

California Law Review

VOL. 46

AUGUST, 1958

No. 3

Where Are We in This Business of Social Security?

*Charles I. Schottland**

Perhaps no piece of social legislation in the history of the United States has been as far-reaching and significant as the Social Security Act. Provisions of the act touch intimately the lives of almost every resident of the United States either in terms of taxes paid or benefits or services received. It is the purpose of this paper to review some of these programs, particularly those income-maintenance programs administered by the Social Security Administration, United States Department of Health, Education, and Welfare.

I

THE SOCIAL SECURITY ACT OF 1935

In June 1934, President Franklin D. Roosevelt sent a special message to the Congress urging legislation on economic security.¹ At the same time, he established, by Executive Order, the Committee on Economic Security to study problems relating to the economic security of individuals and to recommend proposals to promote greater economic security.²

The Committee transmitted its report and recommendations to the President on January 15, 1935. The recommendations were based on the convictions that a program of economic security must "have as its primary aim the assurance of an adequate income to each human being in childhood, youth, middle age, or old age—in sickness or in health" and that it must "provide safeguards against all of the hazards leading to destitution and dependency."³

The first objective in a program of economic security, the report asserted, must be maximum employment, through stimulation of private employment and the provision of public employment for those able-bodied workers whom industry cannot employ at a given time. The Committee

* Commissioner of Social Security, U.S. Department of Health, Education, and Welfare.

¹ 78 CONG. REC. 10769-71 (1934).

² Exec. Order No. 6757 (1934).

³ U.S. COMMITTEE ON ECONOMIC SECURITY, REPORT TO THE PRESIDENT 3 (1935).

recommended a program of unemployment insurance as a "first line of defense," to be instituted "at the earliest possible date to increase the security of all who are employed."⁴

To meet the problem of security for the aged, the Committee recommended a dual approach—immediate aid through a program of noncontributory old-age assistance and a long-range program of compulsory contributory annuities for wage earners.⁵

For children in families with no breadwinner, who would not be aided by employment opportunities or unemployment insurance provisions, the Committee recommended a program of federal grants-in-aid to states for financial aid to dependent children—an extension of the earlier mothers' aid provisions. For other children who were homeless, neglected, or delinquent, grants-in-aid to states were suggested for strengthening and extending child welfare services. Grants were also proposed for child and maternal health services, especially in rural areas.⁶

A nationwide preventive public health program was recommended to cope with the serious problem of sickness in families with low income.⁷

If all these measures were adopted, the Committee concluded, "the residual relief problem will have diminished to a point where it will be possible to return primary responsibility for the care of people who cannot work to the state and local governments."⁸

Characterizing their recommendations as a "piecemeal approach," the Committee declared that such an approach was dictated by practical considerations, but that "the broad objectives should never be forgotten. Whatever measures are deemed immediately expedient should be so designed that they can be embodied in the complete program which we must have ere long. To delay until it is opportune to set up a complete program will probably mean holding up action until it is too late to act. A substantial beginning should be made now . . ."⁹

The President transmitted the Committee's report to Congress in January 1935.¹⁰ After extended congressional hearings, the Social Security Act was passed by both Houses with overwhelming bipartisan support. On August 14, with the President's signature, it became law,¹¹ and in 1937 it

⁴ *Id.* at 4.

⁵ *Ibid.*

⁶ *Id.* at 5-6.

⁷ *Id.* at 6.

⁸ *Id.* at 7.

⁹ *Id.* at 3.

¹⁰ H.R. Doc. No. 81, 74th Cong., 1st Sess. (1935).

¹¹ 49 STAT. 620 (1935), 42 U.S.C. §§ 301-1355 (1952). Laws pertaining to social security are found in *Compilation of the Social Security Laws*, S. Doc. No. 156, 84th Cong., 2d Sess. (1956).

was upheld as constitutional by the United States Supreme Court.¹² The act set up a federal system of old-age benefits.¹³ It encouraged individual states to set up their own unemployment compensation—*i.e.*, unemployment insurance—systems by allowing employers to offset the taxes collected under each state system against a uniform federal tax on payrolls throughout the country—thereby removing the major obstacle of inter-state competition.¹⁴ It provided federal aid to states for financial assistance to three groups in the needy population—the aged,¹⁵ the blind,¹⁶ and dependent children;¹⁷ federal aid to states for maternal and child health services,¹⁸ services for crippled children,¹⁹ and child welfare services;²⁰ and federal aid for public health services²¹ and for vocational rehabilitation.²²

In order to assure basic planning in the area of economic security, the act imposed upon those charged with responsibility for administering most of the provisions of the act—now the Secretary of Health, Education, and Welfare—the “duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance.”²³

Although the Social Security Act provided for a variety of payments and services, its major emphasis was on income maintenance. It thus recognized that, as a nation changes from a predominantly rural or agricultural to an industrialized society, there is a growing dependence upon money income in both urban and rural areas. When such income stops because of unemployment, old age, disability, or other reasons, those dependent upon such income face serious problems. To continue income to individuals and families under such disabilities was the primary purpose of the social insurance and public assistance programs established under the Social Security Act.

II

THE PROGRAM TODAY

Today, social security is accepted as an established part of American political and economic life, and practically every person in the United States

¹² *Helvering v. Davis*, 301 U.S. 619 (1937).

¹³ 49 STAT. 621 (1935), as amended, 42 U.S.C. §§ 401–21 (1952).

¹⁴ 49 STAT. 639 (1935), as amended, 26 U.S.C. §§ 3301, 3302(a), 3304 (Supp. V, 1957).

¹⁵ 49 STAT. 620 (1935), as amended, 42 U.S.C. §§ 301–06 (1952).

¹⁶ 49 STAT. 645 (1935), as amended, 42 U.S.C. §§ 1201–06 (1952).

¹⁷ 49 STAT. 627 (1935), as amended, 42 U.S.C. §§ 601–06 (1952).

¹⁸ 49 STAT. 629 (1935), as amended, 42 U.S.C. §§ 701–05 (1952).

¹⁹ 49 STAT. 631 (1935), as amended, 42 U.S.C. §§ 711–15 (1952).

²⁰ 49 STAT. 633 (1935), as amended, 42 U.S.C. § 721 (1952).

²¹ 49 STAT. 633 (1935), repealed and replaced by the Public Health Service Act, 58 STAT. 693 (1944), as amended, 42 U.S.C. § 246 (1952).

²² 49 STAT. 633 (1935), supplanted by the Vocational Rehabilitation Act, 41 STAT. 735 (1943), as amended, 29 U.S.C. §§ 41–51 (1952).

²³ 49 STAT. 636 (1935), as amended, 42 U.S.C. § 902 (1952).

is affected by it. In 1957, benefits of about eighteen and one-half billion dollars were paid through the Social Security Act programs, including unemployment insurance, and through the other social insurance and related programs—the veterans', workmen's compensation, railroad, and public employee retirement systems. The major share of these payments is made through programs administered by the Social Security Administration of the Department of Health, Education, and Welfare: old-age, survivors and disability insurance, which is now paying monthly benefits at an annual rate in excess of seven billion dollars, and the four federally-aided public assistance programs with payments at an annual rate of three billion dollars.

About four-fifths of our population 65 and over, or roughly twelve million people, are receiving either old-age and survivors insurance or old-age assistance, or are eligible to receive the former if they, or their husbands, retire. The number of aged beneficiaries of the insurance program, including women 62–64, exceeds nine million. Over four million survivors and dependents below retirement age or children deprived of parental support for reasons other than the death or retirement of the worker are receiving payments through the insurance program or the aid-to-dependent-children program. Obviously, the impact of these programs on our citizenry has been extremely significant.

A. Old-Age, Survivors, and Disability Insurance

In contradistinction to other social insurance systems such as workmen's compensation, administered entirely by states, or unemployment insurance, administered by states with certain federal tax and administrative requirements, the program of old-age, survivors and disability insurance is administered directly by the federal government.²⁴ This program, originally administered by the Social Security Board, an independent bipartisan board of three members, is now administered by the Department of Health, Education, and Welfare.²⁵ Responsibility for the social insurance program has been delegated by the Secretary of Health, Education, and Welfare to the Commissioner of Social Security. Most operating responsibilities have, in turn, been delegated by the Commissioner to the Bureau of Old-Age and Survivors Insurance.²⁶ This Bureau operates through offices situated throughout the United States.

During the 22 years from 1935 to 1957, many legislative changes have been made in the program; these related to the groups covered, benefits

²⁴ A minor exception involves the administration of the disability provisions, with determinations of disability being made by state agencies as agents of the U.S. Department of Health, Education, and Welfare.

²⁵ 67 STAT. 631 (1953), 5 U.S.C. § 623 n.4, 5 (Supp. V, 1957).

²⁶ Other operating bureaus of the Social Security Administration are the Bureau of Public Assistance, Children's Bureau, and the Bureau of Federal Credit Unions.

paid, and methods of financing. The most important amendments, those of 1939, 1950, 1952, 1954, and 1956, reinforced and extended the basic principles established in the original law.

The program today may best be described by nine main characteristics.

1. Coverage Is Almost Universal

A basic premise of the system is that all persons, regardless of income level or type of employment, should be covered by the system.

Limited in its original coverage to wage earners in industry and commerce, the old-age, survivors, and disability insurance program has been expanded until it now covers, or makes eligible for coverage, nine-tenths of all gainfully employed workers, including the self-employed. For some years now, as many as 90 per cent of the nation's children and their mothers have had survivorship protection that assures them of a monthly income if the family breadwinner were to die.

The background studies of the Committee on Economic Security recognized that the risk of loss of livelihood in old age was so nearly universal that the coverage of the old-age benefits program should be as broad as possible.²⁷ Nevertheless, administrative, constitutional and other special considerations dictated the congressional decision to cover only employment in industry and commerce, where accurate wage reporting could be obtained through relatively simple additions to employers' regular bookkeeping practices.

The 1950 amendments brought in categories of work for which coverage had appeared too difficult administratively in the beginning—regularly employed agricultural and domestic workers and most self-employed persons other than farmers.²⁸ While continuing in general to apply the principles of compulsory coverage, these amendments provided elective coverage on a group basis for state and local government employees who were not already covered by retirement systems²⁹—elective because constitutional barriers generally preclude taxation of state and local governments. The amendments also provided elective coverage on a group basis for employees of nonprofit organizations;³⁰ these organizations objected to compulsory coverage as a threat to their traditionally tax exempt status.

The 1954 amendments extended coverage to self-employed farmers, to ministers (on an individual election basis, because of special considerations),³¹ and to most state and local government employees covered by

²⁷ U.S. COMMITTEE ON ECONOMIC SECURITY, REPORT TO THE PRESIDENT 23-35 (1935).

²⁸ Social Security Act Amendments of 1950, c. 809, 64 STAT. 477 (codified in scattered sections of 42 U.S.C.).

²⁹ 64 STAT. 514 (1950), 42 U.S.C. § 418 (1952).

³⁰ 64 STAT. 494 (1950), as amended, 42 U.S.C. § 410 (1952).

³¹ 68 STAT. 1054 (1954), 42 U.S.C. § 410 (Supp. V, 1957).

retirement systems.³² Also, more agricultural and domestic workers were covered by broadening the definition of regularly employed.³³

Lawyers were covered through the 1956 amendments,³⁴ on the same basis as other self-employed persons, after the Congress had been convinced that a majority of the members of the profession wished to be included in the system. Similarly, coverage was extended in 1956 to other self-employed professional groups—dentists, chiropractors, veterinarians, naturopaths, osteopaths, and optometrists³⁵—but not to doctors of medicine, who have, through the American Medical Association, opposed coverage of physicians.

Amendments in 1956 also extended coverage to members of the armed forces on the regular compulsory, contributory basis used for civilian employment.³⁶

Thus, the scope of the program has gradually been broadened until more than nine-tenths of all gainfully employed persons are covered or could be covered by election.³⁷ The only major exclusions from coverage today are self-employed physicians, many policemen and firemen with their own retirement systems, federal employees under the Civil Service Retirement system, very low-income self-employed persons, and farm and domestic workers with irregular employment.

As to geographical coverage, the 1935 act applied only to the continental United States and to Alaska and Hawaii.³⁸ Now coverage also applies to Puerto Rico and the Virgin Islands and to American citizens working abroad for American employers.³⁹

The insurance program has thus gone a long way toward meeting the goal of universal coverage envisaged by the Committee on Economic Security when it formulated our social security measures.

2. *Benefits Are Paid as a Matter of Right*

A fundamental element in the old-age, survivors, and disability insurance program is that benefits are paid as a matter of "right." Benefits are not paid as a gratuity, nor do they depend upon the discretion of administrators. The right to benefits is a statutory right which can be enforced by

³² 68 STAT. 1055 (1954), 42 U.S.C. § 418 (Supp. V, 1957).

³³ 68 STAT. 1052 (1954), 42 U.S.C. § 410 (Supp. V, 1957).

³⁴ 70 STAT. 825 (1956), 42 U.S.C. § 411 (Supp. V, 1957).

³⁵ *Ibid.*

³⁶ 70 STAT. 869 (1956), (codified in scattered sections of 26, 42 U.S.C. (Supp. V, 1957)).

³⁷ Railroad workers are, in essence, covered under the basic program as a result of the provisions for transfer of wage credits between the railroad system and the social security system for those with less than 10 years of service and the provisions under which the railroad employment of persons with over 10 years of railroad work is in effect reinsured under old-age and survivors insurance.

³⁸ 49 STAT. 625, 633 (1935).

³⁹ 64 STAT. 500 (1950), 42 U.S.C. § 410(e), (i) (1952).

court action.⁴⁰ The rights of persons who have met certain specified conditions are detailed by the Social Security Act and protected by an appeals machinery. Where benefits are denied or the individual is dissatisfied with the determination of the Bureau of Old-Age and Survivors Insurance, he may either request a reconsideration by the Bureau of Old-Age and Survivors Insurance⁴¹ or file an appeal with an "Appeals Council" for a review of the decision by a referee.⁴² The Appeals Council may render the final decision subject only to judicial review;⁴³ appeal may be taken to the federal district court.⁴⁴

Thus, a person's rights to benefits are protected by provision for both an administrative appeal and judicial review.

3. Integrated Protection Is Provided Against Three Major Risks

A person who has attained "insured" status is protected against the risks of old age, disability, and death. The old-age, survivors, and disability benefits are administered as a single program. The same wage records are used as a basis for all types of benefits.

A person is "currently insured" if he has at least six quarters of coverage within three years of death or eligibility for benefits.⁴⁵ A quarter of coverage is a calendar quarter in which the individual has been paid wages of at least \$50.00 in covered, nonfarm employment or for which he has been credited with at least \$100.00 from farm employment or from self-employment. A person is "fully insured" when he has forty quarters of coverage or at least one quarter of coverage for each two calendar quarters since 1950.⁴⁶ He is insured for disability purposes if he is fully and currently insured and, in addition, has twenty quarters of coverage out of the last forty calendar quarters.⁴⁷

(a) *Old-Age Insurance Benefits.* The 1935 act provided monthly old-age benefits for the worker himself.⁴⁸ In 1939, before any monthly benefits had been paid, the law was amended to also provide benefits for the worker's dependents.⁴⁹ Additional categories of dependents were added in subsequent amendments. Under present law monthly benefits are payable to fully insured retired people—to men at age 65, and women at age 62⁵⁰—and to the

⁴⁰ *Ewing v. Gardner*, 185 F.2d 781, 784 (1950).

⁴¹ 20 C.F.R. 403.707-08 (Supp. 1957).

⁴² 20 C.F.R. 422.6 (Supp. 1957).

⁴³ *Stull v. Ewing*, 102 F. Supp. 927 (S.D.N.Y. 1950).

⁴⁴ *Ekus v. Altmeyer*, 42 F. Supp. 306 (E.D.N.Y. 1943).

⁴⁵ 64 STAT. 505 (1950), as amended, 42 U.S.C. § 414(b) (Supp. V, 1957).

⁴⁶ 64 STAT. 505 (1950), as amended, 42 U.S.C. § 414(a) (Supp. V, 1957).

⁴⁷ 66 STAT. 771 (1952), as amended, 42 U.S.C. § 416(i) (Supp. V, 1957).

⁴⁸ 49 STAT. 623 (1935), 42 U.S.C. § 402 (1952).

⁴⁹ 53 STAT. 1363 (1939), 42 U.S.C. § 402 (1952).

⁵⁰ 49 STAT. 623 (1935), as amended, 42 U.S.C. §§ 402, 416(a) (1952), as amended, 42 U.S.C. §§ 402, 416(a) (Supp. V, 1957).

following dependents: a wife age 62 or over, a dependent husband age 65 or over,⁵¹ a child under 18 or disabled before age 18, and a wife of any age caring for a child entitled to benefits.⁵²

(b) *Survivors Insurance Benefits.* Benefits for the survivors of a deceased worker were introduced by the 1939 amendments.⁵³ Upon the death of a fully insured worker, benefits are payable to a surviving widow age 62 or over, a surviving dependent widower age 65 or over,⁵⁴ a child under 18 or disabled before age 18, a mother who has such child in her care, or a dependent parent (a mother must be age 62 or over and a father must be at least 65). The survivor benefits for children and their widowed mothers are also payable even if the worker was only currently insured. A lump-sum payment is payable at death if the deceased worker was either fully or currently insured.⁵⁵

(c) *Disability Insurance Benefits.* The recommendations of the Committee on Economic Security, designed as they were as a "piecemeal approach, dictated by practical considerations,"⁵⁶ did not include provisions to maintain income during disability. Recognition of the importance to the individual and to society of measures to cope with this risk was limited, in the original Social Security Act, to the provisions for services for maternal and child health and crippled children, and for assistance to the needy blind and to children whose needs arose from the parent's incapacity. In 1950, a further attack on need arising from disability was made through the provision of federal grants to the states for assistance for needy adults who are totally and permanently disabled.⁵⁷

In its 1948 report, the Advisory Council on Social Security to the Senate Committee on Finance had stated: "Income loss from permanent and total disability is a major economic hazard to which, like old age and death, all gainful workers are exposed. The Advisory Council believes that the time has come to extend the nation's social-insurance system to afford protection against this loss."⁵⁸ In amending the program shortly thereafter, however, the Congress rejected the social insurance approach and chose instead the

⁵¹ The female worker must also have been currently insured.

⁵² 49 STAT. 622 (1935), as amended, 42 U.S.C. § 402 (1952), as amended, 42 U.S.C. § 402 (Supp. V, 1957).

⁵³ 53 STAT. 1362 (1939), as amended, 42 U.S.C. § 402 (1952).

⁵⁴ The female worker must also have been currently insured.

⁵⁵ 53 STAT. 1362 (1939), as amended, 42 U.S.C. §§ 402(a)-(i) (1952), as amended, 42 U.S.C. § 402 (Supp. V, 1957).

⁵⁶ Note 9 *supra*.

⁵⁷ 64 STAT. 555 (1950), as amended, 42 U.S.C. §§ 1351-55 (1952).

⁵⁸ ADVISORY COUNCIL ON SOCIAL SECURITY, REPORT TO THE SENATE COMMITTEE ON FINANCE: RECOMMENDATIONS FOR SOCIAL SECURITY LEGISLATION. S. Doc. No. 208, 80th Cong., 2d Sess. 69 (1949).

public assistance method, establishing the above-mentioned assistance program.⁵⁹

Prior to 1954 the basic insurance program not only provided no cash benefits for the disabled; it afforded no protection against the impairment of the disabled worker's old-age and survivors insurance protection. A period of disability without covered earnings at best lowered the old-age and survivors insurance benefits subsequently payable and at worst could result in a loss of insured status so that neither the worker nor his survivors could qualify for any payments under the system. Amendments in 1954 removed this disadvantage by providing for "freezing" old-age and survivors insurance status during extended total disability.⁶⁰

Congress significantly changed the basic insurance system in 1956 by enacting—after much controversy—provisions for monthly insurance benefits beginning at age 50 for workers who are permanently and totally disabled.⁶¹ Disability insurance benefits are payable, after a waiting period of six months, to totally disabled workers between the ages of 50 and 65 who qualify both as to work requirements and degree of disability. The amount of the disability benefit is the same as the amount the worker would receive if he became entitled to old-age insurance benefits in the first month of his waiting period. No additional amounts, however, are paid for family dependents.

4. *The System Is Contributory*

In contradistinction to some foreign social insurance programs that are financed in whole or in part by general revenues of the government, our program is financed through contributions by workers and employers, or the self-employed where there is no employer. The contributions are a tax upon payrolls or self-employment income. The tax is on the first \$4,200 of earnings. The law provides for an increase in taxes until 1975, when the maximum tax will be reached.⁶²

The contributory principle has many advantages, but of utmost importance is the effect in encouraging a responsible attitude among those cov-

⁵⁹ Note 57 *supra*.

⁶⁰ 68 STAT. 1079 (1954), 42 U.S.C. §§ 413, 414, 416, 417, 419 (1952), as amended, 42 U.S.C. §§ 413, 414, 416, 417, 419 (Supp. V, 1957).

⁶¹ 70 STAT. 815 (1956), 42 U.S.C. § 423 (Supp. V, 1957).

⁶² The scheduled tax rates are:

Calendar year	Employer (per cent)	Employee (per cent)	Self-Employed (per cent)
1957-1959	2¾	2¾	3⅓
1960-1964	2¾	2¾	4⅓
1965-1969	3¾	3¾	4⅞
1970-1974	3¾	3¾	5⅞
1975 and after	4¾	4¾	6⅞

ered. The taxpayer knows that the benefits for himself and his family are made possible by the payment of social security taxes and this knowledge gives him a personal interest and stake in the adequacy and soundness of the program. It is believed that this principle has been a major factor in the growing support and acceptance of the program.

5. *The System Is Soundly Financed*

From the beginning of the program, the methods of financing have been controversial. Should the program be on a "pay as you go" basis? That is, should current taxes be sufficient, and no more than sufficient, at all times to pay for current expenditures? Should taxes be fixed so that they equal the "level premium cost" as in many forms of private insurance? How should funds be invested? These and other questions have been debated in public print⁶³—frequently with more heat than light.

Without detailing the various controversies, suffice it to say that the appropriate committees of Congress and numerous students of the problem have concluded that, in general, the present system, as it has evolved, is a satisfactory one.⁶⁴ This system involves several features.

(a) *A self-supporting system.* It is agreed that the system shall be self-supporting; *i.e.*, that the special social security taxes and interest earnings of the trust funds must be sufficient to finance all expenditures. Contributions received under the schedule described above,⁶⁵ when added to income from interest on the trust funds, are expected to be sufficient to meet the cost of benefits indefinitely into the future, as far as can be foreseen.

(b) *Actuarial soundness.* It is generally agreed that the program must be financed on an actuarially sound basis. This does not mean, however, that a government program must establish reserves similar to private life insurance. Actuarial soundness implies that, in the long-run, the total income must be sufficient to match total outlay.

(c) *Trust funds.* The Social Security Act creates two trust funds—a "Federal Old-Age and Survivors Insurance Trust Fund,"⁶⁶ and a "Federal

⁶³ Gelles, *Financing Social Security*, 60 POL. SCI. Q. 222 (1945); Manning, *Financing Social Security*, 46 PUB. AFFAIRS BULL. (1946); Merriam, Schlotterbeck, and Maroney, *The Cost and Financing of Social Security*, Brookings Institution (1950); Merriam, *Social Security Financing*, Soc. Sec. Admin., Div. of Research and Statistics, Bureau Report No. 17 (1952); Myers, *Actuarial Aspects of Financing Old-Age and Survivors Insurance*, 16 SOC. SEC. BULL. No. 6, at 3 (1953); Parker, *Financial Policy in Old-Age and Survivors Insurance, 1935-1950*, 14 SOC. SEC. BULL. No. 6, at 3 (1951).

⁶⁴ Senate Committee on Finance, *Digest of Issues in Social Security*, 80th Cong., 1st Sess. (1947); Senate Committee on Finance, *A Report from the Advisory Council on Social Security*, S. Doc. No. 204, 80th Cong., 2d Sess. (1948); BURNS, *SOCIAL SECURITY AND PUBLIC POLICY* (1956).

⁶⁵ Note 62 *supra*.

⁶⁶ 49 STAT. 622 (1935), as amended, 42 U.S.C. § 401(a) (Supp. V, 1957).

Disability Insurance Trust Fund."⁶⁷ Into these funds are deposited the taxes collected from the employees, employers, and self-employed. A Board of Trustees is established by the act consisting of the Secretary of the Treasury, who is the "Managing Trustee," the Secretary of Labor, and the Secretary of Health, Education, and Welfare. The Commissioner of Social Security serves as Secretary of the Board of Trustees. The trustees are required to report to Congress annually on the actuarial status of the trust funds and on estimated income and disbursements for the ensuing five years.⁶⁸ These reports have assumed great importance in view of the fact that the figures and statistics presented therein are relied upon by congressional committees as a basis for congressional action.

The monies in the trust funds are invested in government securities, and interest earned is added to the funds. Assets in the funds now total approximately 23 billion dollars.⁶⁹

(d) *Advisory Council on Social Security Financing.* The concern of Congress regarding social security financing and its desire to assure financing on a sound basis led to an amendment to the Social Security Act in 1956 establishing an "Advisory Council on Social Security Financing." This council is established for the purpose of "reviewing the status of the Federal Old-Age and Survivors Insurance Trust Fund and of the Federal Disability Insurance Trust Fund in relation to the long-term commitments of the old-age, survivors, and disability insurance program."⁷⁰

The council must be appointed by the Secretary of Health, Education, and Welfare at least two years prior to the scheduled tax increase and consists of the Commissioner of Social Security as chairman and 12 other members.⁷¹

⁶⁷ 70 STAT. 820 (1956), 42 U.S.C. § 401(b) (Supp. V, 1957).

⁶⁸ 49 STAT. 622 (1935), as amended, 42 U.S.C. § 401(c) (Supp. V, 1957).

⁶⁹ For more complete discussion of the trust funds and social security financing, see U.S. DEPT. OF HEALTH, EDUCATION, & WELFARE, OASI No. 36, *FACTS ABOUT THE OLD-AGE AND SURVIVORS INSURANCE TRUST FUND* (1957); Myers, *Actuarial Aspects of Financing Old-Age and Survivors Insurance*, 16 SOC. SEC. BULL. No. 6, at 3 (1953); U.S. DEPT. OF HEALTH, EDUCATION, & WELFARE, *THE FINANCIAL PRINCIPLE OF SELF-SUPPORT IN THE OLD-AGE AND SURVIVORS INSURANCE SYSTEM* (Actuarial Study No. 40, 1955); Meyers, *Old-Age and Survivors Insurance: Financing Basis and Policy Under 1956 Amendments*, 14 SOC. SEC. BULL. No. 6 at 3 (1951).

⁷⁰ 70 STAT. 833 (1956), 42 U.S.C. § 401a (Supp. V, 1957).

⁷¹ *Ibid.* The present Council consists of Charles I. Schottland, Comm'r of Social Security; Robert A. Hornby, Pres., Pacific Lighting Corp.; Elliott V. Bell, Chairman, Exec. Comm., McGraw-Hill Publishing Co.; Reinhard Hohaas, Vice-Pres. & Chief Actuary, Metropolitan Life Insurance Co.; Nelson Cruikshank, Director, Department of Social Security, AFL-CIO; Joseph W. Childs, Vice-Pres., United Rubber, Cork, Linoleum & Plastic Workers; Eric Peterson, General Secretary-Treasurer, Internat'l Ass'n of Machinists; Carl H. Fisher, Professor, School of Business Administration, Univ. of Michigan; Thomas N. Hurd, Professor, Cornell Univ.; Robert McAllister Lloyd, Chairman, Teachers' Insurance & Annuity Ass'n, College Retirement Equities Fund; Arthur Burns, Pres., Nat'l Bureau of Economic Research; J. Douglas Brown, Dean of the Faculty, Princeton Univ.; Malcolm Bryan, Pres., Fed. Reserve Bank, Atlanta, Georgia.

It is anticipated that the council will review the actuarial cost estimates, investment policies of the trust funds, and related fiscal matters to determine whether the program requires changes to maintain it on a financially sound basis.

6. Participation Is Compulsory

Another feature of the system is that coverage is compulsory, with very few exceptions. This principle has been adhered to since the beginning of the system in order to protect it from adverse selection of risks as well as to protect the country as a whole against widespread destitution due to the very risks insured against, namely old age, disability, and death of the wage earner.

The 1950 and 1954 amendments which provided for elective coverage⁷² did not represent a reversal in the intent of Congress to preserve the compulsory character of the system. On occasions when voluntary coverage on an individual basis was proposed, Congress has recognized that it involved grave dangers with respect to the financing of the system—those most likely to elect would be persons who could expect the largest return for a relatively small contribution. Furthermore, persons who could most easily spare the money, rather than those who most needed the protection, would be more likely to elect to participate. Over-riding considerations of a special character, however, entered into the decisions to introduce certain voluntary elements into the coverage. Constitutional barriers generally preclude the federal government from imposing the employer tax upon state and local governments and, traditionally, certain nonprofit institutions have been tax-exempt. These groups were therefore brought into coverage on an elective basis. Because, generally speaking, coverage is not optional for individual employees of states or localities or of nonprofit institutions, but rather is on a group basis with new employees compulsorily covered, it does not involve the financial risk to the system inherent in an individual election.

In providing coverage for ministers through individual election in the 1954 amendments, the Committee on Finance of the Senate stated: "A provision for coverage on an individual election basis, while not generally desirable, is considered by your committee to be justified in this area because of the special circumstances. Many churches have expressed the fear that their participation in the old-age and survivors insurance program as employers of ministers might interfere with the well-established principle of separation of church and state. Many church representatives also be-

⁷² See text at and following note 29 *supra*.

lieve that individual ministers who do not wish to be covered on grounds of conscience should not be required to participate in the program."⁷³

Significantly, although proposals for coverage on an individual election basis have been made over the years in connection with several other groups—such as farm operators and self-employed professional persons—clergy-men have been the only group for which this basis of coverage was acceptable to Congress. Even then strict provisions as to coverage are included—a limited period to make election and irrevocability of election once made.⁷⁴

7. *Benefits Are Wage Related*

Again in contradistinction to some European systems, our social security program emphasizes the relation of the economic status of the worker to the benefits he receives.⁷⁵ Thus, the worker himself establishes his level of benefits by his earnings on which he pays contributions. The tax is on wages up to \$4,200 of earnings per year. A person who earns \$4,200 or more per year during his potential working life—and there are provisions for dropping out years of low earnings in determining the average wage⁷⁶—will receive the maximum monthly retirement benefit of \$108.50 at age 65 or later retirement. A person who averages only \$3,000 will receive \$88.50 per month.

The scale of benefits, ranging from a monthly payment of \$30 minimum to \$108.50 for the individual worker and \$200 for a family, although wage related, is weighted in favor of the low-income worker.

The provision of differential benefits related to wages has several objectives: preserving the worker's motivation for making the maximum contribution to the economy, relating benefits to diverse economic situations, and relating benefits to differing standards of living. It is interesting to note that several countries which originally rejected the wage related principle are now veering in the direction of this type of program.⁷⁷

⁷³ Senate Committee on Finance, *Social Security Amendments of 1954, Report to Accompany H.R. 9366*, S. REP. No. 1987, 83d Cong., 2d Sess. 9 (1953). See also H.R. REP. No. 1698, 83d Cong., 2d Sess. (1953).

⁷⁴ 68 STAT. 1054 (1954); 42 U.S.C. § 411(c) (Supp. V, 1957).

⁷⁵ See Brown, *The American Philosophy of Social Insurance*, THE SOCIAL SERVICE REV., Mar. 1956, p. 4.

⁷⁶ 49 STAT. 623 (1935), as amended, 42 U.S.C. § 415 (1952), as amended, 42 U.S.C. § 415 (Supp. V, 1957).

⁷⁷ See for example, as to England, LABOUR PARTY, NATIONAL SUPERANNUATION—LABOUR'S POLICY FOR SECURITY IN OLD AGE (1957); as to Canada, address by Prime Minister Diefenbaker, House of Commons, Nov. 19, 1957, in regard to the Canadian government giving "full consideration to investigating the insurance system in the United States to the end that we will bring about in Canada a rounded and effective contributory social security system over and above that which already exists," Debates of the House of Commons, Canada, 1957-58 Session, Volume II, p. 1298.

8. *Emphasis Is Placed on Family*

Many children in the United States are in homes where family income is low or only moderate. Rural areas where income levels are low have more than their proportionate share of the nation's children. In many families with young children, the father has not yet reached his full earning power and the mother is needed at home. The parents have had to meet the extra expenses of setting up the home and starting the family, so they often have not been able to save much money.

For these reasons, it is especially important that families with children have some assured means of support when the breadwinner's earnings stop or are greatly reduced. Because of the survivor protection under the federal insurance system, nine out of ten of the mothers and young children in the nation now have the assurance that they can receive monthly benefits if the father of the family dies.

At the beginning of 1957 there were more than 1.9 million children under age eighteen whose fathers had died and almost 700,000 widows with children in their care. Over half of these mothers were working and more than two-fifths were receiving monthly survivor benefits from the old-age and survivors insurance program. More than 1.1 million of the children whose fathers were dead received such benefits. Almost 400,000 children in families in which the father had died were benefiting from other social insurance and related programs, especially the veterans' programs.

Thus, the old-age, survivors, and disability insurance program contributes to strengthening and maintaining family life by providing income upon death of the breadwinner. This reduces the necessity for mothers to place children in foster care in order to be free to accept a job. Most families can now rest assured that death of the breadwinner does not mean a complete stoppage of income.

9. *Benefits Replace Earnings Lost*

A basic principle of the old-age, survivors, and disability insurance system is that the benefits are paid only when earnings are *lost* because of these three occurrences—old age, death of the wage earner, and disability. The program is not an annuity system and, in general, benefits are not paid to persons whose income from earnings continues. This concept gives rise to one of the most controversial aspects of the program, namely, the "retirement test."⁷⁸

A worker who reaches retirement age is considered "retired" if his earnings do not exceed \$1,200 per year; after he reaches age 72 he is "retired"

⁷⁸ See COHEN, RETIREMENT POLICIES UNDER SOCIAL SECURITY (1957).

regardless of his earnings.⁷⁹ For each \$80 (or fraction thereof) which a person under 72 earns above \$1,200, he loses one month's benefit, except that he never loses a benefit for a month in which he earns wages of \$80 or less or does not engage in substantial self-employment.⁸⁰ Therefore, a worker earning \$2,080 in a year—with over \$80 each month—would lose all benefits for the year.

Although controversial, this retirement test feature is an essential part of the program. To abolish it, changing the character of the program from insurance against wage loss to an annuity arrangement, would permit persons who continued to work full time at their regular jobs to receive full benefits.

There are about 10 million people age 65 or over who could initially qualify for benefits. Almost 2 million have not applied for them, presumably because they are not substantially retired. About 7.5 million are receiving their checks each month, and 300,000 are receiving checks for some months of the year. Only 200,000 applicants have all 12 monthly checks withheld.

These two groups of people who are not drawing full benefits because they have substantial earnings from work—the 500,000 who have applied and almost 2 million who have not yet applied—are the ones who would benefit if the retirement test were eliminated.

To abolish the test would involve a combined increase of the employer-employee tax of $1\frac{1}{4}$ per cent of covered wages—a tax that would be paid by all workers for the benefit of persons beyond retirement age who have substantial income from their own earnings. Whenever the retirement test provision has been examined it has generally been concluded that the test should be retained—that for the best use of available funds, benefits should be paid to persons who most need them rather than to those who have not substantially retired.

B. Public Assistance

Complementing the basic attack on economic insecurity through social insurance stands the program of federal grants-in-aid to states for the support of needy persons. Approximately \$3,250,000,000 a year of federal, state and local funds is expended by states and localities for the care of the destitute. About \$1,800,000,000 of this amount comes from the federal government. These funds are expended through five programs: old-age assistance for persons over 65, aid to the needy blind, aid to dependent children who have been deprived of parental support, aid to the permanently and totally disabled, and general assistance. General assistance is entirely

⁷⁹ 49 STAT. 623 (1935), as amended, 42 U.S.C. § 403 (1952), as amended, 42 U.S.C. § 403 (Supp. V, 1957).

⁸⁰ *Ibid.*

a state and/or local program. The other four represent a federal-state partnership with federal grants-in-aid supplementing state and local funds. Over six million persons receive public assistance through these five categories.

These public assistance programs contribute to "income maintenance" for needy persons who, for the most part, are not receiving social insurance benefits.⁸¹

The question is sometimes asked, why—in these years of prosperity, with an insurance program of broad coverage—so many of our people must still look to the assistance programs for basic support. Of the almost two million people who receive their main support from old-age assistance (this excludes those who are receiving assistance to supplement insurance benefits), two-thirds are women. Many of them had depended on the earnings of persons who were already dead or retired when our insurance program began. Of the payments made under the program for aid to dependent children, only thirteen per cent go to children in need because of the death of a parent, the major risk to children for which the insurance program makes provision. Predominantly, these children are in need because they are in broken homes, a risk that has been considered uninsurable, or because of the incapacity of the parent, a risk only recently and partially covered by our insurance program.

As the insurance program assumes more and more of the burden of income support in old-age, or after the death or disability of the breadwinner, the efforts of our assistance programs can be increasingly concentrated on constructive and preventive approaches. The 1956 amendments were of great significance in this respect in that they make clear that the purpose of public assistance includes both financial assistance and services leading to the strengthening of individual and family independence.

CONCLUSION

With practically all the gainfully employed covered by the old-age, survivors, and disability insurance system, social security has brought to the 75 million workers contributing to the system and their families a measure of economic security which means much to the aged, to widows, and to surviving children not only materially but in terms of peace of mind in periods when such security is most needed. In this accomplishment alone, measured in terms of human worth and personal satisfaction, those who had a role in the formulation of our Social Security Act can take just pride.

⁸¹ About 700,000 persons receive both social insurance and public assistance.