

Old-Age and Survivors Insurance: Coverage Under the 1950 Amendments

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The first large-scale extension of old-age and survivors insurance coverage in the 15-year history of the Federal social security program occurred when Congress enacted the Social Security Act Amendments of 1950. Many workers, however, are still not covered. In the following pages the new coverage provisions are examined and the purposes behind the continuing exclusions are explored.

THE Social Security Act Amendments of 1950 extend the protection of old-age and survivors insurance so that, in an average week, a possible 10 million persons, previously excluded, will be covered by the program. Of these, 7.7 million are to be covered on a compulsory basis and 2 million on the basis of voluntary coverage agreements. The addition of the newly covered groups to those protected under earlier legislation brings the total coverage of the program to about 45 million members of the total labor force in an average week. The new coverage will become effective on January 1, 1951.

Of the 14 million gainfully employed persons not yet covered by the program, more than 7 million are covered by some other retirement system, such as the Federal civil-service, railroad, Armed Forces, and State and local government retirement systems. The remainder, comprising about 10 percent of the Nation's labor force, includes 3 million farm operators netting at least \$400 in a year; 500,000 professional self-employed people; and 2 million domestic and farm workers who, while they spend substantial time in their occupation, do not work steadily enough with a single employer to meet the regularity test required for coverage under the new law. These are the principal remaining groups who do not have protection under a government insurance program against the hazards of old-age and death.

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In amending the law, Congress provided coverage for at least a portion of all the major groups previously excluded. It is the purpose of this article to describe the extent to which coverage is provided for the previously excluded groups and to explore some of the reasons underlying the current limitations of coverage.

The Self-Employed

Under the amendments, 4.6 million self-employed persons are brought under the old-age and survivors insurance program. This group includes such persons as proprietors (whether sole owners or partners) of retail stores, service establishments, wholesale and jobbing businesses, manufacturing plants, and transportation, communication, insurance, real estate, publishing, and financial enterprises. It also takes in about 250,000 workers, such as part-time life-insurance salesmen, house-to-house salesmen, operators of leased taxicabs, and "newsboys" over age 18 who are excepted from coverage as employees but will be treated as self-employed persons.

All persons in self-employment, in fact, are covered except those whose net earnings from self-employment are less than \$400 in a year, those whose income is derived from agricultural enterprises, and those whose income is derived from the practice of certain specified professions. The exclusion from coverage of persons whose annual net earnings from self-employment do not reach \$400 affects mainly those whose self-employment is either sporadic or supplementary to other income that provides their

basic means of livelihood. It also avoids collecting contributions that might never result in benefits.

The excluded professional groups are lawyers, physicians, dentists, osteopaths, chiropractors, naturopaths, Christian Science practitioners, optometrists, veterinarians, professional engineers, architects, funeral directors, and certified, registered, licensed, or full-time practicing public accountants. In each of these cases, Congress made it clear that the exclusion reflected an attempt to comply with what it believed were the wishes of the group itself. Unfortunately, many of these groups had been confronted with a dilemma with respect to their desire for coverage. Faced with the choice of being covered and not listed among professional groups in the law, or of not being covered but receiving congressional recognition of their professional status, most of them decided in favor of the latter.

Farm operators were excluded from coverage, mainly because few individual farmers expressed a desire for coverage to their Congressmen and because the farm organizations were split on the question. While two of the major farm organizations recommended the coverage of farmers, another suggested that it would be desirable to get some experience with the coverage of other groups of the self-employed before attempting to include farmers in the program.

The coverage of the self-employed was made practicable by the solution of a number of serious administrative problems. First, a method of reporting and contributing different from that used for employees had to be devised. Second, so that benefits might be geared to income losses actually due to retirement or death, the earnings to be reported and on which benefits are to be based had to represent as far as possible a return for work done rather than a return for capital investment. Third, a retire-

ment test had to be devised under which benefits would be paid if the self-employed person had substantially retired even though he continued to receive income from his business.

The contributing and reporting method is geared to the income-tax return filed by the self-employed person. The same schedule of the tax return in which the individual computes his earnings from a trade or business will serve for both income-tax and social security purposes. The combined income-tax and social security return will now be filed by the self-employed person at the same time that the income-tax return alone would have been filed.

The basis for the self-employed person's social security coverage is the amount of his "net earnings from self-employment." In essence, this is his net profit from his trade or business as computed for income-tax purposes, with certain exceptions designed to exclude certain groups from coverage and to exclude investment income from self-employment earnings. The term "net earnings from self-employment" is specifically defined in the law and does not include income from farming, from the practice of certain specified professions, from the performance of service as a clergyman, or from the holding of public office. In addition, the term also excludes the following types of investment income: rentals from real estate unless received by a real estate dealer in the course of his trade or business, dividends and interest on stocks and bonds unless received by a securities dealer in the course of his trade or business, capital gains and losses, and income from an estate or trust derived by a beneficiary of the estate or trust. Another deviation from normal income-tax procedure concerns the carry-over loss deduction. For social security purposes, losses in previous years are not used in computing net earnings from self-employment for a current year.

The self-employed person would first compute his net earnings from self-employment and then his "self-employment income," which is the amount to be posted to his social security wage record and on which his insurance contributions are figured.

An individual's self-employment income is ordinarily the same as his net earnings from self-employment. In three situations, however, it would be different. First, if his net earnings are less than \$400 in a taxable year there is no self-employment income. Second, a nonresident alien, regardless of his net earnings from a trade or business carried on within the United States, has no self-employment income. Third, if an individual's net earnings, either alone or in combination with his covered wages as an employee, exceed \$3,600 in a taxable year, his self-employment income will be reduced to either \$3,600 or an amount equal to \$3,600 less his covered wages. These provisions were designed to avoid contributions that might never result in benefits, to exclude a group Congress did not wish to cover, and to avoid taxing earnings in excess of the \$3,600 maximum.

The law makes it possible for a self-employed person to continue to own his business and at the same time to be considered retired and therefore to draw retirement benefits. A beneficiary aged 75 or over can receive benefits without regard to whether he works or the amount he earns. A beneficiary under age 75 is permitted a certain amount of net earnings from self-employment without any question being raised as to his retirement status. The permitted amount is computed by multiplying the number of months in his taxable year by \$50. Since in the ordinary case the taxable year covers 12 months, a beneficiary may have \$600 of net earnings from self-employment in a year without any question as to whether he worked or not.

If the beneficiary's net earnings from self-employment are in excess of this permitted amount of \$600 for a full year, he may lose some benefits for the year. The number of monthly benefits he may lose is subject to two limitations: It can be no greater than the number of months in the year in which the beneficiary renders substantial services in his trade or business; nor can it be greater than the number of times \$50 can be divided into his annual net earnings in excess of \$600. Here are some examples of the way these limitations operate in the case of a per-

son entitled to benefits throughout a year.

If the beneficiary renders substantial services during all 12 months of the year, the effective ceiling on the number of benefits he can lose is the amount of net earnings for the year. When such net earnings are, for example, \$830, he would lose five benefits, one for each of the four full \$50-units of excess earnings and one for the remaining \$30.

If the beneficiary's annual net earnings are in excess of \$1,150, there are at least 12 \$50-units of excess net earnings and the effective ceiling on the number of benefits he can lose is the number of months in the year during which substantial services were rendered. If, for example, the beneficiary's net earnings are \$1,170 and he renders substantial services in his trade or business only from the first day of July through October, he would lose only four benefits.

If the beneficiary's net earnings are \$900 and he performs substantial services in 10 months of the year, both earnings and services must be examined. In this case the number of benefits lost is determined on the basis of earnings since this limitation gives the more favorable result—six deductions compared with 10 on the basis of services.

The law authorizes the Federal Security Administrator to presume that an individual has rendered substantial services in any month unless the individual shows otherwise, and to prescribe, by regulations, the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business. In explaining the reason for giving the Administrator this authority, the House Ways and Means Committee said:

There is no single rule under which the determination of whether or not a beneficiary has rendered substantial services in self-employment can be made. The determinations are to be based on the facts in each particular case, consideration being given to the particular factors applicable to the trade or business of the individual. Exemplary of the factors to be considered are: The presence or absence of a paid manager, a partner, or a family member who manages the

business; the amount of time devoted to the business; the nature of the services rendered by the beneficiary; the type of business establishment; the seasonal nature of the business; the relationship of the activity performed prior to the period of "retirement" with that performed subsequent to retirement; and the amount of capital invested by the beneficiary in the business.¹

Definition of Employee

In view of the fact that the self-employed will contribute at a somewhat higher rate than employees, Congress was concerned with the manner in which persons in the borderline areas between employment and self-employment would be covered under the program. While both Houses of Congress agreed that the usual common-law rules should not be the only criteria for determining employee status, there was considerable question as to the proper method for broadening the scope of the definition of employee.

The House Committee recommended a revised definition that would have provided employee coverage for persons who perform services under prescribed circumstances in seven specified occupational categories; in addition, it developed a statutory test designed to determine an individual's status on the basis of the combined effect of seven enumerated factors. The Senate Committee rejected the statutory test.

In the final law, all who are covered as employees under the earlier act—officers of corporations and individuals who are employees under the usual common-law rules—continue to be covered in that manner. In addition, the amended law provides employee coverage for approximately 400,000 persons in specified occupational categories who may not be common-law employees but who have a similar status. The occupational categories are full-time life-insurance salesmen; certain full-time traveling or city salesmen (other than house-to-house salesmen); certain agent drivers and commission drivers; and home workers subject to regulation

¹ House Report No. 1300 to accompany H. R. 6000 (81st Cong., 1st sess.), p. 65.

under State law who work in accordance with specifications prescribed by their employer. (Such home workers will not be covered during quarters in which they are paid less than \$50 in cash wages.)

It is significant that both Houses of Congress expressed themselves on the manner in which the usual common-law rules should be applied for old-age and survivors insurance purposes. In the Senate the point was made that the usual common-law rules realistically applied and not the restrictive rules of a particular State should be used.² The position of the House is contained in the Conference Report,³ which quotes verbatim the Report of the Committee on Ways and Means on the Social Security Act Amendments of 1939.

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 the common-law concept of master and servant should not be narrowly applied.

The House conferees on the 1950 amendments endorsed this position, declaring "This statement made in 1939 is equally applicable to the phrase in the bill as agreed upon in the conference agreement, which contemplates a realistic interpretation of the common-law rules."

Agricultural Labor

The amendments make two major changes with respect to agricultural labor. First, they provide coverage for agricultural workers who are "regularly employed" by an employer and earn cash wages of at least \$50 in a calendar quarter.⁴ Second, certain

² *Congressional Record*, August 17, 1950, p. 12,885.

³ House Report No. 2771 to accompany H. R. 6000 (81st Cong., 2d sess.), p. 104.

⁴ Workers performing services in connection with the ginning of cotton or the production and harvesting of oleoresin and its processing into gum spirits of turpentine are "agricultural," but these coverage tests do not apply to them and they are not covered under any circumstances.

services formerly classified as agricultural are not so classified under the new definition; as a result, workers performing such services are covered without regard to the regularity of their employment or the amount of their cash wages. Approximately 850,000 workers will be covered by these two changes.

To be regularly employed by an employer, an agricultural worker must first serve a qualifying period during which he works continuously for that employer throughout a calendar quarter. He will then be regularly employed in the next calendar quarter and those that follow as long as he works for the same employer on at least 60 days on a full-time basis during each quarter. Once the worker has been regularly employed, he will also be deemed regularly employed in the first calendar quarter in which he performs agricultural work for the same employer on fewer than 60 days. Any time he works less than 60 days in a quarter, however, that quarter becomes his last quarter of regular employment. He must then serve a new qualifying period during which he is continuously employed throughout a calendar quarter before he can again become regularly employed.

Take the case of Bill Gardner, for example.

Bill worked as a dairy hand for Paul Drew from September 25 through December 31, 1950, without a break in employment. He has thus served his qualifying period (October 1 through December 31, the fourth quarter of 1950) with Mr. Drew. From January 1, 1951, through March 31 (the first quarter of 1951) he works 72 days on a full-time basis and earns \$200 in cash wages plus his meals. He is regularly employed by Mr. Drew in this quarter, and since his cash wages exceed \$50 he is covered for the amount of his cash wages.

Bill continues to work for Mr. Drew during the second and third quarters of the year, working 65 days and earning \$185 in April-June and working 71 days and earning \$215 in July-September. During the fourth quarter (October-December 1951), after having earned \$65, Bill quits his job with Mr. Drew on November 5. Bill is regularly employed in the second and third calendar quarters because he worked more than 60 days and in the

fourth because it is the first quarter following a 60-day "regularly employed" quarter in which he works less than 60 days for the same employer. Bill is covered in all three of these quarters because he is regularly employed and earns more than \$50 in cash wages in each quarter.

On November 15, Bill goes to work for Peter Kook, another dairy farmer in the neighborhood. Before he can be considered regularly employed by Mr. Kook, he must serve a qualifying period with him during which he is continuously employed throughout a calendar quarter. The fourth quarter of 1951 (October-December) cannot be the qualifying period, since Bill began working for Mr. Kook in the middle of it. The first quarter of 1952 (January-March), however, can be the qualifying period. If Bill is continuously employed by Mr. Kook in that first quarter, it will constitute his qualifying period. Bill is not, however, "regularly employed" during the first quarter of 1952. The experience in that quarter merely makes it possible for him to be regularly employed by Mr. Kook in the second quarter of 1952.

The coverage of agricultural labor was limited to regularly employed workers to avoid the difficulty farm employers would have in reporting employment, wages, and social security contributions for seasonal, migratory, and other part-time agricultural workers.

On farms operated for profit, household workers and workers performing services not in the course of the employer's trade or business are considered "agricultural labor" and, in order to be covered, must meet the regularity and cash wage tests for farm workers. The inclusion of these workers as "agricultural" allows farm employers to apply a single standard to all their employees, whether performing services in the home or on other parts of the farm or ranch and whether performing the usual work incident to farming or performing services not in the course of the employer's trade or business.

Only the cash remuneration paid to agricultural workers will count for social security; lodging, meals, farm produce, and other noncash payments are excluded.

Employers of regularly employed

farm workers will file a social security report form four times a year. The first report from employers of newly covered farm workers will be due in April 1951 and will cover the 3-month period, January through March. Forms for preparing the report will be sent to the farm employers by collectors of internal revenue. On the quarterly reports, employers will list the names, account numbers, and taxable wages of their employees. They will then mail the report to the collector with a check or money order in an amount representing contributions deducted from the employees wages and their own matching taxes.

Under the amendments, most agricultural processing operations are no longer agricultural labor. The services continue as agricultural labor, however, when the agricultural processing is done for an individual employer who was also the producer of more than half the commodities on which the work is done. Likewise, if the services are performed for an informal group of farm operators with fewer than 21 members, who among them grew all the commodities, the services remain agricultural.

In all other cases, however—when the employer is a farm operator who did not grow half the commodities, or a farmers' cooperative, or an informal group of farmers with more than 20 members, or an informal group of farmers with 20 or fewer members who did not grow all the commodities, or a commercial handler of fruits and vegetables—the services are no longer agricultural. In these cases, the workers will be covered on the same basis as workers in commerce and industry and without regard to regularity of employment.

Services in the production or harvesting of maple sirup or in connection with the raising or harvesting of mushrooms or the hatching of poultry (all previously excluded from coverage by being defined as agricultural labor) are now classified according to where the work is performed. Those services performed "on a farm" continue to be agricultural labor and subject to the laws and regulations governing that type of work. The off-farm services are covered employment without any such limitations. Services in connection with farm ir-

rigation systems operated for profit were also eliminated from the definition of agricultural labor and thus covered as nonfarm employment.

Domestic and Other Nonbusiness Services

Under the amendments, domestic service in a private home not on a farm operated for profit⁵ is covered if the cash wages paid in a calendar quarter are \$50 or more and the worker is "regularly employed" by the employer during the quarter. Thus, households employing such persons as maids, cooks, laundresses, handymen, housekeepers, baby-sitters, practical nurses, governesses, valets, butlers, gardeners, and chauffeurs will be required to determine whether their workers meet the tests for coverage.

A domestic worker who works for an employer on 24 different days during a calendar quarter is considered regularly employed by that employer in both that quarter and the quarter immediately following it.

Only the cash wages of a domestic worker are taken into consideration. Noncash wages, such as room, board, meals, and transportation, are not considered. Tokens used for carfare are not to be considered as cash payment, but cash for carfare is to be included with the wage. An example of the application of these tests follows:

During the quarter from January 1 through March 31, 1951, Mildred Jones works for Mrs. Brown on Monday and Tuesday of each week. Mrs. Brown pays Mildred \$4 a day, plus her meals, and calls for and takes her home. Since Mildred works 2 days a week and there are 13 weeks in a calendar quarter, she would work on 26 days if she doesn't miss any days. Even though Mildred misses 2 days of work because of illness, she still works a total of 24 days and thus meets the requirement of being regularly employed by Mrs. Brown in the quarter. Since she is paid cash wages that total \$96, her employment with Mrs. Brown is covered for the quarter.

Every Wednesday, Mildred is em-

⁵ Domestic workers on farms operated for profit are considered to be in "agricultural labor" and covered on the same basis as other agricultural workers.

ployed by Mrs. Lane, who pays her \$4, plus meals and 25 cents for carfare. Since she works only 13 days for Mrs. Lane, she is not regularly employed and therefore not covered. Mrs. Lane has no social security report to make.

Mildred also works for Mrs. Smith, on Fridays and Saturdays. Her pay is \$4.50 a day, plus meals and 25 cents a day for carfare. Since Mildred works for Mrs. Smith on 26 days, she is regularly employed by Mrs. Smith and her total cash wage of \$130.00⁶ is covered.

Since Mildred is regularly employed by Mrs. Brown and Mrs. Smith in the first quarter of 1951, she will be considered a regularly employed worker of these employers in the next quarter regardless of the number of days she works for them. Her coverage in the second quarter, for these employers, will depend solely on whether she is paid cash wages of at least \$50 in the quarter.

It is estimated that, of the 1.8 million persons who work in domestic service, approximately 1 million will be covered. Nearly all the full-time workers will be covered for practically all their employment. Perhaps half the regular day workers will be covered but often only with respect to some of their employers. All irregular day workers will be excluded from coverage.

The most important problem in administering domestic coverage is the development of a reporting and contributing system simple enough to be used by persons unaccustomed to record keeping. The need for simplicity was recognized in the plans developed by the Bureau of Old-Age and Survivors Insurance and the Bureau of Internal Revenue. Where the husband is making social security reports for his business employees, he may add the domestic worker in his home to these reports. In other cases, domestic workers will be reported on a simple return devised with special attention to the convenience of the

⁶This amount results from the rounding of the cash wage of \$4.75 a day to \$5.00. The administering agencies are authorized by the legislation to issue regulations that provide for considering the nearest dollar as the wage for social security purposes and for figuring the tax on such rounded amount.

housewife. A stamp plan, which has been much discussed, was found unnecessary. One reason is the fact that coverage in this area is limited to regularly employed workers.

The 1950 amendments change the coverage requirements for services not in the course of an employer's trade or business by establishing almost the same tests for these services as for domestic service in private homes. The new law limits the covered wages of an employee performing nonbusiness services to cash payments. It requires also that to be covered the employee must be paid at least \$50 in cash wages for the quarter by an employer. The \$50 test refers, however, to an amount of wages paid for a given quarter, rather than to the amount paid in the quarter as is the case for domestic service. On farms operated for profit, nonbusiness services, like domestic service, are defined as agricultural labor.

The most common nonbusiness services are those of artisans who build or repair residential property under the supervision of the employer-owner rather than as self-employed contractors. An important distinction between this type of service and domestic employment is that the former is subject to income-tax withholding while domestic service in a private home is not.

Employees of Nonprofit Organizations

Coverage is made available on a voluntary basis to the employees of most nonprofit organizations. Clergymen and members of religious orders are excepted. Initially, if the employing organization is willing to have its employees covered and two-thirds of them desire coverage, those employees who wish to be covered will be brought under the program. Once any coverage is in effect for an organization any new employees are to be compulsorily covered.

The factors that led Congress to enact this unique provision are much the same as those underlying the exclusion of nonprofit employees up to now. Employees of nonprofit organizations were excluded under both the original law and under the 1939 amendments principally because some employing organizations feared that

the levy of an employer's tax on nonprofit institutions might tend to weaken their traditionally tax-exempt status. In addition, religious groups opposed any appearance of governmental control that might seem to depart from the traditional principle of separation of church and state. Over the years, however, there has been a growing desire for coverage on the part of both the nonprofit employees and their employers. Accordingly, the legislative provisions finally enacted must be viewed as a compromise of conflicting objectives and views.

Both Houses of Congress recognized the desirability of making the coverage provisions for nonprofit employees compulsory to the greatest degree possible. Each of them approved a measure containing a mixture of voluntary and compulsory provisions. The provisions developed by the Conference Committee and finally enacted tend further toward voluntary coverage than the measures approved by either House.

Under the new law, service for nonprofit organizations operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals may be covered if the organization files a certificate with the Commissioner of Internal Revenue requesting coverage for those of its employees who wish coverage and certifying that at least two-thirds of its total employees concur in the filing of the certificate. All negotiations concerning the filing of a certificate and determinations as to the validity of certificates are the responsibility of the Bureau of Internal Revenue.⁷

Coverage starts on the first day of the calendar quarter following the quarter in which the certificate is filed. Its effectiveness may be terminated by the nonprofit organization on 2 years' notice, but only after the certificate has been in effect at least 8 years. For the effective period, both the nonprofit organization and its employees are covered on substantially the same basis as a private employer and his employees.

⁷These certificates have been prepared by the Bureau of Internal Revenue and can be obtained from the local collectors of internal revenue.

Coverage under these voluntary provisions is available in an average week to about 600,000 employees of nonprofit organizations. Roughly 200,000 clergymen and members of religious orders remain excluded from coverage.

Coverage would be extended on a compulsory basis to some nonprofit employment previously excluded—to service for agricultural and horticultural organizations and for voluntary employees' beneficiary associations, to certain ritualistic or dues-collecting services for fraternal beneficiary societies, and to services performed by students in the employ of nonprofit organizations other than schools, colleges, or universities. Other nonprofit organizations whose employees were heretofore covered only when they earned over \$45 in a calendar quarter now have their employees' coverage based on earnings of \$50 in a quarter. These organizations include labor organizations, mutual savings banks, building and loan associations, cooperative banks, chambers of commerce, civic leagues, and social clubs. Incidentally, this \$50-in-a-quarter rule applies to all nonprofit employment, whether compulsorily covered or covered by virtue of a certificate filed with the Bureau of Internal Revenue.

Employees of State and Local Governments

The amendments make coverage available, under agreements that may be negotiated between the States and the Federal Security Administrator, to about 1.4 million employees of State and local governments not covered by State or local retirement systems. The 2.4 million employees already protected under State, city, or other local retirement systems will not be eligible for old-age and survivors insurance coverage. Coverage is compulsory, however, for employees of certain transit systems taken over from private ownership after 1936.

State and local government employees were originally excluded from coverage because of doubt as to the constitutionality of a compulsory tax levy upon State and local governmental units. Because of this constitutional question, optional coverage in this area appears to be the only practical approach. Nevertheless,

because optional coverage may attract an unduly large number of expensive risks, the law contains provisions to minimize adverse selection and prevent an undue drain on the old-age and survivors insurance trust fund.

The Federal-State agreement may cover State employees, or employees of one or more political subdivisions, or both. Whether the employees of a State government will be covered will depend, of course, on the wishes of the State. Whether the employees of a particular political subdivision of a State will be covered will, for the most part, depend on the preference of the political subdivision, although the final decision rests with the State. Before a State agency can enter into a coverage agreement with the Federal Security Administrator it must be given the authority to do so. Such authority generally can be granted only by the legislature of the State. States that have already passed legislation relating to social security coverage are Arkansas, California, Idaho, Kentucky, Massachusetts, North Carolina, Oklahoma, South Dakota, Utah, Vermont, Washington, and West Virginia.

For purposes of coverage, employees are divided into four kinds of "coverage groups": (a) All the employees of a State other than those engaged in performing service in connection with a proprietary function; (b) all the employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (c) all the employees of a State engaged in performing service in connection with a single proprietary function; and (d) all the employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function.

If any employees of a coverage group are to be covered by an agreement, then all employees in that group (other than those covered by retirement systems and certain others named in the law) must be included.

Certain types of employment cannot be covered under an agreement. The most important of these is service performed by an employee in a position covered by a retirement system on the date the agreement is

made applicable to the coverage group involved. The main reason for this exclusion was the strong feeling revealed during the hearings on the part of members and beneficiaries of established retirement systems that old-age and survivors insurance coverage might adversely affect the retirement systems. Among the other types of service that cannot be covered are: service on work relief projects, service performed "in a hospital, home, or other institution by a patient or inmate thereof," and service performed "by an individual who is employed to relieve him from unemployment."

There are also certain types of service that may be excluded at the option of the State. These are services of an emergency nature and services in any class of elective jobs, part-time jobs, or jobs compensated on a fee basis. Also, the State may exclude agricultural labor, or service performed by a student, if such labor or service would be excluded from coverage if performed for a nongovernmental employer.

The State is required to collect from each employee an amount equivalent to the employee contribution that would be imposed under the Internal Revenue Code; it must pay to the Federal Government that amount plus an amount equivalent to the employer tax. The State must also agree to comply with regulations relating to payments and reports prescribed by the Federal Security Administrator.

Agreements once made may be modified to cover additional coverage groups. No agreement or modification of an agreement can become effective before January 1, 1951, or before the calendar year in which it is entered into. An exception to this rule provides that agreements or modifications agreed to before January 1, 1953, can be made effective January 1, 1951. The purpose of this exception is to prevent disadvantage to employees when the process of negotiating agreements cannot be completed immediately. Since eligibility requirements and benefit computation provisions are set in terms of time elapsing after January 1, 1951, it is generally to the employee's advantage to have coverage made retroactive to that date.

The law provides that interest at an annual rate of 6 percent may be required if the State does not make payments when due. In addition, the Administrator may deduct the amount of the delinquent payments, plus interest, from grants due the State under any other provision of the Social Security Act.

The State is authorized to terminate an agreement in its entirety after it has been in effect for at least 5 years, or with respect to any coverage group after the group has been covered for at least 5 years, by giving 2 years' advance notice in writing. The Federal Security Administrator is directed to terminate an agreement in its entirety, or with respect to any coverage group, if it appears, after reasonable notice and opportunity for hearing, that the State has failed, or is not able legally, to comply substantially with the terms of the agreement. If an agreement with a State is terminated in its entirety, no agreement with that State may be made again. If the termination affects only particular groups, those groups may not again be covered by the Federal program.

The provisions for compulsory coverage of employees of certain transit systems acquired from private ownership by a State, political subdivision, or instrumentality are intended to assure continued protection of employees of transportation systems that become publicly owned. For a transit system taken over after 1950, the employees will be covered by old-age and survivors insurance unless the employer provides protection for them under a general retirement system. For a transit system taken over between 1936 and 1951, the employees will as a general rule be covered under old-age and survivors insurance whether or not the employer provides protection for them under a general retirement system, except that they will not be covered by old-age and survivors insurance if they are protected by a retirement system whose benefits are guaranteed by the State constitution. In application, it is believed that this latter exception will exclude only one group, employees of the New York City transportation system.

Federal Employees

The amendments provide retirement and survivor protection for most employees of the Federal Government and its instrumentalities who heretofore have lacked such protection. Those covered are, in general, the most likely to shift between Federal and private employment. The vast majority of Federal employees have protection under Federal retirement systems and will continue to be excluded from old-age and survivors insurance coverage. Excluded also are specifically named types of employees who are not regularly in the labor market or who are not normally dependent upon Federal employment for a livelihood. At the time of the new legislation, it was estimated that about 200,000 Federal employees would be covered. The recent congressional action placing the hiring of many new employees on a temporary basis without civil-service retirement coverage will probably increase this number to between 500,000 and 600,000 in the next year.

Employees of Federal instrumentalities that are exempt from the employer tax on December 31, 1950, generally continue to be excepted. Employees of several types of instrumentalities are, however, specifically covered (subject, of course, to the exceptions mentioned above). These are employees of national farm loan associations (other than directors); the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, and similar organizations; Federal credit unions; county and community committees under the Production and Marketing Administration (but not the committeemen themselves); Federal Reserve Banks; and production credit associations. Also covered are employees of corporations wholly owned by the United States, such as the Virgin Islands Corporation and the Tennessee Valley Authority, if the employees are not covered by civil-service retirement or by some other system in lieu of civil-service retirement.

Most Federal agencies will have some employees covered under old-age and survivors insurance. The

major group of employees who will be covered throughout the Federal service consists of temporary employees, whether hired for temporary jobs or pending the establishment of a register. Still excluded, however, are temporary employees of the Bureau of the Census employed for the taking of a census, and temporary employees hired for temporary jobs in the field service of the Post Office Department.

The amendments provide that the Federal Security Administrator shall not make determinations as to employment or wages with respect to service in the employ of the United States or its wholly owned instrumentalities, but shall accept the determinations of the appropriate Federal agency or instrumentality. This provision represents an extension of previous provisions of title II of the Social Security Act applicable to services for the United States Maritime Commission and the Bonneville Power Administration. It is expected that each agency or instrumentality will delegate responsibility for reporting and making determinations to the organizational units now withholding Federal income tax.

Geographical Limitations on Coverage

Heretofore coverage has been limited not only by the requirement that the worker be an employee engaged in certain types of employment but also by the requirement that the service be performed within the United States—defined to include the continental United States, Alaska, and Hawaii—or on or in connection with an American vessel. The new law extends coverage by relaxing these geographical restrictions in three ways.

First, the term "United States" is redefined to include the Virgin Islands and also, if its legislature should express a desire for coverage, Puerto Rico. The necessary resolution was passed by the Puerto Rican Legislature on September 22, 1950. This extension will bring under the program about 400,000 persons of a total employed labor force of 700,000 on these islands. The coverage of regularly employed agricultural workers will be

of particular benefit to the islands.

Serious consideration was given by the Congress to the desirability of a separate system for these areas because of the low level of income, the high proportion of agricultural employment, and other economic differences between the islands and the continental United States. The House Ways and Means Committee sent a subcommittee to the islands to obtain "information and advice" with respect to their coverage. The Committee decided that two adjustments in the general system—retaining the earnings requirement of \$50 for a quarter of coverage rather than increasing it to \$100 as in the House bill, and reducing the minimum benefit from \$25 to \$20 in certain cases—would provide a satisfactory solution to the problem.

The second relaxation of the geographical restrictions is the extension of coverage to services performed outside the United States (the continental United States, Alaska, Hawaii, the Virgin Islands, and Puerto Rico) by an American citizen for an American employer. The latter term is very specifically defined in such a way as to assure the collection of contributions without difficulty. This provision results in the coverage of about 150,000 American citizens working in all parts of the world, including the few remaining dependencies of the United States not defined as part of the United States for social security purposes.

The new law does not solve all the problems concerning service performed outside the United States. For example, foreign service of aliens long resident in the United States is not covered. Likewise, American citizens working for foreign subsidiaries of American corporations continue to be excluded.

The third change in geographical requirements brings the coverage of services on American airships into line with the coverage of services on American vessels. In general, services performed on or in connection with an American aircraft are covered if the individual's contract of service was entered into "within the United States" or if the aircraft, while the employee is employed on it, "touches at a port in the United States."

World War II Veterans

The granting of wage credits under old-age and survivors insurance for World War II military service potentially affects more persons than all the provisions extending coverage to specific areas of employment. Under this provision, some 16 million individuals could receive from 1 to 83 months' credit of \$160 a month for military service between September 16, 1940, and July 24, 1947. Thus as many as 29 quarters of coverage and more than \$13,000 in wages could be credited to the social security account of an individual who served throughout the war period.

The wage credits are to be granted effective September 1, 1950, to any serviceman (or woman) who had at least 90 days' service in the active military or naval forces of the United States during the defined period or who, if he had served less than 90 days, died or was discharged because of disability incurred or aggravated in service. Wage credits may not be granted to an individual who was dishonorably discharged or whose death was inflicted as lawful punishment for a military offense.

The new credits count toward eligibility for and raise the amount of benefit payments to the veteran and his family when he retires, the family of a veteran who dies at any future time, and the family of an already deceased serviceman. The wage credits may be used with respect to any monthly benefit payable after August 1950 and any lump-sum death payment when the veteran dies after that month.

To avoid duplication of retirement credit granted because of World War II service, the new law provides that the wage credits may not be used if periodic benefits based in whole or part on the same period of service are determined to be payable by any Federal agency or wholly owned instrumentality other than the Veterans Administration. The credits would not be used in computing old-age and survivors insurance benefits if a larger benefit would be payable without them.

The purpose of the provision is to guarantee to servicemen of World War II the same old-age and survivors

insurance protection they would have had if they had been in civilian jobs during their period of service. This objective is substantially accomplished except for those who would have averaged more than \$160 a month in civilian employment. Even for most of these, however, the provisions for using January 1, 1951, as an optional starting point in computing the average monthly wage and the use of a higher wage base after 1950 will remove the handicap imposed by their World War II service. In general, this group would continue to have above-average earnings and would be likely to benefit by the new provisions.

The retroactive granting of wage credits is a good step in itself but is not a permanent answer to the problem of offsetting the gap in social insurance protection created by service in the armed forces. This fact is emphasized by the current emergency during which men and women in the armed services are not receiving credits under the old-age and survivors insurance program. This difficulty might be overcome by adding the present period of crisis to the period for which wage credits are granted; a more effective solution, however, would appear to be the coverage of service in the armed forces on a permanent basis.

Conclusion

Unquestionably the chief significance of the expanded old-age and survivors insurance coverage is the protection that many more persons will now have against the hazard of loss of income caused by the death of the wage earner or by his retirement in old age. Also significant is the fact that in the 1950 amendments Congress has limited coverage in certain areas on the basis of factors and considerations that previously were not widely applied to the insurance program. Experience will show whether these limitations should be retained.

A consideration clearly evident in the provisions for agricultural workers, domestic workers, home workers, and nonprofit employees was the avoidance of possibly unproductive

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COVERAGE UNDER AMENDMENTS

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contributions by excluding from coverage low-paid and nonregular services. There is little doubt but that the definitions of such services, however, will exclude many workers who could gain insurance protection along with those who could not. It is to be hoped that methods will be found to accomplish the purpose of the Congress and at the same time provide coverage for more workers. To a certain extent the coverage limitations in the amendments were due to administrative considerations. It is likely that experience with the new

coverage will help to solve the administrative difficulties that once prevented the establishment of a program of universal coverage.

Another significant fact was the conclusion of Congress that public employees and others covered by public retirement systems should remain excluded, at least for the time being, from old-age and survivors insurance. It is obvious, however, that a great deal of further study is needed of the disadvantages suffered by individuals shifting between the several systems and old-age and survivors insurance and of possible alternatives for overcoming them. Re-

sults of such study should give valuable information on the best methods of coordination between old-age and survivors insurance and these public retirement systems.

A third factor leading to the continued exclusion of certain groups—that is, farmers and professional self-employed people—was the feeling of Congress that members of these groups had not expressed sufficient desire for coverage. With the passage of time and growing awareness of the value of old-age and survivors insurance, it may be expected that these groups will come to realize the advantages of coverage.