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REPORT ON STATUS OF WELFARE PLAN DISCLOSURE ACTS

In asking me to report on this subject, Mr. Hoskins indicated that a factual summary—without viewpoints—was desired for those of us who are not specialists on the subject and who would like a general roundup without much detail. (In fact, if detail is sought, I am not a proper authority because it requires very close attention to each law, and to regulations, forms and state authority responsible for administering these laws.)

The state laws are the same six in number that obtained at this time last year: in the order of their effective date, Washington (6/23/55), Wisconsin (8/22/57), Connecticut (10/1/57), California (10/7/57), New York (4/19/58) and Massachusetts (10/1/58). The Federal law, passed in 1958, had an effective date of January 1, 1959. Briefly, I will take up the six states together according to broad characteristics, and then the Federal law.

State Laws

State Authorities under the Law. In four states, California, Connecticut, Washington and Wisconsin, the operation of the law is the responsibility of the Insurance Commissioner; in New York, the Superintendent of Insurance handles the welfare and pension plans not managed by corporate trustees, while the Superintendent of Banking serves the corresponding function for subject trust fund plans. Massachusetts is different still in that an interagency board of three persons, Commissioners of Banks, of Insurance and of Labor and Industries, is charged with the law's administration.

Plans Subject to the Law. Connecticut and New York have the laws with the narrowest application—namely, confined to the so-called Taft-Hartley type funds, *i.e.*, those established by labor and management jointly and with equal representation in administering the plan and trust. The California law applies to union-negotiated plans in general, whether jointly administered or not. Massachusetts, Washington and Wisconsin (the law of widest application) do not confine the purview to plans involving union participation. Other qualifying conditions exist in most states: California, Connecticut and Washington exclude the program if involving a trustee subject to the state or Federal banking laws. As for Massachusetts, it is understood that there is current litigation claiming

that nontrusteed programs—insured plans, Blue Cross, and such—are not subject to the law (filings were due 11/1/59 but many are not complying or are filing under protest). I also understand that in Wisconsin the question of the law's application to directly written group insurance contracts may be moot. Finally, some laws reduce the load considerably by excluding programs involving less than a given number of participants.

Requirements. All states call for registration of the plan and for annual statements or reports. Various rules exist as to the report's format and its availability to participants or the public. When it comes to provision for the *examination* of a registered plan or fund, we find a *requirement* for such examination by the state authority at least every five years in New York, Washington and Wisconsin; three years in California (but here a C.P.A. audit may satisfy in lieu of the examination). In Connecticut, an examination is only conducted subject to suitable requests of one or more of the parties involved (there are five alternate criteria of what is a "suitable request"). Finally, in Massachusetts, examination by the state authority can be conducted only with the approval of a probate court judge.

Form of Reporting and Examination. While the states were working up their reporting forms (with NAIC assistance) the D-2 form of the Federal law came out and it is my understanding that in general the states will accept the Federal D-2 form, in lieu of other forms or portions thereof, for filings commencing in 1960. This topic of examination is one on which actuaries are very much interested but concerning which I have scant information. The first date of the above 3-year or 5-year periodicity has not run out yet under any law and, except for New York State, I have not been able to determine what sort of examination is envisioned, nor how perfunctory or exhaustive it might be (this may all depend on each particular case). Relative to New York State, the alleged Insurance Department procedure, in an outline I have seen, will include: (1) verification and valuation of assets, (2) determination of liabilities and reserves, (3) analysis of experience and insurance transactions, and (4) general investigation and review of fund affairs. Bearing in mind that, in the last figures I have seen, about 1,000 joint funds had reported to the Insurance Department, this sort of examination carried out with any detail would seem pretty formidable (and think how much more so if not confined to joint labor-management programs); the work will probably be greatly reduced, however, by reason of a majority of those welfare and pension plans being largely under insurance contracts. I have not seen a statement relative to statistics or examination procedure under those plans reporting only to the Superintendent of Banking in New York State.

Federal Law

Authority under the Law. The Department of Labor is given what only amounts to custodial responsibility under the law. Descriptions of plans and annual reports are to be filed with the Department, but no authority for enforcement or promulgating regulations is given the Department. The Department was authorized, however, to prepare forms, D-1 and D-2, and to make them available for use, if desired, in describing plans and reporting thereon respectively. I have seen the figure of 95% as indicating the relative number of plans which are using the Department's forms.

Plans Subject to the Law. The purview is very wide, embracing almost any nongovernmental benefit arrangement that could remotely be called a welfare or pension "plan." Plans covering less than 26 employees are excluded, and certain tax-exempt fraternals, charitables and civic organizations are not subject to filing requirements. Also, if you can find something that is not interstate commerce, it is excluded. The latest information I have indicates that some 200,000 plans (less than expected) have filed the D-1 or comparable form with the Department; one company filed 125 D-1 forms!

Requirements. Besides the filing called for, employers must make available, to any participant requesting it, the disclosure and reporting information submitted to the Department. If for any reason the employer does not do this or if the participant is reluctant to ask for it, the participant may obtain this from the Department. In fact, *anyone* can go into the Document Room and request the information from the Department representative. About the only way to seek redress from noncomplying employers is through the courts. I have not yet heard of such a suit being started.

Examination. The Federal law is completely silent with respect to powers or intent for the *examination* of any plan or fund or, indeed, for even investigating the responses on such forms as are filed. In this respect the Federal law is much less curious about the plans than are the state laws. This omission—if it can be called such—was intentional; the House Report so states and indicates that this area should be reserved to the State.

Actuarial Participation. The law and the Department's D-2 form do not call for much by way of actuarial participation. Only under pension plans, the actuary for a trust-fund plan or for an insured deposit administration plan would furnish certain information on type of funding, actuarial assumptions, accrued liability and current costs. However, no actuarial certification is called for; and this situation caused concern in

some actuarial circles because it is the plan's "Administrator" or his certified accountant that is made responsible for the information on the annual report forms, even for the actuarial responses. When the law was being formulated, sort of an ad hoc committee of actuaries attempted to make the actuarial items the responsibility of a qualified actuary rather than implying that the actuary is "junior" to an accountant or Administrator in the premises. The revision, however, was not successful, probably getting started too late in the day.

Present Status and Outlook

The six state laws carry effective dates prior to the effective date of the Federal law (California's Act is due to expire June 30, 1960 unless reenacted). During the formulation of the Federal law various groups, including NAIC, were opposing the legislation on the grounds that it invades a province of the states. How much of this opposition will continue—now that we *have* a Federal law—is debatable. For instance, the states, in accepting the Federal D-2 form, seem to have indicated resignation to the Federal law. Thus, is there likely to be any further extension of state legislation—that is, by new states—in this area? There still remains argument for it, however, in the field of supervision and examination of plans, or certain types thereof, in order to prevent the Federal government from arrogating to itself this "regulation."

The President, in signing the Welfare and Pension Plans Disclosure Act, stated that it was a defective measure in not giving the Department of Labor power to implement it properly and to police it (probably Secretary Mitchell was "speaking"). During the 1959 session of Congress, four Bills were introduced to amend the disclosure act; they would all, in varying degrees, restore the powers of the Secretary of Labor, which were contained in the Senate version and then stripped by the House. For example, one of these Bills (HR-7489) would have provided for investigation, enforcement and punishment powers, official recognition of Departmental interpretations (regulations), and elimination of use of the word "summary" with respect to disclosing a plan's assets, liabilities, receipts and disbursements, requiring enough detail to minimize otherwise concealed abuses. The Bills did not make much progress and remained, I believe, in Committee.

Accomplishments. What have the disclosure laws accomplished so far? Do the state authorities feel that concrete advantages have resulted from their laws? Perhaps it is too early for opinions. As for the Federal act, as enacted it seemed to satisfy no one. Labor wanted more control and regulation; industry wanted less. What the law came out with was sort of

a "do-it-yourself kit" for benefit plans, but the first thing that happened was loud shouts for the governmental "rule book." Enormous quantities of conference time, correspondence, guessing games and tons of waste paper went over the dam during the months before and following the effective date of the law. Someone has estimated that disclosure laws to date have entailed $50,000,000 of administrative expense (on the low side, I feel). The act's alleged purpose was primarily disclosure to the *participants*, but how many participants have received or sought this information? (At a recent meeting of a sizable number of employer benefit plan representatives, the question was raised of how many cases of employees coming in and asking for the D-1 information had been experienced; out of the whole audience, two hands were raised, one case each!). Furthermore, I venture to say that mighty few employees have written to or gone to the document room for this information. Perhaps the accomplishment to date has been one of instilling more care in administration of plans and prevention of misleading information, but as far as the actual material filed is concerned, it probably has been used only by labor unions, people curious about another company's plan, and that sort of thing.

In this connection, just before this meeting, I visited the "Welfare Act's" Document Room in Washington to see what it was like and to experiment in asking for information. The location is at the bottom of 14th Street, just beyond the Bureau of Engraving and just before the Potomac River Bridge; to the right, over the Tidal Basin is the Jefferson Memorial. On the fifth floor of an edifice whose age may be imputed by the legend over the door, "Liberty Loan Building," the file rooms will be found. In the receiving room there were five empty desks (for customers) and one desk at which a pleasant lady was eating her lunch. I was sorry to interrupt her repast, but she appeared not to mind and was glad to see me. On learning my business, she handed me the forms on which to fill out my prescription. This brought me up sharp as to what I was down there for. I decided to ask for the pension files of a small Washington firm that I knew had already filed both D-1 and D-2. Then, since Jim Hoskins got me into doing this report, I decided to ask for the filing of the Travelers pension plan to make sure Jim's retirement was properly documented. The nice lady took my requests, made out some more pink forms of her own and phoned for a messenger. It was some time before he showed up, but he made off with the forms and within ten minutes I had the papers on the small Washington firm, but it took another ten minutes to find the Travelers. The files in both cases were well put together and in individual envelopes containing both of the two copies which had been called for by

the law. I sat down to study these papers and let the lady finish her lunch. Later, I wandered into the file rooms; the shelves were full of neat-looking jackets so that I believe the Department has done a good organizing job on its limited budget and authorization. It all seemed a rather lonely place; no one else came in while I was there and the ash trays were all clean, so I think I was the only customer so far that day. As I said, the view from the windows was pleasant, the sun shining and Jefferson and the fall foliage reflecting in the Tidal Basin, all very serene. On the way down in the elevator the operator seemed happy and was singing, in a melodic voice, the song "Somewhere Over The Rainbow." I rather hated to leave.

Labor Reform Law of 1959 (Official name: The Labor-Management Reporting and Disclosure Act of 1959). This act which resulted from the McClellan Committee investigations does not modify the 1958 Federal disclosure law. It has, however, made it necessary for officers, representatives and trustees of union monies and joint funds to be bonded for the protection of—among others—benefit plan monies passing through their hands or under their control.

Regulation versus Disclosure. As I have said, the Federal law is solely one of *disclosure* and *reporting;* beyond this some state laws call for *examination*, but still as a handmaiden to *disclosure.* No law, to date, calls for partial or complete *regulation* in the sense that it is used for the insurance business. Some quarters, I am sure, are in favor of rather complete regulatory laws on a centralized Federal basis. Whether actual regulation will develop through the evolution of state and/or Federal machinery is a good question to end on.

DORRANCE C. BRONSON