

# Social Security Legislation, January–June 1948: Legislative History and Background

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*The following article outlines the legislation in the field of social security enacted by the Eightieth Congress in the first 6 months of 1948. Because of the divergent viewpoints underlying the development of some of the amendments and the implication of the provisions for the social security program, the authors have also sketched in briefly, as a matter of record, the legislative history and background of the various provisions.*

THERE was considerable legislative activity in the field of social security during the second regular session of the Eightieth Congress. Numerous bills to amend the Social Security Act were introduced. One, H. R. 6777, would have extended coverage, increased benefits, and made other changes in the old-age and survivors insurance program. It had already passed the House and was pending in the Senate Committee on Finance when Congress recessed on June 20. Of the five bills passed by both the House and the Senate in the first 6 months of 1948, the President vetoed four. Three of the four vetoes were overridden.

## News Vendors Bill

On April 20, 1948, the so-called News Vendors Bill, H. R. 5052, introduced by Representative Gearhart, was passed over the President's veto and became Public Law No. 492.

The purpose of Public Law No. 492 is "to exclude certain vendors of newspapers or magazines from certain provisions of the Social Security Act and the Internal Revenue Code." Specifically, it excludes from coverage under old-age and survivors insurance and the Federal Unemployment Tax Act services performed by newspaper and magazine vendors who sell directly to the public, even though their contract with the publisher may vest the publisher with substantial control of the vendor's activities. Probably not more than a thousand workers, ac-

ording to the sponsor of the legislation, are affected immediately.<sup>1</sup>

The new law does not change the status of the ordinary newsboy. Most newsboys are not covered by the Social Security Act, either because they are in fact independent contractors or because they come within the terms of the 1939 amendments to the act, which exclude "service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution."

The amendments to the taxing provisions of the old-age and survivors insurance program and to the Federal Unemployment Tax Act are applicable with respect to services performed after December 31, 1939. For the purposes of the Federal unemployment tax, services performed before July 1, 1946, shall be considered as if the amendment had been in effect since the enactment of the Social Security Act Amendments of 1939.

The act prohibits any credit or refund of any amount paid before its enactment which is an overpayment of tax solely because of the new amendment.

To avoid wiping out benefits and benefit rights which already have accrued under old-age and survivors insurance and on which the worker and his family may have placed reliance, old-age and survivors insurance wage credits based on services performed before enactment of the amendment are not affected.

## Historical Background

One of the first significant steps leading to the passage of the news vendors law occurred in April 1944, when the Supreme Court declared that vendors making street sales at established locations and working full time for the Hearst Corporation and other publishers in Los Angeles were employees of the newspapers for purposes of the National Labor Relations Act (*National Labor Relations Board v. Hearst Publications, Inc.*, 322 U. S. 111). This decision seemed to indicate that the vendors might be employees under the Social Security Act. In 1946 the District Court of the United States for the Northern District of California, Southern Division, heard the cases, *Hearst Publications, Inc. v. United States* and *The Chronicle Publishing Company v. United States* (70 F. Supp. 666, 1946), which dealt specifically with the status, for employment-tax purposes, of vendors in the San Francisco area.<sup>2</sup>

The District Court found that these vendors were employed by the Hearst Corporation under agreements negotiated for them by an American Federation of Labor union of their own choosing. Under these agreements the publishers selected the vendors, designated their place, days, and hours of service within certain conditions in the contract, and fixed the profits they were to derive from the sale of each newspaper. The vendors were expected to be at their corners at press-release time, stay there for the sales period, be able to sell the papers, and take an interest in selling as many papers as they could. To see that they complied with the publisher's rules, the vendors were supervised by the publisher's employee, the "wholesaler." The wholesaler was authorized to report the vendor if the vendor failed in any of his duties, and was required to report any infraction to the publisher, who could then discontinue further sales to the vendor or report him to the union for disciplinary action. The vendor was required to sell his papers complete with sections in

<sup>2</sup> Reprinted in *Newspaper Vendors: Hearings Before the Committee on Ways and Means, House of Representatives . . . on H. R. 3997*, pp. 30–37.

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<sup>1</sup> *Congressional Record* (daily edition), Apr. 14, 1948, p. 4535.

the order designated by the publisher and to display only newspapers on the stands or racks that were furnished by the publisher at the latter's expense. He was not allowed to sell a competitor's newspaper without the publisher's consent. The vendor incurred no expense or risks save that of having to pay for papers delivered to him which by reason of loss or destruction he was unable to return for credit. Moreover, a vendor "was guaranteed by contract a minimum weekly profit." In effect, the vendors were subject to the publisher's control.

The District Court on January 2, 1947, held that these particular vendors were employees of the publishers for employment-tax purposes. The Hearst Corporation appealed the decision to the Circuit Court of Appeals for the Ninth Circuit, which affirmed, per curiam, the District Court decision on June 23, 1948.<sup>3</sup>

### Legislative History

In June 1947, Representative Gearhart introduced a series of three bills, H. R. 3704, H. R. 3920, and H. R. 3997,<sup>4</sup> which would have excluded all news vendors from coverage under the Social Security Act. The Committee on Ways and Means of the House of Representatives on June 12 conducted public hearings on H. R. 3997, at which representatives of the publishers and of the Social Security Administration testified.<sup>5</sup> Both houses of Congress passed H. R. 3997 without a record vote. On August 6, by means of a pocket veto, the President killed the bill,<sup>6</sup> pointing out, in a strongly worded message, that the legislation would "establish a precedent for special exemption, and the exclusion of one group would lead to efforts to remove social security protection from workers in other activities. Demands for further special legislation would be inevitable." The President also warned that "we must not open our social security structure to piecemeal

attack and to slow undermining. We must, instead, devote our energies to expanding and strengthening that system."

On January 20, 1948, Representative Gearhart introduced H. R. 5052, a bill identical with the one vetoed the preceding year. The Committee on Ways and Means reported the bill for passage on February 3 (H. Rept. 1320), saying "whatever effect it may have on the extension or restriction of existing coverage provisions is purely incidental to its main purpose, which is the removal of a substantial area of ambiguity and confusion in the application of the coverage provisions of the act. The bill has the unqualified endorsement of the newspaper publishers, the vendors concerned, and their union representatives." The House of Representatives passed the bill without debate and without a record vote on March 4.

In the Senate the Committee on Finance reported the bill on March 13 to the Senate without amendment (S. Rept. 985). The Senate, without debate, adopted the bill on March 23, again without a record vote.

President Truman vetoed the second news vendors bill on April 5, 1948.<sup>7</sup> In his message he called attention to the danger of the bill. "This legislation," he said, "has far greater significance than appears on the surface. It proposes to remove the protection of the social security law from persons now entitled to its benefits. Thus, it raises the fundamental question of whether or not we shall maintain the integrity of our social security system.

"H. R. 5052 would remove social security protection from news vendors who make a full-time job of selling papers and who are dependent on that job for livelihood. Many vendors of newspapers are excluded even at present from coverage under the Social Security Act because they are not employees of the publishers whose papers they sell. But some vendors work under arrangements which make them bona fide employees of the publishers and, consequently, are entitled to the benefits of the Social Security Act.

"If enacted into law, this bill would make the social security rights of these

employees depend almost completely upon the form in which their employers might choose to cast their employment contracts. Employers desiring to avoid the payment of taxes which would be the basis for social security benefits for their employees could do so by the establishment of artificial legal arrangements governing their relationships with their employees. It was this sort of manipulation which the Supreme Court effectively outlawed in June of 1947 when the Court unanimously declared that employment relationships under the social security laws should be determined in the light of realities rather than on the basis of technical legal forms. I cannot believe that this sound principle announced by the Court should be disregarded, as it would be by the present bill."

The President also declared that he was opposed to other congressional proposals that would deprive workers of coverage under the Social Security Act. "In withholding my approval from H. R. 3997 last August," he said, "I expressed my concern that such a bill would open our social security structure to piecemeal attack and to slow undermining. That concern was well founded. The House of Representatives has recently passed a joint resolution which would destroy the social security coverage of several hundred thousand additional employees. As in the case of H. R. 5052, the joint resolution passed by the House is directed toward upsetting the doctrine established by the Supreme Court last summer that employment relationships should be determined on the basis of realities. The present bill must be appraised, therefore, as but one step in a larger process of the erosion of our social security structure. The security and welfare of our Nation demand an expansion of social security to cover the groups which are now excluded from the program. Any step in the opposite direction can only serve to undermine the program and destroy the confidence of our people in the permanence of its protection against the hazards of old age, premature death, and unemployment."

On April 14 the House voted, 307 to 28, to override the President's veto.<sup>8</sup>

<sup>8</sup> *Congressional Record* (daily edition), Apr. 14, 1948, pp. 4534-4540. See also

<sup>3</sup> The citation for the circuit decision is not yet available.

<sup>4</sup> For a summary of the action on H. R. 3997, see the *Bulletin*, September 1947, p. 15.

<sup>5</sup> *Newspaper Vendors: Hearings . . . on H. R. 3997*.

<sup>6</sup> *Congressional Record* (daily edition), Aug. 15, 1947, p. A4456.

<sup>7</sup> H. Doc. 594, 80th Cong., 2d sess.

and on April 20, when the Senate also voted 77 to 7,<sup>9</sup> to override the veto, the bill automatically became law.

### House Joint Resolution 296

House Joint Resolution 296, which became law on June 14 when it was passed over the President's veto, amends the definition of the term "employee" as used in the Social Security Act and in related sections of the Internal Revenue Code and increases Federal financial participation in payments to needy aged and blind persons and to dependent children.

The first part of the new law (Public No. 642, 80th Cong., 2d sess.) excludes from the coverage of the Federal old-age and survivors insurance program and the provisions of the Federal Unemployment Tax Act any person who, "under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor," or "who is not an employee under such common-law rules." Thus, all persons whom the Treasury Department, the Federal Security Agency, or the courts have previously held to be employees covered by the Social Security Act but who do not meet the common-law rules will be excluded from coverage.

The joint resolution was introduced primarily to prevent the release by the Treasury Department and the Federal Security Agency of new regu-

issue of Apr. 12, 1948, pp. 4464-4466, for Representative Eberharter's discussion of the bill.

<sup>9</sup> *Ibid.*, Apr. 20, 1948, pp. 4703-4705, 4706-4707.

TABLE 1.—Federal participation in old-age assistance and aid to the blind under the Social Security Act

Average assistance payment	Federal share under 1946 amendments		Federal share under 1948 amendments	
	Amount	Percent	Amount	Percent
\$15.....	\$10.00	66.7	\$11.25	75.0
20.....	12.50	62.5	15.00	75.0
25.....	15.00	60.0	17.50	70.0
30.....	17.50	58.3	20.00	66.7
35.....	20.00	57.1	22.50	64.3
40.....	22.50	56.2	25.00	62.5
45.....	25.00	55.6	27.50	61.1
50.....	25.00	50.0	30.00	60.0
60.....	25.00	41.7	30.00	50.0

TABLE 2.—Federal participation in aid to dependent children (one-child family) under the Social Security Act

Average assistance payment per child	Federal share under 1946 amendments		Federal share under 1948 amendments	
	Amount	Percent	Amount	Percent
\$6.00.....	\$4.00	66.7	\$4.50	75.0
9.00.....	6.00	66.7	6.75	75.0
12.00.....	7.00	58.3	9.00	75.0
15.00.....	9.00	60.0	10.50	70.0
20.00.....	12.50	62.5	13.00	65.0
24.00.....	13.50	56.2	15.00	62.5
27.00.....	13.50	50.0	16.50	61.1
30.00.....	13.50	45.0	16.50	55.0
40.00.....	13.50	33.8	16.50	41.3
50.00.....	13.50	27.0	16.50	33.0
60.00.....	13.50	22.5	16.50	27.5

lations defining the meaning of the term "employee" along the lines interpreted by the Supreme Court in three cases decided in June 1947. The proposed new regulations would have interpreted the term to include persons whose status had been in doubt before the Supreme Court handed down its decision.

The second part of Public Law No. 642 increases Federal grants to States for public assistance payments, effective October 1, 1948. The Federal Government will now share in the payments to the needy aged and blind up to a maximum of \$50 a month. The previous maximum established by the 1946 amendments was \$45.<sup>10</sup> The maximum payments to dependent children in which the Federal Government will share are raised \$3 a month, from \$24 to \$27 for the first child in a home and from \$15 to \$18 for each additional child. The law also provides that the Federal Government will pay three-fourths of the first \$20 of average payments to the needy aged and blind and one-half the balance of matchable payments; for aid to dependent children, three-fourths of the first \$12 of average payments to such children plus one-half of the balance of matchable payments.

<sup>10</sup> Under the Social Security Act Amendments of 1946 the Federal Government paid two-thirds of the first \$15 of average payments to the aged and to the blind and one-half of the balance up to \$45. It paid two-thirds of the first \$9 of average payments to dependent children and one-half of the balance up to \$24 for the first child and up to \$15 for each additional child in the same home.

### Historical Background

The determination of borderline cases of employer-employee relationship is one of the thorniest problems in administering the social insurance programs. To have his employment covered for old-age and survivors insurance purposes and for Federal unemployment taxes, an individual must render service as an employee for the person employing him. The term "employee" is not defined in the Social Security Act or the pertinent sections of the Internal Revenue Code except that both laws specify that the term "includes an officer of a corporation."

In 1936 the Treasury Department, which administers the provisions of the Internal Revenue Code, and the Social Security Board issued regulations to implement the Social Security Act, in which they spelled out the meaning of the terms "employer" and "employee." Emphasis was placed on the legal right to control the performance of service, but other significant factors were taken into account such as the right to discharge, the furnishing of tools, and the furnishing of a place to work.<sup>11</sup>

During the first years of operation under these regulations the Treasury Department and the Social Security Board issued a number of rulings to clarify the boundaries of employ-

<sup>11</sup> *Regulations 90, Relating to the Excise Tax on Employers Under Title IX of the Social Security Act* (p. 5); *Regulations 91, Relating to the Employers' Tax and the Employers' Tax Under Title VIII of the Social Security Act* (pp. 3-4).

TABLE 3.—Federal participation in aid to dependent children (two-child family) under the Social Security Act

Average assistance payment		Federal share under 1946 amendments		Federal share under 1948 amendments	
Per family	Per child	Amount	Percent	Amount	Percent
\$12.00	\$6.00	\$8.00	66.7	\$9.00	75.0
18.00	9.00	12.00	66.7	13.50	75.0
24.00	12.00	15.00	62.5	18.00	75.0
30.00	15.00	18.00	60.0	21.00	70.0
36.00	18.00	21.00	58.3	24.00	66.7
39.00	19.50	22.50	57.7	25.50	65.4
42.00	21.00	22.50	53.6	27.00	64.3
45.00	22.50	22.50	50.0	28.50	63.3
48.00	24.00	22.50	46.9	28.50	59.4
54.00	27.00	22.50	41.7	28.50	52.8
60.00	30.00	22.50	37.5	28.50	47.5

ment relationship. The common-law meaning of the term "employee" was interpreted as not wholly restricted to cases in which the legal right of control was present. In establishing generally applicable precedents, the largest area in which difficulties were encountered was that of outside salesmen.

In 1939 the House Committee on Ways and Means reported out a bill (which became the Social Security Act Amendments of 1939) that included an amendment to the definition of "employee" by providing a rule of thumb for determining the coverage of certain salesmen. It was proposed that all salesmen be brought under the law as employees unless they were brokers or factors selling on behalf of more than one company and employing at least one assistant salesman in their brokerage or factoring business, or unless the selling was "casual service," not in the course of the salesman's principal occupation. This rule of thumb would have brought under the law all salesmen whose employment relationship was not clear cut and, in addition, would have covered many who were obviously self-employed.<sup>12</sup>

Both the Senate Committee on Finance, to which the bill was referred, and the Conference Committee re-

jected the proposal. The Committee declared that it did not at the time wish the Social Security Act to cover persons who were not employees. However, neither the Committee nor the Congress gave any new indication how the term "employee" should be defined.<sup>13</sup>

The first narrowing of the definition of employer-employee relationship occurred in 1941 with the decision in the case of *Texas Co. v. Higgins* (188 F. (2d) 636). In that and several subsequent cases the courts apparently were guided largely by the language of the contracts between the employers and their agents. In each instance the Government based its case not only on the language of the contract but also on the actual employment conditions that existed between the parties.

As a result of these reversals, the Treasury Department felt obligated to adopt a narrower interpretation of the term "employee" than it had used in the past. It consequently placed chief emphasis on the employer's legal right to control the performance of the alleged employee's services. At no time, however, did the Treasury Department confine coverage to the narrow control test of the employer-employee relationship.<sup>14</sup>

While the Treasury Department altered considerably the character of its rulings on employment-tax liability, the Social Security Board continued to use the broader interpretation of employer-employee relationship followed by both agencies up to 1941. Because of this divergent approach the rulings of the two agencies differed at times, the Treasury Department holding that there was no tax liability in a particular case while the Board held that the employment was covered for benefit purposes.

The restrictive decisions of the lower courts and the narrowed interpretations of the Treasury Department encouraged certain employers to revise their contracts with their agents for the specific purpose of avoiding liability for Federal employment taxes.

<sup>12</sup> H. Rept. 728, 76th Cong., 1st sess., pp. 18 and 61-62. This report stated (p. 61), "A restricted view of the employer-employee relationship should not be taken in the administration of the Federal old-age and survivors insurance system in making coverage determinations. The tests for determining the relationship laid down in cases relating to tort liability and to common-law concept of master and servant should not be narrowly applied. In certain cases even the most liberal view as to the existence of the employer-employee relationship will fall short of covering individuals who should be covered, for example, certain classes of salesmen. In the case of salesmen, it is thought desirable to extend coverage even where all of the usual elements of the employer-employee relationship are wholly lacking and where accordingly even under the liberal application of the law the court would not ordinarily find the existence of the master-and-servant relationship. It is the intention of this amendment to set up specific standards so that individuals performing services as salesmen may be uniformly covered without the necessity of applying any of the usual tests as to the relationship of employer and employee."

<sup>13</sup> S. Rept. 734, 76th Cong., 1st sess., p. 75.  
<sup>14</sup> Testimony of Adrian W. DeWind, Tax Legislative Counsel, Treasury Department, in *Social Security Status Quo Resolution, Hearings Before the Committee on Finance, United States Senate . . . on H. J. Res. 296*, pp. 9-10, 22-23.

The new contracts purported to terminate the employer's right to control performance of service but actually did not alter materially the previous economic relationships.<sup>15</sup>

A typical illustration of this practice is the case of *Nevins, Inc. v. Rothensies* (58 F. Supp., 460, aff'd per curiam, 158 F. (2d) 189), in which a chain drug company made licensees of its branch store managers. The drug company furnished the licensees with equipment and a stock of goods and in fact maintained almost the same economic relationship with them that had previously existed. The court held the licensees to be independent contractors.

In other instances, even when there was no change that implied an attempt to avoid tax liability, the normal arrangements between employers and employees, such as those for many outside sales representatives, could not be realistically evaluated in terms of control alone. All told, more than 1¼ million persons were in the group whose status was not clearly that of an employee or an independent contractor. This group included certain taxicab operators, private-duty nurses, owner-operators of leased trucks, industrial home workers, entertainers, newspaper vendors, contract loggers, commission oil plant operators, mine lessees, journeymen tailors, filling-station operators, and more than 600,000 salesmen.

The legal situation became more and more complex. In 1944 and 1945, several of the courts held for the Government while others followed the 1941 precedents. In all, about 250 cases were litigated. The standards applied by the courts varied widely. Certain of them interpreted the common-law definition of an employee very liberally while others restricted its meaning to the exercise of substantial control.

It was held in *Jones v. Goodson* (121 F. (2d) 176), for example, that taxicab operators were employees. In *United States v. Wholesale Oil Co.* (154 F. (2d) 745) a filling-station operator was held to be an employee. In *United States v. Vogue, Inc.* (145

<sup>15</sup> At the same time, some employers changed their contracts so that their employees could be covered by the social security program.

F. (2d) 609) a seamstress was held to be an employee. In *Grace v. Magruder* (148 F. (2d) 679) coal hustlers were held to be employees.

Many of the lower courts, on the other hand, took a more restrictive view. For example, taxicab operators,<sup>16</sup> a bulk-plant operator,<sup>17</sup> a home worker,<sup>18</sup> and a truck operator<sup>19</sup> were all held to be independent contractors.

The predicament in which the courts found themselves was well stated by the Supreme Court in *National Labor Relations Board v. Hearst Publications* (322 U. S. 111) when it refused to accept the argument that the definition of the term "employee" for purposes of the National Labor Relations Act must be determined by reference to common-law standards. The court declared in part:

"The argument assumes that there is some simple, uniform and easily applicable test which the courts have used, in dealing with such problems, to determine whether persons doing work for others fall in one class or the other. Unfortunately this is not true. Only by a long and tortuous history was the simple formulation worked out which has been stated most frequently as 'the test' for deciding whether one who hires another is responsible in tort for his wrongdoing. But this formula has been by no means exclusively controlling in the solution of other problems. And its simplicity has been illusory because it is more largely simplicity of formulation than of application. Few problems in the law have given greater variety of application and conflict in results than the cases arising in the borderland between what is clearly an employer-employee relationship and what is clearly one of independent, entrepreneurial dealing. This is true within the limited field of determining vicarious liability in tort. It becomes more so when the field is expanded to include all of the possible applications of the distinction.

"It is hardly necessary to stress

<sup>16</sup> *Magruder v. Yellow Cab Co.* (141 F. (2d) 324).

<sup>17</sup> *Glenn v. Standard Oil Co.* (148 F. (2d) 51).

<sup>18</sup> *Glenn v. Beard* (141 F. (2d) 376).

<sup>19</sup> *United States v. Mutual Trucking Co.* (141 F. (2d) 655).

particular instances of these variations or to emphasize that they have arisen principally, first, in the struggle of the courts to work out common-law liabilities, where the legislature has given no guides for judgment, more recently also under statutes which have posed the same problem for solution in the light of the enactment's particular terms and purposes. It is enough to point out that, with reference to an identical problem, results may be contrary over a very considerable region of doubt in applying the distinction, depending upon the state or jurisdiction where the determination is made; and that within a single jurisdiction a person who, for instance, is held to be an 'independent contractor' for the purpose of imposing vicarious liability in tort may be an 'employee' for the purposes of particular legislation, such as unemployment compensation . . . In short, the assumed simplicity and uniformity, resulting from application of 'common-law standards,' does not exist."

In order to resolve the welter of conflicting opinions of the lower courts, the Supreme Court took jurisdiction of several cases in this area. In June 1947 it handed down three decisions<sup>20</sup> which involved the proper interpretation of employer-employee relationship under the Social Security Act. In these cases the Court, looking at the social purpose of the law, held that within the meaning and intent of social security legislation the employment relationship should be determined on the basis of the worker's relationship in fact with the person for whom he performed services rather than his technical relationship under common law. All relevant factors in a given relationship should be considered, the Court added, including those recognized by common law. Relevant factors are the degree of control that is or can be exercised over the individual in performance of services, the permanency of the relationship, the skill required in the performance of the work, the investment in the facilities for work, the integration of the individual's work in the

<sup>20</sup> *United States v. Silk* (67 S. Ct. 1463), *Harrison v. Greyvan Lines, Inc.* (67 S. Ct. 1463), and *Bartels v. Birmingham* (67 S. Ct. 1547).

business to which he renders service, and the opportunity for profit or loss from the activities, giving to each such weight as it properly deserves in the light of the statutory aims.

These decisions affirmed in major part the position taken by the Social Security Board and the Federal Security Agency and indicated that the Treasury Department should in the future look to the economic realities of the arrangements between employers and their agents. On the basis of investment and of opportunity for profit and loss, however, the Court classified as independent businessmen some persons whom the Agency had regarded as employees and who might well be so regarded at common law.

In consequence of these decisions, the Treasury Department and the Federal Security Agency established a joint drafting committee to draw up new regulations spelling out in more detail the factors that the court enumerated as significant with respect to the employer-employee relationship under the old-age and survivors insurance and unemployment insurance programs.

On November 27, 1947, the Treasury Department published a copy of the proposed regulations in the Federal Register pursuant to the provisions in the Federal Administrative Procedure Act.

Final publication and issuance of both the Treasury and Federal Security Agency regulations were scheduled for January. Shortly before the scheduled date, however, Senator Millikin, Chairman of the Senate Committee on Finance, and Representative Knutson, Chairman of the House Ways and Means Committee, asked the Treasury Department to defer releasing the regulations until Congress had time to study the question further. Both the Treasury Department and the Federal Security Agency complied with the requests.

### Legislative History, 1948

On January 15, 1948, Representative Gearhart of California introduced House Joint Resolution 296 to "maintain the status quo in respect of certain employment taxes and social security benefits pending action by Congress on extended social security cov-

erage." As the title indicated, the resolution was designed to amend the definition of an employee in the Social Security Act and in the tax provisions of the Internal Revenue Code relating to old-age and survivors insurance and unemployment insurance taxes, to exclude from coverage "(1) any individual who, under the common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (2) any individual (except an officer of a corporation) who is not an employee under such common-law rules." The resolution, as introduced, would have made the taxing provisions effective as though they had been included in the Internal Revenue Code on February 10, 1939, the date the tax titles of the Social Security Act were repealed and reenacted as part of the Internal Revenue Code, and it would have made the benefit provisions retroactive to August 14, 1935, when the Social Security Act became law. This latter provision would have wiped out any wages posted to the social security accounts for all individuals not employees under the usual common-law rules; but the resolution provided that those benefits that were adjudicated before January 1, 1948, on the basis of wages that would normally be excluded by this new definition, would not be disturbed.

The Committee on Ways and Means of the House reported the resolution on February 3, 1948, and recommended its passage to stop the proposed Treasury regulations from going into effect. Otherwise, the report alleged, "endless confusion will result, existing rulings will be unsettled, and many types of relationship fixed by contract will have to be reversed at a time when full emphasis should be given to an increase of production and distribution. The proposed regulations by changing the test in existing regulations for determining whether an individual is an employee will require a review of existing contractual arrangements, and result in extensive litigation."<sup>21</sup>

It was felt that common-law rules should apply at least until Congress

acted to extend coverage under the law. The charges were made that the administering agencies and the Supreme Court had usurped the prerogatives of Congress to extend coverage to types of employment that Congress had never intended to be covered at this time. It was also pointed out that many employers would have difficulty determining actual earnings of salesmen and other workers covered by the proposed regulations.

The report included a minority report opposing its adoption. The minority report, issued by four members of the Committee, contained statements by the Acting Secretary of the Treasury and the Federal Security Administrator opposing the change in the law on the grounds that it would exclude some 500,000-750,000 persons whose coverage had been confirmed by the Supreme Court decisions of 1947. These agencies also believed that the resolution would confuse rather than clarify the meaning of the term "employee" since there is no generally accepted meaning of "usual common-law rules."

House Joint Resolution 296 came up for debate on the floor of the House on February 27. The arguments advanced for and against the measure were substantially those presented in the majority and minority reports of the Committee on Ways and Means. Representative Gearhart and others declared that the resolution would simply continue existing practices and that Congress could extend coverage to independent contractors at a later date.

The opponents of the measure, led by Representative Eberharter, argued that the usual common-law definition of an employee cannot be precisely defined. The alternative, they said, was to use the guides laid down by the Supreme Court to look behind any artificial facade that might be erected in terms of control, and get at the actual facts in individual cases. It would be easier, they contended, to follow the Court's guides than to follow a less liberal definition. Their main argument, however, was that three-quarters of a million persons should be allowed to retain the rights to which they were legally entitled under the Social Security Act. An added advantage would be that States would

not have to revise their unemployment insurance laws to conform to a narrower Federal position.

After considerable discussion, the House passed the resolution by a vote of 274 to 53.<sup>22</sup>

The Senate first acted on House Joint Resolution 296 on April 1 and 2, when the Committee on Finance, under the chairmanship of Senator Millikin, conducted public hearings on the measure. Testimony was given by representatives of several employers, the American Federation of Labor, the Congress of Industrial Organizations, the Treasury Department, and the Federal Security Agency.<sup>23</sup>

On May 6 Senator Millikin reported an amended version of the measure<sup>24</sup> for passage. Mr. Millikin's Committee had eliminated the provision that benefits adjudicated before January 1, 1948, would not be disturbed, and had substituted in its place a more liberal provision preserving "(1) wage credits reported to the Bureau of Internal Revenue with respect to services performed prior to the enactment of this Act or (2) wage credits with respect to services performed prior to the close of the first calendar quarter which begins after the date of the enactment of this Act in the case of individuals who have attained age 65 or who have died, prior to the close of such quarter, and with respect to whom prior to the date of enactment of this Act wage credits were established which would not have been established had the amendment made by subsection (a) been in effect on and after August 14, 1935."<sup>25</sup>

The report which accompanied the amended resolution said: "2. The resolution would maintain the status under the act of those who, prior to the enactment of the resolution, have been given coverage by erroneous construction of the term 'employee' (as defined in the resolution) if social security taxes have been paid into the old-age and survivors insurance trust fund with respect to the covered services.

<sup>22</sup> *Congressional Record* (daily edition), Feb. 27, 1948, p. 1973.

<sup>23</sup> *Social Security Status Quo Resolution, Hearings . . . on H. J. Res. 296.*

<sup>24</sup> H. J. Res. 296, Calendar No. 1298.

<sup>25</sup> *Ibid.*, pp. 2-3.

<sup>21</sup> H. Rept. No. 1319, 80th Cong., 2d sess., p. 2.

"3. The resolution would assure continued benefits to those who will have attained age 65, and to the survivors of those who will have died prior to the close of the first calendar quarter which begins after the enactment of the act and who have coverage under the system because of misconstruction of the term 'employee' (as defined in the resolution) even though social security taxes have not been paid by them or in their behalf."<sup>26</sup>

The Committee had added another subsection to the resolution which requires the Federal Security Administrator to estimate the total amount of benefits that have been and will be paid but which would not have been paid had the resolution been part of the Social Security Act. The subsection also provides that the aggregate amount of such benefits as estimated by the Administrator be authorized to be appropriated to the old-age and survivors insurance trust fund.

The Finance Committee's report is significant because it places a more liberal interpretation on the resolution than was given in the report of the House Ways and Means Committee. When the House later adopted the Senate amendments, it expressed no disagreement with the Finance Committee's interpretation.<sup>27</sup> The report of the Finance Committee makes it clear that the resolution would not confine the meaning of the term "employee" to a restricted concept of master and servant. The report says: "The joint resolution would reaffirm the unbroken intent of Congress that the usual common-law rules, *realistically applied*, shall continue to be used to determine whether a person is an 'employee' for purposes of applying the Social Security Act."<sup>28</sup> The report also declares: "The pending resolution would not disturb the existing Treasury regulation which construes the term 'employee' in the Social Security Act harmoniously with the usual common-law rules.

"The pending resolution will maintain the moving principles of the decisions of the United States Supreme Court in the *Silk*, *Greyvan*, and *Bartels* cases where, in the opinion of your

committee, the Court realistically applied the usual common-law rules. But if it be contended that the Supreme Court has invented new law for determining an 'employee' under the social security system in these cases, then the purpose of this resolution is to reestablish the usual common-law rules, realistically applied."<sup>29</sup>

The Senate report also states: "If we were compelled to interpret these remarks of the Court we would say, in untechnical and summary fashion and without aiming at complete exposition, that the lower courts and administrative agencies were told: Don't be fooled or unduly influenced by the form of the arrangement to which you must apply the Social Security Act. Look to the real substance. Illuminate the usual common-law control tests by regard for all the pertinent facts. This requires that all of the realities that will lead you to the truth must be consulted and weighed along with all other significant indicators of the real substance of the arrangement.

"But this again should be said: If we have misinterpreted these decisions of the Supreme Court, if we have incorrectly called the real moving principles of these cases, if the Treasury's interpretations and the proposed regulation based upon them are correct, then by this resolution we propose to restore the usual common-law rules, realistically applied."<sup>30</sup>

At another point in the report the following statement is made: "The major argument asserted by the Federal Security Agency against the pending joint resolution is that the resolution intends to reenact the past restrictive decisions of the lower Federal courts. In the words of the Federal Security Administrator: 'What disturbs me the most about House Joint Resolution 296 is this line of decisions . . . As nearly as we can judge . . . it seems to be the intention of the sponsors of the resolution to reenact the restrictive court decisions I have referred to . . .' This argument is based upon false premises."<sup>31</sup>

House Joint Resolution 296 was debated in the Senate on June 3. The

first significant development was the approval of the Finance Committee's amendments.<sup>32</sup>

### *McFarland Amendment on Public Assistance*

Senator McFarland and 22 other Senators then introduced an amendment to the resolution to revise the public assistance provisions of the Social Security Act to increase Federal grants to the States for the needy aged and blind and for dependent children. Senator McFarland pointed out that increased living costs necessitated larger grants for these groups. He explained that under his amendment the Federal Government would put up \$15 of the first \$20 of the average assistance payment made to the aged and the blind and would match the balance of the payments on a 50-50 basis up to a maximum on individual payments of \$50 a month.<sup>33</sup> The McFarland amendment raised the Federal matching provisions for dependent children to three-fourths of the first \$12 of the average payment per child and one-half the balance up to \$27 for the first child and up to \$18 for each additional child in the same home.

Debate on the McFarland amendment and the resolution was continued on June 4, and the amendment was approved 77 to 2. The amended resolution then passed the Senate by a vote of 74 to 6. The House concurred in the Senate amendment without a record vote.<sup>34</sup>

### *Presidential Veto*

On June 14 the President transmitted to Congress a message vetoing House Joint Resolution 296.<sup>35</sup>

The President first attacked this narrowing of the definition of "employee." "Despite representations to the contrary," he warned, "sections 1 and 2 of this resolution would exclude from the coverage of the old-age and survivors insurance and unemployment insurance systems up to 750,000 employees, consisting of a substantial portion of the persons working as commission salesmen, life insurance sales-

<sup>26</sup> S. Rept. 1255, 80th Cong., 2d sess., p. 2.

<sup>27</sup> *Congressional Record* (daily edition), June 4, 1948, p. 7388.

<sup>28</sup> S. Rept. 1255, pp. 1-2. Italics supplied.

<sup>29</sup> *Ibid.*, p. 2.

<sup>30</sup> *Ibid.*, p. 17.

<sup>31</sup> *Ibid.*, p. 18.

<sup>32</sup> *Congressional Record* (daily edition), June 3, 1948, p. 7207.

<sup>33</sup> *Ibid.*, p. 7207 ff. See footnote 10.

<sup>34</sup> *Ibid.*, June 4, pp. 7305, 7306, 7388.

<sup>35</sup> H. Doc. 711, 80th Cong., 2d sess.

men, piece workers, truck drivers, taxicab drivers, miners, journeymen tailors, and others. In June 1947 the Supreme Court held that these employees have been justly and legally entitled to social security protection since the beginning of the program in 1935. I cannot approve legislation which would deprive many hundreds of thousands of employees, as well as their families, of social security bene-

fits when the need for expanding our social insurance system is so great.

"Furthermore, if enacted into law, this resolution would overturn the present sound principle that employment relationships under the social security laws should be determined in the light of realities rather than on the basis of technical legal forms. In so doing, it would make the social security rights of the employees di-

rectly excluded, and many thousands of additional employees, depend almost entirely upon the manner in which their employers might choose to cast their employment arrangements. Employers desiring to avoid the payment of taxes which would be the basis for social security benefits for their employees could do so by the establishment of artificial legal arrangements governing their relationship

TABLE 4.—Additional cost to the Federal Government of the provisions in the 1948 amendments, by State and program <sup>1</sup>

State (ranked by average 1944-46 per capita income)	Additional amount (in thousands)			
	Total	Old-age assistance	Aid to dependent children	Aid to the blind
Total, continental United States.....	\$184,401	\$140,512	\$40,010	\$3,879
Per capita income above United States average:				
New York.....	10,699	6,687	3,801	211
California.....	12,690	11,035	1,233	422
Nevada.....	128	128		
New Jersey.....	1,869	1,391	439	39
Connecticut.....	1,177	923	245	9
Delaware.....	120	77	35	8
Washington.....	4,565	3,828	697	40
Illinois.....	9,795	7,540	1,975	280
District of Columbia.....	292	140	139	13
Rhode Island.....	787	533	245	9
Massachusetts.....	6,274	5,300	899	75
Ohio.....	8,508	7,337	968	203
Maryland.....	1,339	709	602	28
Montana.....	861	653	182	26
Michigan.....	7,385	5,463	1,833	89
Oregon.....	1,591	1,331	237	23
Pennsylvania.....	9,083	5,323	3,760	
Per capita income below United States average:				
Wisconsin.....	3,620	2,865	678	77
Indiana.....	3,880	3,027	739	114
Wyoming.....	283	235	41	7
Colorado.....	3,161	2,691	447	23
Idaho.....	814	630	172	12
South Dakota.....	903	730	160	13
North Dakota.....	695	528	160	7
Nebraska.....	1,752	1,448	273	31
Kansas.....	2,644	2,133	458	53
Missouri.....	8,807	6,935	1,872	
Utah.....	986	701	276	9
Maine.....	1,049	779	230	40
Iowa.....	3,432	2,912	448	72
Florida.....	4,986	3,406	1,413	167
Vermont.....	449	361	77	11
Minnesota.....	3,941	3,265	614	62
Arizona.....	934	642	253	39
New Hampshire.....	538	410	110	18
Texas.....	13,926	12,038	1,556	332
Virginia.....	1,591	982	538	71
West Virginia.....	2,452	1,317	1,082	53
New Mexico.....	974	522	427	25
Oklahoma.....	7,954	5,752	2,046	156
Tennessee.....	4,605	3,030	1,462	113
Louisiana.....	4,718	3,298	1,324	96
Georgia.....	5,783	4,910	736	137
North Carolina.....	3,661	2,560	914	187
Kentucky.....	4,379	3,085	1,181	113
Alabama.....	4,861	3,790	1,066	65
South Carolina.....	2,710	1,961	671	78
Arkansas.....	3,676	2,760	820	96
Mississippi.....	3,074	2,411	536	127

<sup>1</sup> Public No. 642 (H. J. Res. 296). Cost figures based on March 1948 data.

TABLE 5.—Percentage distribution of additional cost to the Federal Government of the provisions in the 1948 amendments, by State and program <sup>1</sup>

State (ranked by average 1944-46 per capita income)	Percentage distribution of additional amount from Federal funds				Percentage increase over present expenditure from Federal funds	
	Total	Old-age assistance	Aid to dependent children	Aid to the blind	Old-age assistance	Aid to dependent children
Total, continental United States.....	100.0	100.0	100.0	100.0	25.4	30.4
Per capita income above United States average:						
New York.....	5.9	4.8	9.9	5.4	21.7	28.9
California.....	6.9	7.9	3.2	10.9	20.1	28.9
Nevada.....	.1	.1			20.1	
New Jersey.....	1.0	1.0	1.1	1.0	23.0	30.2
Connecticut.....	.6	.7	.6	.2	21.0	26.7
Delaware.....	.1	.1	.1	.2	32.6	30.5
Washington.....	2.5	2.7	1.8	1.0	19.2	29.7
Illinois.....	5.3	5.4	5.0	7.2	23.1	28.7
District of Columbia.....	.2	.1	.3	.3	23.6	31.7
Rhode Island.....	.4	.4	.6	.2	24.0	30.9
Massachusetts.....	3.4	3.8	2.3	1.9	20.8	28.6
Ohio.....	4.6	5.2	2.4	5.2	22.4	20.6
Maryland.....	.7	.5	1.5	.7	26.9	30.8
Montana.....	.5	.5	.5	.7	22.4	30.0
Michigan.....	4.0	3.9	4.8	2.3	23.1	30.0
Oregon.....	.9	.9	.6	.6	22.5	27.0
Pennsylvania.....	5.0	3.8	9.6		25.1	28.4
Per capita income below United States average:						
Wisconsin.....	2.0	2.0	1.7	2.0	23.5	28.7
Indiana.....	2.1	2.2	1.9	2.9	26.8	29.2
Wyoming.....	.2	.2	.1	.2	20.8	28.5
Colorado.....	1.7	1.9	1.1	.6	23.9	28.1
Idaho.....	.4	.4	.4	.3	23.4	29.5
South Dakota.....	.5	.5	.4	.3	27.0	31.3
North Dakota.....	.4	.4	.4	.2	24.9	26.9
Nebraska.....	1.0	1.0	.7	.8	23.6	30.2
Kansas.....	1.4	1.5	1.2	1.4	24.2	30.9
Missouri.....	4.7	4.9	4.5		23.8	26.5
Utah.....	.5	.5	.7	.2	20.4	27.3
Maine.....	1.6	.6	.6	1.0	23.8	29.6
Iowa.....	1.9	2.1	1.1	1.9	22.4	27.6
Florida.....	2.7	2.4	3.4	4.3	23.2	30.3
Vermont.....	.2	.3	.2	.3	25.9	28.8
Minnesota.....	2.1	2.3	1.6	1.6	22.7	29.8
Arizona.....	.5	.5	.6	1.0	20.5	30.5
Arkansas.....	.3	.3	.3	.5	23.6	29.7
New Hampshire.....	7.5	8.6	3.8	8.6	27.5	34.2
Texas.....	.9	.7	1.3	1.8	42.2	37.7
Virginia.....						
West Virginia.....	1.3	.9	2.6	1.4	39.5	33.7
New Mexico.....	.5	.4	1.1	.6	25.5	29.1
Oklahoma.....	4.3	4.1	4.9	4.0	21.1	28.8
Tennessee.....	2.5	2.2	3.5	2.9	39.5	30.9
Louisiana.....	2.6	2.3	3.3	2.5	36.8	36.7
Georgia.....	3.1	3.5	1.8	3.5	41.7	34.7
North Carolina.....	2.0	1.8	2.2	4.8	43.4	38.5
Kentucky.....	2.4	2.2	2.9	2.9	44.7	36.3
Alabama.....	2.6	2.7	2.4	1.7	40.1	39.1
South Carolina.....	1.5	1.4	1.6	2.0	40.3	48.6
Arkansas.....	2.0	2.0	2.0	2.5	43.1	36.2
Mississippi.....	1.7	1.7	1.3	3.3	48.8	46.5

<sup>1</sup> Public No. 642 (H. J. Res. 296). Cost figures based on March 1948 data.



TABLE 6.—Additional cost to the Federal Government of the provisions in the 1948 amendments, by program<sup>1</sup>

Item	Additional amount			
	Total	Old-age assistance	Aid to dependent children	Aid to the blind
	Amount (in thousands)			
Total continental United States.....	\$184,401	\$140,512	\$40,010	\$3,879
12 States with highest per capita income.....	56,904	44,919	10,676	1,309
12 States with lowest per capita income.....	48,847	35,396	12,205	1,246
States with per capita income above national average...	77,163	58,398	17,290	1,475
States with per capita income below national average...	107,238	82,114	22,720	2,404
	Percent of national total			
12 States with highest per capita income.....	31.0	32.0	26.7	33.7
12 States with lowest per capita income.....	26.5	25.2	30.5	32.1
States with per capita income above national average...	41.8	41.6	43.2	38.0
States with per capita income below national average...	58.2	58.4	56.8	62.0

<sup>1</sup> Public No. 642 (H. J. Res. 296). Cost figures based on March 1948 data.

with their employees. I cannot approve legislation which would permit such employers at their own discretion to avoid the payment of social security taxes and to deny social security protection to employees and their families."

The President then rebutted the arguments advanced in favor of a more restricted meaning of the term "employer." "The expressed purpose of the sponsors of this resolution," he said, "is to exclude from the coverage of the Social Security Act persons who have the status of independent contractors, rather than that of employees. But no legislation is needed to accomplish this objective. Under present law, as interpreted by the Supreme Court, only persons who are bona-fide employees are covered by our social security system."

"Instead of clarifying the distinction between independent contractors and employees, which is a difficult legal issue in many cases, this resolution would revive the confusion which has plagued the administration of the Social Security Act for so many years . . .

"It has been asserted that it would be difficult for employers to keep the necessary records and meet other requirements of the law with respect to the employees affected by this resolution. This is reminiscent of the objections made in opposition to the original Social Security Act in 1935. If such objections had prevailed in 1935, our social security program

never would have been enacted. To allow them to prevail now would threaten the very foundation of the system. I cannot believe that the mere convenience of employers should be considered more important than the social security protection of employees and their families.

"It has also been urged that without this resolution some persons would receive credit toward old age and survivors benefits for three or four past years during which contributions were not collected. If the elimination of these credits had been the real purpose of the resolution, it could readily have been achieved without permanently excluding anyone from social insurance protection.

"If our social security program is to endure, it must be protected against these piecemeal attacks. Coverage must be permanently expanded, and no employer or special group of employers should be permitted to reverse that trend by efforts to avoid a tax burden which millions of other employers have carried without serious inconvenience or complaint."

Then the President turned to the public assistance section of the bill. "Section 3 of this resolution," he stated, "contains provisions—completely unrelated to sections 1 and 2—for additional public assistance of \$5 per month to the needy aged and blind and \$3 per month to dependent children.

"These changes fall far short of the substantial improvements in our pub-

lic assistance program which I have recommended many times. Nevertheless, I am strongly in favor of increasing the amount of assistance payments. Were it not for the fact that the Congress still has ample opportunity to enact such legislation before adjournment, I would be inclined to approve the resolution in spite of my serious objections to sections 1 and 2. Speedy action on public assistance legislation is clearly possible. I note that section 3 of this resolution was adopted as an amendment on the floor of the Senate and passed by both houses in a single afternoon. Accordingly, I am placing this matter before the Congress in adequate time so that the public assistance program will not suffer because of my disapproval of this resolution."

The President concluded his veto with a plea for more general improvement of the social security program saying, "At the same time, I urge again that the Congress should not be satisfied at this session merely to improve public assistance benefits—urgent as that is. There are other equally urgent extensions and improvements in our social security system which I have repeatedly recommended. They are well understood and widely accepted and should be enacted without delay.

"Because sections 1 and 2 of this resolution would seriously curtail and weaken our social security system, I am compelled to return it without my approval."

Several members of the House suggested upholding the President's veto and passing a separate measure embodying the provisions for increasing public assistance grants. On roll call, however, the veto was overridden 297 to 75.<sup>36</sup>

After a brief debate in the Senate, where it also was suggested that the public assistance provisions be passed in a separate measure, the resolution was passed over the veto by a vote of 65 to 12 and became Public Law No. 642 on June 14.<sup>37</sup>

Two days later, Representative Eberharter introduced H. R. 6966, a bill "To restore the status quo in respect of certain employment taxes and

<sup>36</sup> *Congressional Record* (daily edition), June 14, 1948, p. 8271.

<sup>37</sup> *Ibid.*, p. 8368.

social-security benefits pending action by Congress on extended social security coverage."<sup>38</sup> This bill would have repealed sections 1 and 2 of Public Law No. 642, which amended the definition of employer-employee relationship, but would not have affected the new public assistance provision of that act.

The following day a similar bill, S. 2883, was introduced in the Senate by Senator Hill, for himself and Senator Sparkman.<sup>39</sup> Neither the House nor the Senate bill was considered in committee before Congress recessed.

### U. S. Employment Service Transferred to Social Security Administration

Under the terms of the Supplemental Federal Security Agency Appropriation Act, 1949, the U. S. Employment Service was transferred permanently, as of July 1, 1948, from the Department of Labor and became part of the Bureau of Employment Security of the Social Security Administration. The appropriation act transfers the relevant functions of the Secretary of Labor to the Federal Security Administrator to be "performed by him or, under his direction and control, by such officers and employees of the Federal Security Agency as he may designate."

The appropriation bill, H. R. 6355, became law on June 16, after having been vetoed by President Truman on June 14.<sup>40</sup> The veto was overridden by a vote of 238 to 161 in the House and 72 to 17 in the Senate.

H. R. 6355 was reported out in the House on April 28 and, after debate, passed on the following day by a vote of 271 to 35. Consideration of the appropriations for the U. S. Employment Service, the Bureau of Employment Security, and related appropriations for the Federal Security Agency was delayed until final action had been taken on the President's Reorganization Plan No. 1 of 1948, which provided for transferring the Bureau of Employment Security to the Department of Labor. The President's Plan was finally turned down by Congress on

March 16.<sup>41</sup> On April 2, the Subcommittee on Labor Department and Federal Security Appropriations began hearings on the appropriations.<sup>42</sup>

The bill as reported out and passed by the House transferred the U. S. Employment Service from the Department of Labor to an independent bureau of the Federal Security Agency and there consolidated the Service with the unemployment insurance functions of the Bureau of Employment Security. The result would have been to take the Bureau of Employment Security out of the Social Security Administration.

The Senate voted on June 3 to retain the U. S. Employment Service in the Department of Labor.<sup>43</sup> In conference, it was agreed to transfer the Employment Service to the Federal Security Agency but to place the Employment Service in the Bureau of Employment Security administered by the Social Security Administration.<sup>44</sup>

The appropriations act also transferred to the Federal Security Administrator certain functions and funds previously handled by the Commissioner for Social Security. The act also reduced very substantially the appropriations available to the Commissioner for over-all management, personnel, research, and informational services.

### Importation of Farm Labor

S. 2767, a bill to provide assistance in the recruitment and distribution of farm labor for the increased production, harvesting, and preparation for market of agricultural commodities to meet domestic needs and foreign commitments, became law on July 3 (Public Law 893).

The law authorizes the Federal Se-

<sup>41</sup> See Gladys R. Friedman, "Reorganization Plan No. 1 of 1948: Legislative History and Background," *Social Security Bulletin*, May 1948, pp. 15-21.

<sup>42</sup> *The Supplemental Federal Security Agency Appropriation Bill for 1949, Hearings Before the Subcommittee of the Committee on Appropriations, House of Representatives . . .*, pp. 208 ff.

<sup>43</sup> There was no record vote in the Senate. *Congressional Record* (daily edition), June 3, 1948, pp. 7187-90.

<sup>44</sup> The Conference Report was adopted by both houses on June 9. There was no record vote in the Senate. In the House a vote of 228 to 137 was taken on "the previous question."

curity Administrator to recruit foreign workers within the Western Hemisphere and workers in Puerto Rico for temporary agricultural employment in the United States. It also authorizes the Administrator to direct, supervise, coordinate, and provide for the transportation of such workers from the places of recruitment to places of employment and return them to places of recruitment not later than June 30, 1949. No money was appropriated for carrying out the legislation,<sup>45</sup> which is effective only for the fiscal year 1949.

### Exemption of Income for Aid to the Blind Vetoed

H. R. 6818, a bill to amend title X of the Social Security Act permitting the States to exempt income up to \$40 per month in determining need of applicants for aid to the blind, was passed by the House of Representatives on June 9 and the Senate on June 18, and vetoed by the President on July 2. No public hearings were held on the bill in either house, nor was there a record vote on the bill in either house.

H. R. 6818 provided that additional language be added to paragraph (8) in section 1002 (a) of the Social Security Act, which now reads "that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the blind." The language which would have been added by H. R. 6818 was as follows: "except that the State may, in determining income and resources of an individual, disregard any payments, not in excess of \$40, received in any calendar month by an individual for services performed by him." The effect of this provision would be to enable States to determine the eligibility and amount of assistance a blind person is to receive without regard to the first \$40 a month of in-

<sup>45</sup> *Supplemental Hearing on Supplemental Federal Security Appropriation Bill for 1949, Hearings Before the Subcommittee of the Committee on Appropriations, United States Senate . . . on H. R. 6355, May 21, 1948. Second Deficiency Appropriation Bill for 1948, Hearings Before the Subcommittee of the Committee on Appropriations, United States Senate . . . on H. R. 6935, pp. 135-137.*

<sup>38</sup> *Ibid.*, June 16, 1948, p. 8708.

<sup>39</sup> *Ibid.*, June 17, 1948, pp. 8794-5.

<sup>40</sup> H. Doc. 714, 80th Cong., 2d sess.

come he may have from his own labor. Such action by a State is not possible under the present provisions.

The report of the House Committee<sup>46</sup> stated the purpose of the bill as follows:

"This bill is designed to liberalize existing law with respect to payments, by the States, to the needy blind . . . The limit of \$40 conforms to the limit recently recommended in another bill with respect to so-called permissive monthly earnings of beneficiaries under the old-age and survivors insurance program.

"Enactment of the bill should provide a much needed encouragement to blind individuals to become useful and productive members of their community. The States, of course, will determine whether such encouragement is to become an actuality, by electing to avail themselves of the opportunity extended to them in this bill, to disregard certain income in the measurement of need. The Federal Government cannot properly participate in the blind-aid program to the extent of compelling adoption of any particular test in determining the need for assistance.

"The underlying objectives of the bill are in line with recommendations made to your committee from time to time by witnesses appearing in behalf of the blind at hearings on social security revisions. They have urged, and your committee earnestly believes, that blind individuals should be given every possible incentive to pursue useful occupations.

"Aid to the needy blind, in the judgment of your committee is not in the same category with aid programs for the aged, or for other needy individuals. The needy blind are under a double handicap. Their opportunities for gainful employment are sharply reduced and their necessary expenditures are increased by the need for special books, for special medical treatment in some cases, for employment of guides and readers and purchase of special appliances and equipment. As with concessions and special provisions for the blind in other laws, this bill is not regarded by your committee as a precedent for

similar treatment for individuals who are not blind."

H. R. 6818 was introduced by Representative Reed of New York, Chairman of the Subcommittee on Social Security of the House Committee on Ways and Means. An earlier bill—H. R. 6211, introduced by Mr. Reed on April 12—and an identical bill—S. 2590, introduced by Senator Ives on April 30—provided for a mandatory exemption of \$500 a year on income and of \$2,000 on property and optional exemptions above such amounts. Another bill, S. 1491, providing that States may exempt income with respect to blind persons, was introduced by Senator Martin on June 23, 1947.<sup>47</sup> Several bills providing for exemption of income in the public assistance titles of the Social Security Act have been introduced in Congress since the act was amended in 1939 to prohibit such exemptions.<sup>48</sup>

In vetoing the bill, President Truman declared: "I believe that this bill is unsound in principle, would not accomplish the ostensible purpose for which it was enacted, and would do serious damage to our social security program. This bill is contrary to the most important principle on which our entire public assistance program is based—relief of need. If it became law it would inevitably operate unfairly against those needy blind who are unable to work and who have no other sources of income. It would actually lead to reductions in the assistance payments of thousands of blind persons who are most in need of assistance and whose payments are even now far below that necessary to sustain them at a decent standard of living. Payments to these most needy recipients would have to be reduced in order to make available the funds required for the increased payments to those able to earn and who would be benefited by this bill. The most compelling reason for disapproval of this bill is my firm belief that the un-

<sup>46</sup> See statements favoring "further liberalization in the law so that blind persons may have every encouragement to be self-supporting" by Senator Ives and Senator Martin during Senate consideration of H. R. 6818. *Congressional Record* (daily edition), June 18, 1948, pp. 8931-32.

<sup>48</sup> For an explanation of the 1939 amendment, see H. Rept. 728 on H. R. 6635, 76th Cong., 1st sess., p. 32.

sound principles on which it is based would seriously hinder further progress in the development of a sound and comprehensive social security program . . .

"There is another fundamental objection to this bill. The aid to the blind program in title X of the Social Security Act, like the other public assistance programs provided in that act, was designed and intended to provide financial assistance at a decent minimum of subsistence to those unable to provide for themselves. Necessarily payments under these programs must be made on the basis of a finding as to the need of each individual for assistance, and for such a finding to be realistic and equitable to all alike, it must be based on a consideration of each individual's earnings from employment and of any other resources available to him. To disregard an individual's income in determining the extent of his need for assistance negates the principle of providing assistance on the basis of need. Once this principle has been breached, grave questions arise as to a logical stopping place to changes of this character short of converting public assistance payments into flat, noncontributory pensions."

### Railroad Social Security Programs

On June 23, the President approved H. R. 6766, a bill amending the railroad retirement and unemployment insurance laws. The amendments (Public No. 744) increase by 20 percent virtually all old-age and disability retirement annuities and pensions and survivor annuities paid pursuant to a joint and survivor election (but not annuities for other survivors); guarantee that every employee who contributes to the system will obtain in benefits, either for himself or for his survivors or a designated beneficiary, an amount at least equal to the taxes he paid, plus an allowance in lieu of interest; and reduce the employer's contribution for unemployment insurance by establishing a system of experience rating based on the size of the railroad unemployment insurance fund. As long as the unemployment reserve is \$450 million or more, the rate is to be

<sup>46</sup> H. Rept. 2253, 80th Cong. 2d sess. See also S. Rept. 1727.

TABLE 7.—Illustrative monthly old-age and disability retirement benefits under the 1948 amendments to the Railroad Retirement Act, (Public No. 744) <sup>1</sup>

Average monthly earnings	Years of railroad employment			
	10	20	30	40 <sup>3</sup>
\$50: Regular formula.....	\$12	\$24	\$36	\$48
Minimum <sup>2</sup> .....	36	50	50	50
100: Regular formula.....	21	42	63	84
Minimum <sup>2</sup> .....	36	60	-----	-----
200.....	36	72	108	144
300.....	48	96	144	192

<sup>1</sup> The amounts shown in the table are subject to reduction in the case of nondisabled male employees retiring at ages 60-64 after 30 or more years of service. They are also subject to reduction if the retiring employee had made a joint and survivor election.

<sup>2</sup> In the case of an individual having a "current connection with the railroad industry," and not less than 5 years of service, a minimum monthly retirement benefit is payable equal to the least of (a) \$60, (b) \$3.60 multiplied by the years of service, and (c) the average monthly earnings.

<sup>3</sup> An annuity based on more than 30 years of service is payable only when the entire period of service credited is performed after 1936.

½ of 1 percent; the rate then increases ½ of 1 percent for each \$50 million by which the reserve is less than that amount, reaching the maximum rate of 3 percent if the reserve falls below \$250 million. The law also provides that, out of the unemployment contributions collected, an amount equal to two-tenths of 1 percent of pay rolls is to be allocated to the unemployment administration fund.

The bill was the result of a compromise between representatives of railroad management and labor. Railroad labor had supported proposed legislation for increasing benefits while railroad management was supporting proposed legislation reducing contributions or repealing certain benefits.<sup>49</sup> During the closing days of the session, agreement was reached on a compromise bill, and passage was assured when the legislation was introduced by Representative Wolverton, Chairman of the House Committee on

<sup>49</sup> See *Amendment to Railroad Unemployment Insurance Act, Hearings on S. 670 Before a Subcommittee of the Committee on Labor and Public Welfare, United States Senate . . . June 23 and 24, 1947; Railroad Retirement, Hearing on H. R. 6766 Before the Committee on Interstate and Foreign Commerce, House of Representatives . . . June 2, 1948; Railroad Unemployment Insurance, Hearings on H. R. 5711 Before the Committee on Ways and Means, House of Representatives . . . June 2, 1948.*

Interstate Foreign Commerce, and by Senator Taft, Chairman of the Senate Committee on Labor and Public Welfare, and 12 other Senators from both parties.

"It was pointed out to the committee by the representatives of management and labor in the railroad industry," the report accompanying the bill <sup>50</sup> explained, "that the terms agreed upon must be considered as a unit. The bill contains some provisions which, standing alone, management would not recommend and others which, standing alone, the em-

ployees would not recommend. Nevertheless, by considering all the provisions as a unit, both management and employees are in agreement that the bill represents a fair solution to the immediate problems concerning this legislation and recommend that the bill be enacted."

Table 7 indicates illustrative retirement benefits payable under the amended law. The amendments also have the effect of increasing disability annuities but do not affect the amount of benefits to widows, children, or parents under the survivorship provisions added in 1946.

<sup>50</sup> H. Rept. 2154, 80th Cong., 2d sess., p. 2.

## Hearings in Public Assistance

By Bernard W. Scholz\*

*The Social Security Act has always required as one of the conditions for Federal participation in State public assistance programs that the State laws provide an opportunity for a fair hearing to any person whose claim for assistance is denied. When the act was passed, the right to a fair hearing was a new concept in public assistance administration; no standards against which procedures could be measured were available to the States in setting up their programs. The development of the hearing process since that time and its effect on public assistance policy and administration are outlined in the following article.*

IN KEEPING WITH our basic philosophy of government, the principle of due process must be observed in the administration of any law, whether it limits the rights of the individual citizen or whether it establishes and secures new rights for him. In this respect a program for disbursing public assistance funds is no different from any other public program, such as one for collecting revenues by taxation. It is essential that the people affected by the program be guaranteed equal protection under the law. An opportunity for the citizen to be heard on decisions affecting his welfare is one of the fundamental democratic safeguards designed to achieve this end.

The provisions of the Social Security Act for Federal participation in public assistance are based on the concept that the claimant who meets the requirements established in State law has a right to benefits and has a right

to a hearing when he is denied these benefits. It is assumed, of course, that the public assistance agency is so organized and administered that the individual has the right to apply and is assured that his application will be acted upon and that payment will be made promptly if he is found eligible. If this orderly process breaks down, or if the claimant feels that he has not been accorded proper treatment, the hearing process is there to safeguard his rights. It is no substitute for sound administration.

In accordance with our concept of the relationship between the citizen and his government in a democracy, the agency administering the public assistance programs must observe the principle of due process in all its dealings with claimants for assistance. In other words, agency action must follow a well-established and known procedure, based on administrative or judicial precedent and adhering to an accepted pattern. The hearing required by the Social Security Act

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