger scale. In approving the private pension plan you would have to go through much the same procedure as, say, the State plan for old-age assistance, and in addition to that subsequent actuarial calculations would have to be made.

Senator LA FOLLETTE. Mr. Chairman, may I suggest that it would be well for the committee to submit this draft of the amendment to the Social Security Board and to the Secretary of the Treasury with a request that they furnish this committee with their official position concerning it?

Senator CLARK. I think it would be a good thing to get the Social Security Board up here if they have any opinions to express on it.

Senator LA FOLLETTE. I think since we are meeting day and night it is awfully hard to get everybody together.

Senator CLARK. That is true.

Senator LA FOLLETTE. And it might save time and effort if we waited until we had seen their formal written position, and then if we wished to interrogate them we can always have a meeting for that purpose.

Senator CLARK. That is true. The only thing I think about that is this: If there is going to be anything done at this session it had better be done very quickly, as the time is very short for doing it.

Senator LA FOLLETTE. Yes; but it does seem to me that the committee ought to get an official statement from the Board in charge of the act.

Senator CLARK. That is true.

Senator LA FOLLETTE. And the statement of the Treasury would have to be involved in this legislative proposal if it is enacted, and I notice in reading the testimony at the previous meeting that the Treasury had not been drawn into any of the considerations of the experts.

Senator KING. I think that is a good idea. Senator George, have you any suggestions or any questions?

Senator GEORGE. No; except I think it should be submitted to the Board, or else have representatives of the Board come up here.

Senator CLARK. Why not do both? In other words, submit the matter, and then see if we can arrange to have a fairly early meeting.

Senator GEORGE. Probably that is the best suggestion.

Senator CLARK. It seems to me if anything is to be done on this matter that it may be necessary to do it in connection with the tax bill.

Senator LA FOLLETTE. What I had in mind is this: Senator Clark, the chairman of this committee, could submit this draft of this amendment to both the Secretary of the Treasury and the chairman of the Social Security Board, and request them to submit a written opinion on it.

Senator CLARK. I think that would be very desirable.

Senator KING. At the earliest possible moment.

Senator LA FOLLETTE. And then we could call representatives of the Treasury and Board before us after receiving that. My theory was it would probably save time, and we all have to do a certain amount of study on it anyhow.

Senator KING. Mr. Weaver, have you anything to say?

STATEMENT OF H. P. WEAVER

MR. WEAVER. Senator, in connection with the discontinuance of the plans it has come to my notice that such companies as the Westinghouse Electric, Gulf Refining, and Hibbard, Spencer & Bartlett, a well-known Chicago concern, have served notice on their employees that their pension plans are suspended pending further action on the Social Security Act. Then I am wondering also, and perhaps I should hesitate to enter into something which is of a legal nature, whether this concerns the Treasury very much. You see, this whole title II concerns the Social Security Board itself; I do not mean to say it should not be considered, but I do not think it bothers the Treasury so much.

Senator LA FOLLETTE. I think we ought to have their opinion, because they are involved in this whole question. They have not been consulted, and some criticism might be made of this committee if we did not consult them.

Senator KING. As to the form of this proposed amendment, have you anything to add to it?

Mr. WEAVER. I think it is in as good form as we can get it now, and we have worked on it long and hard.

Senator KING. Does it meet, so far as you understand, the views of those who are the proponents of this plan; that is, this method of the private pension plan?

Mr. WEAVER. As I have talked to different people, there has been a lot of comment made which was based on last summer's draft. And then I have talked with people in the field and explained the present draft, and they have said, "Oh, well, that is different, now you are getting something workable." That is the general reaction.

Senator KING. That is with reference to the draft now before us?

Mr. WEAVER. That is with reference to the draft now before you, which has not had distribution as last summer's draft has had. There are reports based on last summer's draft, and hence partly out of order.

Senator LA FOLLETTE. Mr. Latimer, if you can secure a copy of that report of Dr. Robbins I would like to have it.

Mr. LATIMER. There will be before the end of the week sufficient copies of it for general distribution.

Senator KING. Send a number to the secretary of the committee, Mr. Johnson.

Mr. WEAVER. Could I ask a question?

Senator KING. Yes.

Mr. WEAVER. I would like to ask Mr. Latimer whether this report of Dr. Robbins is based on this draft. The copy I saw sometime ago was based wholly on last summer's draft. Is it being revised?

Mr. LATIMER. It is being revised.

Mr. WEAVER. Yes.

Mr. LATIMER. And with comments on the new form of the amendment. Of course, it is not based on this draft as of May 15, because that was not available until yesterday.

Senator KING. There are four gentlemen over here that I do not know the names of, but would any of you like to make a statement?

Mr. SHREINER. My name is J. H. Shreiner, and I am associated with Mr. Weaver.

STATEMENT OF N. E. HORELICK

Mr. HORELICK. I am Mr. Horelick, of the Equitable Life Assurance Society.

Senator KING. Have you any suggestions to make relative to this draft?

Mr. HORELICK. No. I am familiar with the draft. I think it is as workable a draft as could be gotten out.

I do want to say this: I am not speaking officially for the Equitable; I am in charge of the group-annuity division. That is the division in the Equitable that writes and insures the pension plans. And I will say this with respect to the companies that have pension plans, insured pension plans: I think the main reason, perhaps, why they have not terminated their plans is the hope that some such amendment will be passed. I think there are two things which have kept these companies from terminating their plans or changing them, reducing them: one being the hope that there will be a workable amendment passed by Congress, and the second being, in any event, they will not make any radical changes until the act has been tested from a constitutional standpoint.

I might say I differ from the conclusions I read of Dr. Robbins, in that the small number of plans terminating in the last year or two is an indication that no changes have been made. I think it is an indication that they are holding up any changes until this amendment is acted upon and until the act itself can be tested.

Senator KING. So far as you know, the amendment meets with the approval, at least, with those for whom your organization is fiduciary.

Mr. HORELICK. Yes; I have visited a lot of our people who have insured pensions plans with us. We have quite a number. And they all have a keen interest, I know, in the status of the so-called Clark amendment. They want to know all about it, want to know what the chances are of having that passed, and so on.

From the Equitable standpoint, we have officially written to people who are connected with this amendment, and we stated we preferred a more simple form of amendment, such as an exemption both from tax and benefits, and at the same time we were definitely on record as not wanting to be a party to any amendment which, in the opinion of informed people, make the act doubtful or perhaps injure the act from a constitutional standpoint.

Senator CLARK. These people, Mr. Horelick, have not had their situation changed as yet, because the act has not gone into effect.

Mr. HORELICK. That is right.

Senator CLARK. And many of them have retained their plans in the hope, in view of the fact this joint committee has been constituted, that Congress would modify the act sufficiently to permit private pension plans?

Mr. HORELICK. Senator, that is right.

Senator CLARK. If the law goes into effect, having the effect of a death sentence on all of these private plans, and the employees who are now covered by the private plans lose the rights they have under the private plans, then the Supreme Court, it seems highly probable, might declare the act itself unconstitutional and the employees now covered by private plans will have been done an irreparable damage; is not that correct?

Mr. HORELICK. That is correct.

Senator KING. Is that all you care to say? Pardon me, Mr. Hill. Did you want to ask this gentleman any questions?

Mr. HILL. Not of this witness. I wanted to ask Mr. Woodward a few questions.

Mr. DOUGHTON. I just wanted to ask, Senator, if you had any probable knowledge of the time the Supreme Court will pass on this act.

Senator CLARK. I have not any knowledge at all. I based my knowledge of what the Supreme Court might declare as to it being unconstitutional on the fact that it was not disputed by the experts who openly testified before the Ways and Means Committee and also before the Senate Finance Committee, as well as by the chairman of the Finance Committee in debate on the floor, that the hope for the constitutionality of the act rested on the hope that the Supreme Court would not construe titles II and VIII together. And in view of such a position as that it seems to me a very violent assumption that the Supreme Court does not have sense enough to read the act through and construe the whole act.

Mr. DOUGHTON. I was hoping to get that decision through before we passed on this amendment.

Senator KING. Mr. Woodward, Congressman Hill desires to ask you a question.

Mr. HILL. With reference to the substantive change you said had been made in this draft with reference to the payment into the Treasury by the insurance company of certain income under certain conditions, would you explain that a little more fully, and tell us in just what connection that amendment fits into the draft?

Mr. WOODWARD. In the case of withdrawing employees there may be a cash surrender value. If the insurance company does not give a man a paid-up annuity there is a cash withdrawal value, and of

course that man when he withdraws from service may thereby be thrown back on the Government plan. Therefore, all these moneys that have temporarily been paid to this annuity carrier to build up an annuity for that employee must go back to the Treasury to support his pension. The original draft simply provided that the employer should pay the Treasury back that money. He is receiving certain moneys to support that pension and therefore for the withdrawing employee he should pay it back to the Treasury.

The present draft provides that the contract with the annuity carrier, the insurance company, must provide the insurance company cannot pay the employer any of that cash withdrawal value until the employer has previously paid the Treasury. And if he does not pay the Treasury by March 1 of the next year then the insurance company is obligated to pay direct to the Treasury.

Mr. HILL. That is referring to the withdrawal value of a part of the premium being paid by the employer to the insurance company, and not the lump sum which goes to the employee?

Mr. WOODWARD. No, sir. It is the money necessary to support a 11 $\frac{1}{3}$ -percent annuity that the employer is required to pay to the Government. In other words, we call it the transfer reserve here.

Mr. HILL. On the Government's actuarial plan?

Mr. WOODWARD. Figures; yes.

Mr. HILL. That is on the insurance company's figures?

Mr. WOODWARD. No, sir; that is not correct. The Social Security Board sets up its own values as to what sum that shall be.

Mr. HILL. As I understand it from your explanation in the previous meeting the amount that the Government might pay to the employer upon a showing by the employer that he has paid into the insurance company for certain employees was not of necessity identical with the amount the employer pays into the insurance company, but the amount which under the Government's actuarial plan is sufficient to support that annuity under the Government plan.

Mr. WOODWARD. That is correct; yes, sir. In other words, the premium that the employer pays is not the controlling factor, and he may very well pay 10 percent more to the insurance company than the Government allows him as the amount necessary to support that annuity.

Mr. HILL. And your suggested change here in this draft here over the previous draft is that the insurance company would pay direct to the Government under the circumstances described an amount in accordance with the Government's actuarial plan, rather than the amount that might be paid back to the employer, if paid by the insurance company direct to the employer?

Mr. WOODWARD. That is correct, sir. In other words, it preserves the same yardstick. The Government pays out according to one yardstick, and the insurance company pays back to the Government under the same yardstick. I am assuming from actuarial statements that cash withdrawal values on an average will equal transfer reserves.

Mr. HILL. I would like to ask Mr. Eliot if this substantive amendment about which we have been talking here meets the objection, the first objection you stated to the committee as to the theoretical risk.

Mr. ELIOT. No; it does not. I think the theoretical risk is if the insurance company goes "bust." The way that was sought to be met was by confining the annuity carrier to very substantial insurance companies. The theoretical risk, however, would still remain if the insurance company in spite of the safeguards went broke, the risk of loss would still fall on the employee.

Mr. HILL. Your second objection has been referred to here by Mr. Calhoun, I believe, the administrative expense. You have not any estimate of that?

Mr. ELIOT. I just do not know what that would cost.

Mr. HILL. Just what would it require of the Social Security Board to check up on all these things?

Mr. ELIOT. If you had a great many plans coming in, if this plan in this draft were made use of by a large number of companies with private plans, we would have to have a considerable legal staff examining very thoroughly into the legal requirements of the plan submitted and the nature of the annuity carrier and the contract between the employer and the annuity carrier. And I assume the Board would also have to have many experts and actuaries to examine the soundness of the plans, men familiar with insurance practice. But it would largely depend upon how many companies avail themselves of this private plan opportunity. If only a few did our increase would not be great, but if a great many did our increase would have to be very great.

Mr. HILL. Would that be a continuing operation insofar as governmental activities in connection with it are concerned, or would it be disposed of after examining and finding in the beginning of the initiation of the plan that it was a sound plan?

Mr. ELIOT. There would have to be a certain amount of supervision in connection with complaints by employees who thought they were not getting what they thought they should in the way of benefits from the employers. Then again, if all the employers' plans could be taken care of at the outset, then the job later on would be merely supervisory; but that is very unlikely, as you are likely to have the thing going along with insurance companies coming in gradually rather than all at once.

Mr. HILL. I take it any private plan, in order to be satisfactory to the Security Board, would have to be equivalent to the annuities provided under the Government plan.

Mr. ELIOT. Right.

Senator KING. No; that is not quite right.

Mr. ELIOT. No. The entire benefit to be received by the employee would be the benefit at least as great as the benefit to which he is entitled under title II, but that could be spread between the private plan and the Government.

Mr. HILL. Do you mean they could divide up, each one carry part of it, the Government a part and the insurance company a part?

Mr. ELIOT. That might happen in a great many cases.

Mr. HILL. But you would have to assure the beneficiary that he would receive in the total as much as the Government plan provides?

Mr. ELIOT. He will be assured of that, except for the possible risk which he would bear if the insurance company failed.

Mr. HILL. That is all.

Senator KING. I suppose the insurance companies, such as the one represented by Mr. Horelick, have a system under which they make

a thorough examination of their applicants who insure with them or through them for the protection of their employees?

Mr. WOODWARD. Yes, sir.

Senator KING. So that they have a thorough system, or at least they regard it as thorough future protection, not only of the employer but particularly the protection of the employee.

Mr. WOODWARD. Yes, sir.

Senator KING. Has there been any objection urged to this system of examination of the plans which have been adopted by these large insurance companies for the protection of the employees?

Mr. WOODWARD. On the other hand, in the case of most plans which have been put into effect, better than 99 percent of the employees go into the plan and remain in the plan.

Senator KING. Any other questions?

Mr. HORELICK. I made a statement with reference to the amount of annuities a while ago.

Senator KING. Yes.

Mr. HORELICK. The annuities we are paying under our group annuity plan to people who have retired average at this time, I think, about \$100 a month. That is the average which is far in excess of the theoretical maximum under the Social Security Act. And the average has increased gradually over the years. So that private plans have provided annuities at least for those who are already under the present private plans in a considerably higher amount than is contemplated under the act.

Senator KING. I have received a number of letters from annuitants claiming they were receiving \$156, and I think some said \$140. I think \$156 was the highest.

Mr. HILL. It seems to me, Mr. Chairman, it will greatly simplify this thing if a company that wanted to operate under a private pension plan would be required as a condition precedent before securing permission to so operate to provide an annuity of at least equal to the amount of what is in the Social Security Act.

Senator KING. I think this does it.

Mr. WOODWARD. It does do it.

Mr. HILL. I did not get that impression from what Mr. Calhoun and Mr. Eliot said.

Mr. WOODWARD. Mr. Calhoun and Mr. Eliot both, I think, were talking about a different situation.

A man might work 20 years under the Government plan and then go to work for a company under a private plan. We would not take over all his annuities. They would remain with the Government. We would simply pick him up and provide an annuity equal to the Government plan from then forward.

Mr. HILL. That is, that would be the minimum?

Mr. WOODWARD. That would be the minimum; yes, sir. We would never buy less than he would receive under the Government plan.

Mr. HILL. Let me ask Mr. Calhoun, is that your understanding?

Mr. CALHOUN. Considering it over the first \$45,000, a person who earns \$45,000 under the Government plan would receive \$50 a month. The private pension system to be approved must provide at least this amount of benefits with respect to these wages if earned under it. Of course, if a person earns only \$3,000 under the Government plan he is entitled to a pension of \$15 a month. This bill does not propose to

pay over reserves to support any \$15-a-month pension to an insurance company by the time a man has earned his first three thousand. The amount that is paid over is an amount necessary to support an annual annuity of $1\frac{1}{3}$ percent of the wages, and that would mean that during the time a man earns his first \$3,000, you pay over reserves at the same rate that you do when he earns between three thousand and forty-five thousand. In other words, a person who would be under a plan a very short time, a private plan, would in a sense also be under the Government plan, because the Government would be farming out a level accrual rather than that higher initial amount that he would get with the first three thousand. However, by the time a person reached forty-five thousand, had he been continuously under a private plan all of the time, the Government would farm out his entire risk and he would obtain all his pension under the private plan.

Mr. HILL. But up to \$3,000 the Government makes up the difference, is that the idea?

Mr. CALHOUN. No; the Government does not make up the difference. The Government transfers less than the total amount he is accumulating, and since the Government has transferred only a part of benefits it pays the difference. In other words, it is in the old-age account in the hands of the Government rather than in the hands of the carrier.

Mr. HILL. Is that an accurate system?

Mr. CALHOUN. It is quite accurate in that a man will never get any less annuity. When he reaches \$45,000 had he been with one company all of the time the company would carry his entire annuity by that time.

Mr. HILL. Would it cost the Government any more?

Mr. CALHOUN. No, sir.

Mr. WOODWARD. In that connection my remarks might have been misinterpreted. I was speaking from the standpoint of the annuity. I desire to be so understood. In other words, this man will never get any less, whether under a private plan or under the Government plan part of the time and the rest under the private plan he will always receive the same benefit that he would if he had been under title II all of the time.

Mr. HILL. That has been the essence of this plan all the time, that a man will never receive less from the Government, and might receive a good deal more?

Mr. WOODWARD. As a practical matter, I will say that no insurance company will pay simply the Government level. No employer wants it. And the insurance companies have so gone on record. So employers have to give a man a greater pension than provided under title II, or they cannot be under the private plan.

Senator KING. Did you gentlemen desire to say anything?

STATEMENT OF GEORGE GUTH

Mr. GUTH. My name is George Guth, of the Socony Vacuum Oil Co.

We happen to have, and have had for some 30 years, Senator, perhaps the largest insured pension plan in the United States. It is a very liberal plan. It is a rather expensive plan so far as the company is concerned.

Senator LA FOLLETTE. Who carries that?

Mr. GUTH. The Metropolitan Life Insurance Co.

It is fully funded and it is well reserved naturally. It is a 2-percent plan, providing a maximum pension up to three-quarters of a man's last year's pay for life. Naturally, our people all over the United States are very much interested in this amendment. Our management, fortunately, while this matter has been pending, have taken no steps to make any change in our plan. I have urged that they not make any change until such time as we know definitely and frankly, gentlemen, what we are faced with.

We have taken years in building up this plan for these employees, and thousands of our employees have been on our books with us for years. And naturally this thing is very close to their hearts. They know when we told them last summer after the Federal Social Security Act became a law, without the amendment, that they need not be disturbed, that should any emergency arise whereby we might have to discontinue or change our plan it would not affect any annuities accrued up to date. Now, we have built up a wonderful plan there for our people. They are very much interested in it. They have helped contribute. Every one in our organization, from the chairman of the board down to the office boy, contributes 3 percent of his salary, which is approximately the same maximum amount as they contribute under the Government plan. That 3 percent, however, Senator, under our plan provides a very much larger annuity. It is true the company pays a good share of the bill and helps it along. And in the final wind-up it simply means this, that assume we have no amendment and we ask our employees, as we must the 1st of next January, to contribute 1 percent, and the company makes up 1 percent, regardless of whether we want to or not: it is not a question of what we would like to do, it is a question of what we are able to do. There is no concern as large as ours, or even smaller, that, in my estimation, is in a position to continue their present plan and take on the Government plan, too.

Now, if we were in a position to do so I doubt very much, and I am very sure that our management would not approve going to the employee and saying, "John, you are putting in \$3 to our private plan. The Government is asking you to put in another \$3 into our plan." And people cannot afford to do it. And our management does not feel they should be asked to do it. We have had many other health plans, and so forth, considered from time to time, and some, I am frank to admit, I have looked over and recommended to our management, and they have disapproved them because they said, "Three percent is enough to ask any of these people, and these other things which come up, such as when a man gets sick, we can take care of that."

Senator CLARK. Mr. Guth, under your plan, is it not true thousands of employees stand to get greater benefits than the maximum under the Government plan?

Mr. GUTH. Oh, yes.

Senator CLARK. I did not know you were here. I am glad you are. I recall an example that was cited to me during last session of Congress of a charwoman working for your company, who had never held any higher position than charwoman in her whole serv-

ice to the company, who is now retired, drawing a considerably higher pension than the maximum under the Government plan.

Mr. GUTH. Yes, sir.

Senator CLARK. Was that an authentic example?

Mr. GUTH. Yes, sir. That came right from my records, sir.

Senator CLARK. Do you have other examples of that, sir?

Mr. GUTH. Hundreds of them. Our average pension, Senator, is much larger than the Government maximum. We have had a pension plan for 30 years, and not only in the United States but abroad.

Senator CLARK. And that was a voluntary plan on your part?

Mr. GUTH. Entirely. And our plan is entirely voluntary today, and is not forced on the employee. He has an option. But it is thoroughly explained to him as to the maximum benefit to the employees, and the result is we have 99 percent participation.

Senator KING. Your employees are all satisfied, I understand?

Mr. GUTH. Senator, they are satisfied with our present plan; they hardly let me sleep at nights asking me what the ultimate outcome will be. They want to know what is to happen. I cannot tell them. They are very much interested in it.

STATEMENT OF G. POWELL HAMILTON

Mr. HAMILTON. My name is G. Powell Hamilton, of the Equitable Life Assurance Society. Mr. Horelick has made a very clear statement of our position, and I can only back up all that he has said, and add to it this, that I have opportunity, as he has, to visit many of our contract holders all over the United States, and I find the interest in the exemption amendment very great indeed, not only from employers, but from their employees, who seem to worry considerably as to the outcome of the action on this amendment.

Senator KING. I know they are wondering from some of the letters I get.

Congressman Hill, do you have anything further?

Mr. HILL. Just another question or two. This proposed amendment is an amendment to title II?

Mr. WOODWARD. Yes, sir.

Mr. HILL. It does not touch title VIII?

Mr. WOODWARD. No, sir; the original amendment was an amendment both to Title II and VIII, but this does not refer to title VIII at all.

Mr. HILL. The payment by the Government back to the employer upon a showing by the employer he has paid to an insurance company the requisite premium for the annuity to his employee does not come to him as a credit on taxes, but a direct payment out of this fund created under Title II?

Mr. WOODWARD. Primarily that was the idea. He pays his money to the insurance company during the year 1936, and on March 1, 1937, he would get a refund. You might call it that.

Mr. HILL. It is a refund rather than a credit?

Mr. WOODWARD. He has paid out his cash and he gets the cash, although we have provided in here that in the event that he may desire the Treasury shall issue him a certificate which may be used in payment of taxes.

Mr. HILL. That is, he will be credited the amount of the certificate?

Mr. WOODWARD. He will have his certificate, and then if he has any taxes to pay next year he can use that certificate.

Mr. HILL. And the certificate is good for so much cash?

Mr. WOODWARD. Yes.

Mr. HILL. I have not read this draft, and I have not read the other draft for some time, not since we had our meeting here before. This money that we are talking about, this refund payment back to the employer, is provided in this draft to come out of that fund set up in title II?

Mr. WOODWARD. Yes, sir; it is certified for payment by the Board out of this old-age reserve fund.

Senator KING. Do you have any questions, Senator George?

Senator GEORGE. I have no questions, Mr. Chairman.

Senator KING. Any other questions, gentlemen?

Mr. HILL. Nothing more for me, Senator.

Senator KING. Mr. Latimer, is there anything you want to suggest?

Mr. LATIMER. I was wondering perhaps if it might not be well to send out this information to the same group of twenty-odd persons and organizations to whom was sent the memorandum prepared last fall.

Senator KING. We will follow the suggestion made by Mr. Eliot.

Mr. ELIOT. I made that suggestion partly because we have limited the annuity carrier to the insurance companies, and they will be the ones to tell us whether they want to carry it or not.

Senator KING. Gentlemen, is there anything else you want to suggest as to any points?

Mr. GUTH. Senator, you made the statement that quite a number of employees all over the country have written to you. I would just like to interject this remark, that thousands of our employees asked us for permission and privilege to write to you gentlemen, and we have consistently told them not to do it.

Senator KING. How many employees are there in your various companies?

Mr. GUTH. In the United States we have 42,000, and practically the same in foreign countries.

Senator KING. That is, 80,000?

Mr. GUTH. Yes, sir.

Mr. HILL. Are they all under your insurance plan?

Mr. GUTH. Only in the United States.

Mr. HILL. About how many are under your private pension plan?

Mr. GUTH. 42,000.

Mr. HILL. There are that many under the plan, but that does not include all of your employees?

Mr. GUTH. Practically all in the United States.

Senator GEORGE. You said it included 99 percent, I believe, awhile ago.

Mr. GUTH. I am using 42,000 as a round figure. It may be 41,000 or so.

Senator KING. If there is nothing further we will adjourn. I will submit these communications immediately and urge them to answer promptly, and just as soon as we hear from them I will call the committee together again, if agreeable.

(Whereupon, at 1:10 p. m., an adjournment was taken subject to the call of the chairman.)