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March 3, 1975

MEMORANDUM TO THE MARIANAS POLITICAL STATUS COMMISSION FILE

Subject: Conversation with Adrian deGraffenried

At my request Adrian checked with Social Security about the problem I identified in Section 502(a)(1) of the Covenant -- namely, that Section 228 of Title II of the Social Security Act, which is covered by Section 502(a)(1) of the Covenant, becomes applicable upon the establishment of the new Government of the Marianas, even though the remainder of the laws which provide Social Security benefits do not become applicable, under Section 606 of the Covenant, until termination of the Trusteeship (unless the two Governments agree to make such laws applicable earlier).

Adrian said that it is Social Security's view that since Section 228 of Title II of the Social Security Act provides a "special gratuity" to persons who are "essentially uninsured" that there is no inconsistency. Social Security said that it knew about the difference in effective dates from Tom Johnson -- apparently his follow-up on my earlier conversation with him -- and that it believes the Covenant is properly drafted. I asked Adrian whether Section 228 of Title II distributes funds from the Social Security Trust Fund or from general revenues. He said he didn't know. But in view of Social Security's firm view on the matter -- apparently supported by Burton -- I don't see any reason why we should object.


Michael S. Helfer

cc: Howard P. Willens

N.B. Section 228 is attached. The funds, in effect, seem to come from the general revenues. § (g). It appears that only those persons who became 72 before 1968, see § (a)(2)(A), will be helped, at least until Section 606 of the Covenant makes the Social Security laws generally applicable in the Marianas.

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OLD-AGE, ETC., BENEFITS

42 § 428

Amendment by Pub.L. 92-336 applicable with respect to monthly benefits under this subchapter for months after Aug. 1972, see section 201(i) of Pub.L. 92-336, set out as a note under section 415 of this title.

benefits under title II of the Social Security Act [this subchapter] for and after the second month following the month [July 1965] in which this Act [Pub.L. 89-97] is enacted on the basis of applications filed in or after the month [July 1965] in which this Act [Pub.L. 89-97] is enacted."

Effective Date of 1971 Amendment. Section 202(c) of Pub.L. 92-5 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1970."

Repeal of Amendment of Subsecs. (a) and (b) That Would Have Been Effective Jan. 1, 1975. Section 2(b)(2) of Pub. L. 93-233 repealed section 202(a)(4) of Pub.L. 92-336, Title II, July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1975, substituted "the larger of \$58.00 or the amount most recently established in lieu thereof under section 415(i) of this title" for "\$58.00" and "the larger of \$29.00 or the amount most recently established in lieu thereof under section 415(i) of this title" for "\$29.00", applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title under provisions of section 2(c) of Pub.L. 93-233, set out as a note under section 415 of this title.

Effective Date of 1969 Amendment. Section 1003(c) of Pub.L. 91-172 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969."

Legislative History. For legislative history and purpose of Pub.L. 89-97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90-248, 1967 U.S. Code Cong. and Adm.News, p. 2834; Pub.L. 91-172, 1969 U.S.Code Cong. and Adm.News, p. 1645; Pub.L. 92-5, 1971 U.S.Code Cong. and Adm.News, p. 957; Pub.L. 92-603, 1972 U.S.Code Cong. and Adm.News, p. 4989; Pub.L. 93-233, 1973 U.S.Code Cong. and Adm.News, p. 3177.

Effective Date of 1968 Amendment. Section 102(c) of Pub.L. 90-248 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (a) and (b) of this section and to section 428(b)(1), (2), (c)(2), (3)(A), and (3)(B) of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968."

Effective Date. Section 309(b) of Pub. L. 89-97 provided that: "The amendment made by subsection (a) [adding this section] shall apply in the case of monthly

Library References

Social Security and Public Welfare C.J.S. Social Security and Public Welfare §§ 40, 41.
 150.

Regulations for Federal Old-age, Survivors and Disability Insurance

Application of quarters of coverage for transitional insured status, see § 404.113a, set out in the Appendix.

§ 428. Benefits at age 72 for certain uninsured individuals— Eligibility

- (a) Every individual who—
 (1) has attained the age of 72,
 (2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is a resident of the United States (as defined in subsection (e) of this section), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 410(i) of this title) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he becomes so entitled to such benefits and ending with the month preceding the month in which he dies. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

Amount of benefits

(b)(1) Except as provided in paragraph (2), the benefits amount to which an individual is entitled under this section for any month shall be the larger of \$64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(2) If both husband and wife are entitled (or upon application would be entitled) to benefits under this section for any month, the amount of the husband's benefit for such month shall be the larger of \$64.40 or the amount most recently established in lieu thereof under section 415(i) of this title and the amount of the wife's benefit for such month shall be the larger of \$32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Reduction for government pension system benefits

(c)(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced, (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the larger of \$32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

(3) In the case of a husband and wife only one of whom is entitled to benefits under this section—

(A) the benefit amount under paragraph (1) shall be reduced (but not below zero) by the excess (if any) of (i) the amount of any periodic benefits under governmental pension systems for which the spouse who is not eligible for such month is eligible, over (ii) the amount most recently established in lieu thereof under section 415(i) of this title.

(B) the benefit amount under paragraph (1) shall be reduced (but not below zero) by the excess (if any) of (i) the amount of any periodic benefits under governmental pension systems for which the spouse who is not eligible for such month is eligible, over (ii) the amount most recently established in lieu thereof under section 415(i) of this title.

(4) For purposes of this section, an individual who is eligible for benefits under a governmental pension system—

(A) such individual shall be deemed to be eligible for such benefits, and

(B) to the extent that such individual is not eligible for such benefits, he shall be deemed to have filed application for such benefits.

(C) to the extent that such individual is not eligible for such benefits, or his spouse has not filed application for such benefits, he shall be deemed to be eligible for such benefits for the determination of eligibility for benefits under this section.

(5) For purposes of this section, the amount of any benefit payable on any basis shall be reduced (but not below zero) by the amount of any benefit payable on any basis for such month. The amount so payable shall allocate the amount of such benefit over the number of months for which it is payable.

(6) If, under the foregoing provisions of this section, the amount of any benefit payable for any month is reduced to zero, the amount of such benefit shall be reduced to zero for such month. In the case of a husband and wife only one of whom is entitled to benefits under this section, the amount of such benefit shall be reduced to zero for such month if the amount of such benefit is reduced to zero for such month for either of them.

(7) If any benefit payable under this section is reduced to zero for any month, the amount of such benefit shall be reduced to zero for such month. In the case of a husband and wife only one of whom is entitled to benefits under this section, the amount of such benefit shall be reduced to zero for such month if the amount of such benefit is reduced to zero for such month for either of them.

(8) Under regulation of the Board of Trustees, the amount of any benefit payable under this section shall be reduced (but not below zero) by the amount of any benefit payable under this section for such month. The amount so payable shall allocate the amount of such benefit over the number of months for which it is payable. The amount so payable shall be reduced (but not below zero) by the amount of any benefit payable under this section for such month. The amount so payable shall allocate the amount of such benefit over the number of months for which it is payable. The amount so payable shall be reduced (but not below zero) by the amount of any benefit payable under this section for such month. The amount so payable shall allocate the amount of such benefit over the number of months for which it is payable.

(3) In the case of a husband and wife both of whom are entitled to benefits under this section for any month—

(A) the benefit amount of the wife, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband is eligible for such month, over (ii) the larger of \$64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and

(B) the benefit amount of the husband, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife is eligible for such month, over (ii) the larger of \$32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his spouse having retired, such individual and his spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Secretary shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than \$1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of \$0.10, it shall be raised to the next higher multiple of \$0.10.

(8) Under regulations prescribed by the Secretary, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than \$5 may be accumulated until they equal or exceed \$5.

Suspension for months in which cash payments are made under public assistance or in which supplemental security income benefits are payable

(d) The benefit to which any individual is entitled under this section for any month shall not be paid for such month if—

(1) such individual receives aid or assistance in the form of money payments in such month under a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Secretary, at such time and in such manner as may be prescribed in accordance with regulations of the Secretary, that such payments to such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month and such individual is not an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93-66 for the following month, nor shall such benefit be paid for such month if such individual is an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93-66 for such month, unless the Secretary determines that such benefits are not payable with respect to such individual for the month following such month.

Suspension where individual is residing outside United States

(e) The benefit to which any individual is entitled under this section for any month shall not be paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term "United States" means the 50 States and the District of Columbia.

Treatment as monthly insurance benefits

(f) For purposes of subsections (t) and (u) of section 402 of this title, and of section 1395s of this title, a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 402 of this title.

Annual reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

(g) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the

Secretary of Health, Education and Welfare shall determine in the annual report of the Secretary of Health, Education and Welfare for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the

(1) payments made under such plan in the preceding fiscal year and all individuals who, as of the beginning of the month for which payments are made, are covered by such plan, and

(2) the additional administrative expenses described in paragraph (1) and

(3) any loss in interest on such payments and expenses incurred in order to place such Trust Fund in such fiscal year as it would have been made.

(h) For purposes of this section—

(1) The term "quarterly" means a period of three months as defined in section 416 of this title.

(2) The term "governmental pension system" means a pension system established by the Government of a State, or any one or more of the following: (A) pensions, (B) retirement benefits, (C) similar amounts payable to or for the benefit of workmen's compensation beneficiaries, or (D) Administration as compensation for death.

(3) The term "periodic payments" means a lump sum if it is a lump sum or a series of periodic payments.

(4) The term "determination" means a determination by the Secretary of Health, Education and Welfare for any month under section 416 of this title.

(f) of section 416 of this title.

Aug. 14, 1935, c. 531, Title I, § 302(a), Pub.L. 90-248, Title I, § 102, Dec. 30, 1969, Pub.L. 91-171, § 17, 1971, Pub.L. 92-5, Title I, § 302(a), Pub.L. 92-336, Title II, § 2, Pub.L. 93-233, §§ 2(b)(1), 1

Secretary of Health, Education, and Welfare deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

Definitions

(h) For purposes of this section—

(1) The term "quarter of coverage" includes a quarter of coverage as defined in section 228e(l) of Title 45.

(2) The term "governmental pension system" means the insurance system established by this title or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality or any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen's compensation law or any payment by the Veterans' Administration as compensation for service-connected disability or death).

(3) The term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 416 of this title without regard to subsections (b) and (f) of section 416 of this title.

Aug. 14, 1935, c. 531, Title II, § 228, as added Mar. 15, 1966, Pub.L. 89-368, Title III, § 302(a), 80 Stat. 67, and amended Jan. 2, 1968, Pub.L. 90-248, Title I, § 102(b), Title II, § 241(a), 81 Stat. 827, 916; Dec. 30, 1969, Pub.L. 91-172, Title X, § 1003(b), 83 Stat. 740; Mar. 17, 1971, Pub.L. 92-5, Title II, § 202(b), 85 Stat. 10; July 1, 1972, Pub.L. 92-336, Title II, § 201(g)(2), 86 Stat. 411; Dec. 31, 1973, Pub.L. 93-233, §§ 2(b)(1), 18(c), 87 Stat. 952, 968.