

Notes and Brief Reports

Employment Covered Under the Social Security Program, 1935-84*

In 1981, nearly 105 million workers, or about 88.5 percent of the Nation's workforce, were covered under the old-age, survivors, and disability insurance (OASDI, or social security) program based on employment in their major job.¹ By comparison, the original Social Security Act of 1935 provided coverage to less than 60 percent of the workforce.

This note provides data on the coverage status of workers by their major job in 1981. In addition, the initial coverage provisions in 1935 and coverage extensions since then are described.

About 90 percent of the 109.2 million wage and salary workers were covered under social security in 1981 (table 1). Coverage of workers in the private sector was about 96 percent, compared with 62 percent of those whose major job was in the public sector. Within the private sector, coverage was nearly complete (99.7 percent) among the 77.2 million workers in industry and commerce. Of the remaining 11.5 million workers in the private sector, approximately 8.0 million were covered, with coverage levels ranging from 28 percent among domestic workers to 100 percent among railroad workers.² About 75 percent of the workers whose major job was in the farm sector and nearly 79 percent of those whose major job was for a nonprofit organization were covered under social security.

Social security coverage of work performed in the public sector was not as comprehensive as in the private sector because a large number of State, local, and Federal civilian employees were not covered in 1981. Although about 68 percent of the employees of State

Table 1.—Coverage status of workers by major job, 1981¹

Type of employment	Number of workers (in millions)		Percent covered
	Total	Covered	
Total, all employment	118.2	104.6	88.5
Wage and salary	109.2	97.8	89.6
Private sector	88.7	85.0	95.8
Industry and commerce	77.2	77.0	99.7
Farm	2.2	1.6	74.6
Domestic	2.0	.6	28.1
Nonprofit	6.8	5.3	78.8
Railroad5	.5	100.0
Public sector	20.4	12.8	62.4
Federal	3.5	.5	15.4
State and local	14.8	10.1	68.2
Military	2.1	2.1	100.0
Self-employment	9.0	6.8	75.5

¹ These data refer to workers who are reported as having covered wages in their major job.

and local governments were covered, coverage at the Federal level was limited at that time to about 15 percent of civilian workers with Federal employment as their major job.

There were about 11 million wage and salary workers who were not covered in their major job in 1981. Some of these workers were in employment excluded from coverage under Federal law (for example, most Federal employees and domestic and farm employees with wages below the reporting minimum) while the remaining workers were not covered even though Federal law permitted them to be covered (for example, State and local employees for whom coverage had not been elected by the State).

Among those workers whose highest earnings were from self-employment, about 76 percent were covered under the program. Most of the 2.2 million workers not covered had earnings below the \$400 minimum required for reporting.

Initial Coverage Under the 1935 Act

The Social Security Act of 1935 provided coverage for wage and salary workers under age 65 who were employed in industry and commerce within the United States, Alaska, and Hawaii. Excluded were agricultural laborers, domestic servants in private homes, those engaged in casual labor not in the course of their trade or business, officers and crew members of ships, employees of the Federal Government, employees of

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¹ Major job is the job in which the worker received the most earnings during the year.

² Although employees covered by the Railroad Retirement Act were also excluded from coverage, they are considered as covered in this note since earnings from railroad employment are counted for social security purposes at the death or retirement of the worker if he or she does not qualify under the railroad retirement program.

State and local governments, employees of nonprofit organizations, and self-employed persons.

Although universal coverage was considered to be a desirable goal from the beginning, there were several reasons for limiting coverage, at least during the early stages of the program. Income received in the form of wages or salaries could be readily determined and could therefore serve as a practical basis for contributions assessed on both employers and their employees. With the employer acting as the agent of the Government in the collection of contributions and remitting the proceeds along with his own contributions, considerable economies in administration were possible. At the same time, the employee's interest in assuring a complete record of contributions served as an aid in the enforcement of accurate reporting.³

Within the wage and salary group, however, the scope of coverage was further limited, for several reasons. Farm laborers and domestic workers were originally excluded principally because of the expected administrative difficulties with respect to wage reporting and tax collection. Among farm workers and domestic workers, the frequent absence of accounting records and the usual provision of a part of compensation in the form of maintenance were considered to be impediments to effective enforcement.⁴ Most Federal employees were already covered under other Federal retirement programs and State and local government workers were excluded because of perceived constitutional limitations on the Federal taxing power. Employees of nonprofit organizations were initially excluded because many employers felt that a mandatory social security tax would jeopardize their traditional exemption from income and other taxation.

About 56 percent of the workforce was covered under the social security program in 1937, the year contributions were first made (table 2). This projection is based on data from the 1930 census of occupations, which was the last complete enumeration of the working population in the United States before the passage of the Social Security Act.⁵

Coverage Extensions

Efforts to expand coverage began soon after the Act was passed. The 1939 Advisory Council on Social Security recommended that coverage be extended to farm and domestic employment and work for nonprofit organizations. Between 1940 and 1947, the expansion of coverage continued to be of interest. On several occasions during that period, the President recommended in his budget messages that coverage be

³ See **Social Security in America** (Publication No. 20), U.S. Government Printing Office, 1937, page 208.

⁴ *Ibid.*

⁵ See Laura Wendt, "Census Classifications and Social Security Categories," **Social Security Bulletin**, April 1938, pages 3-12.

Table 2.—Coverage status of workers in 1937, projected on the basis of the 1930 Census

Type of employment	Number of workers (in millions)	Percent of total
Total, all employment	48.8	100.0
Workers in covered occupations	¹ 27.4	56.1
Workers in noncovered occupations	21.4	43.9
Wage and salary workers:		
Farm	2.8	5.7
Domestic	2.1	4.3
Nonprofit6	1.2
Government	2.9	5.9
Other ²8	1.7
Self-employed persons	12.3	25.1

¹ Includes 750,000 workers aged 65 or older in covered employment but excluded between 1936 and 1940; also includes 1.8 million workers in occupations covered under the Railroad Retirement Act.

² Includes casual laborers and officers and crew members of ships.

expanded. Several annual reports prepared by the Social Security Board contained recommendations to expand coverage and the issue continued to be raised in congressional committees. No major coverage legislation was passed; however, in 1939, the exclusion of workers aged 65 or older was eliminated.

The 1949 Advisory Council underscored the need for extending coverage to all types of employment by noting that "the basic protection offered by the contributory social insurance system under the Social Security Act should be available to all who are dependent on income from work. The character of one's occupation should not force one to rely for basic protection on public assistance rather than insurance."⁶

Coverage was extended to the employment of nearly 9 million more workers under the Social Security Amendments of 1950 and other extensions have been enacted periodically through 1984. The remainder of this note traces the changes in coverage provisions during this period for each of the major groups excluded from the original Act.

Coverage of Farm Employment

The 1950 amendments introduced the first provisions for coverage of agricultural labor under a "regularity-of-employment" test designed to reduce the farmer's record keeping activity and to eliminate the coverage of many itinerant workers. The decision to extend coverage to farm labor followed the unanimous recommendation of the Social Security Advisory Council to include such labor and the statement of the Treasury Department and the Social Security Administration that coverage was administratively feasible. A "60-50" test was included in the amendments, specifying that a farm-worker must first have 3 months' continuous service from one employer before coverage could begin. After

⁶ See **Recommendations for Social Security Legislation** (Document 208), U.S. Government Printing Office, 1948, page 6.

having served this qualifying period, the employee was covered in each succeeding quarter with the same employer as long as he or she continued to work at least 60 days on a full-time basis and was paid cash wages of at least \$50. Approximately 650,000 workers became covered as a result of this provision.

In the 1954 amendments, however, this somewhat awkward rule was replaced by the cash-pay test, which stated that agricultural workers were covered if they were paid at least \$100 in cash wages by one employer during the calendar year. This change brought an additional 850,000 farm workers into covered employment.

The 1956 amendments increased the cash-pay amount to \$150 and established, as an alternative, a "regularity-of-employment" test. This test stipulated that the worker was covered if he or she worked on at least 20 days for one employer during the calendar year and was paid on a time basis (for example, hourly, daily, or weekly) as distinguished from a piecework basis. Since coverage could be obtained by meeting the requirements of either the "cash-pay" or "regularity-of-employment" test, many workers who had been denied coverage 2 years earlier were brought back under coverage even though their wages were less than \$150. The "cash-pay" and "regularity-of-employment" requirements have remained unchanged since 1956. During 1981, the most recent year for which data are available, about 75 percent of all workers whose major job was in the farm sector were covered under social security.

Coverage of Domestic Employment

Coverage was extended to domestic employment under the 1950 amendments in much the same way as it was to farm workers. Domestic workers were considered to be those persons who performed services as maids, chauffeurs, butlers, gardeners, and so forth, in or around an employer's private home. Beginning in 1951, coverage was extended to these workers if they were "regularly employed" (that is, if they worked at least 24 days for a single employer in either the current or preceding calendar quarter and were paid cash wages of at least \$50 for services in that quarter). Nearly 1 million domestic workers were brought under the social security program in 1951. The "regularity-of-employment" test was eliminated by the 1954 amendments. Thus, in 1955, domestic workers were covered for any quarter in which they were paid at least \$50 in cash by one employer. This change provided coverage to an additional 150,000 domestic workers. The "cash-pay" test applies separately to the wages paid by each employer and has remained unchanged since 1955. Today, the \$50 amount typically represents less than 2 days of employment, compared with about 10 days in 1950.

In 1981, there were about 2 million workers whose

major job was in domestic work and, of these, 600,000 were covered.

Coverage of Workers for Nonprofit Organizations

Employees of nonprofit organizations were also excluded from coverage under the 1935 Act, which exempted "service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . ." An organization previously held to be exempt from the payment of Federal income taxes by virtue of The Revenue Act of 1934 was also exempt from the tax levied under The Federal Insurance Contributions Act.⁷

In its 1942 annual report, however, the Social Security Board noted that "jobs involving the same kind of work and the same wage level may or may not be covered, depending on whether or not the employer falls within a certain category." Believing this to be inequitable, the Board recommended that "the social insurance protection be extended to employees of nonprofit institutions provided that it could be applied so as not to result in any loss of other types of protection that they might hold." Nonprofit organizations also began to support extension of coverage as they found themselves at a competitive disadvantage in the hiring and retention of employees. But it was not until January 1, 1951 (under the 1950 amendments) that these organizations could obtain coverage for their employees on a voluntary basis by fulfilling the following conditions:

- (1) The organization had to file a certificate with the Treasury Department waiving its exemption from social security taxes, and
- (2) Two-thirds of the employees had to elect coverage.

If at least two-thirds of the employees wished to be covered, only those who indicated their desire for coverage were covered and the remaining employees could continue to be excluded. All employees hired after the effective date of the certificate were covered. Once an organization obtained coverage for its employees, it had to be covered for at least 10 years before it could terminate coverage. The law specified that a waiver certificate had to be in effect for not less than 8 years and that an organization wishing to terminate the waiver must give at least 2 years' notice. The law further specified that once a nonprofit organization terminated the waiver certificate, it could never again secure coverage for its employees by filing another. The waiver could be filed by any nonprofit religious, charitable, educational, or other organization exempt from income taxes under section 501(a) of the Internal Revenue Code of 1954 and

⁷ See Richard E. Wyatt and William H. Wandel, *The Social Security Act in Operation*, D.C. Graphic Arts Press, 1937, page 105.

described in section 501(c)(3) of that Code. Specifically excluded from coverage under the provisions of the social security law were student nurses and students employed by colleges or universities that they regularly attended, and clergymen belonging to religious orders.

About 750,000 workers for nonprofit organizations became covered in 1951 as a result of the elective coverage provision, and this number increased to 5.3 million by 1981. The estimated 1.5 million noncovered workers in 1981 were a concern of the 1983 National Commission on Social Security Reform, which stated that "OASDI-HI coverage should be extended on a mandatory basis, as of January 1, 1984, to all employees of nonprofit organizations."⁸ The Commission noted that adoption of this recommendation not only would result in a favorable cash-flow situation in the short-run, but also have a favorable long-range effect. The reasoning was that the vast majority of these workers would have qualified for sizable benefits as a result of other covered employment even if coverage were not extended to them.

Over the long run, the Commission felt that coverage would be favorable to the system since these workers tended to have higher-than-average wages and were thus entitled to less-heavily weighted benefits. Coverage would also provide or increase social security protection for employees of nonprofit organizations. This recommendation was enacted as part of the 1983 amendments. All employees of nonprofit organizations are subject to a cash-pay test, which requires that the employee receive at least \$100 in a calendar year (\$50 in a calendar quarter before 1978). Beginning in 1984, churches and church-controlled organizations are allowed to treat their employees as self-employed persons.

Coverage of Federal Employment

Because Congress had already established retirement programs covering a large proportion of the employees of the Federal Government, it was not considered expedient in 1935 to include such employees under a general contributory old-age insurance program. In 1943, however, the Social Security Board noted that "large numbers of workers recently entering Government employment may lose the old-age and survivors insurance protection they earned while in private employment, without acquiring comparable protection in their Government jobs." The Board further noted that "all local, State, and Federal employees and their families should have the protection against economic hazards afforded to workers in commerce and industry; continuity of protection which can be provided only by a Nation-wide system."⁹

⁸ See "Report of the National Commission on Social Security Reform," *Social Security Bulletin*, February 1983, page 6.

⁹ See "Information on Changes in and Expansion of the Social Security Program Recommended by the Social Security Board," unpublished, page 16.

It was not until the enactment of the 1950 amendments, however, that coverage was extended to employment of a sizable number of Federal civilian employees not under a Federal retirement system. These were primarily part-time or temporary employees. In 1981, about 3 million workers whose major job during the year was in Federal employment were not covered under social security. All Federal civilian employees were covered under the hospital insurance program (Part A of Medicare) beginning January 1, 1983.

For military service performed between September 16, 1940, and December 31, 1956, veterans received noncontributory wage credits of \$160 for each month of service. These wage credits were not posted on the veteran's social security record but were considered when a benefit claim was made. Coverage was extended to members of the uniformed services in 1957. For military service after 1956, workers receive credit for their basic pay plus deemed wage credits, which represent other cash amounts and wages-in-kind.

Under the 1983 amendments, social security coverage was extended to all civilian employees of the Federal executive, legislative, and judicial branches hired after December 31, 1983, including those with previous periods of Federal service if the break in such service lasted for more than 365 days. Coverage was also extended to some current employees: Members of Congress, the President and the Vice President, Federal judges, and most executive-level political appointees. This coverage provision was recommended by the 1983 National Commission on Social Security Reform and carried the same rationale for inclusion as had the recommendation on coverage of workers for nonprofit organizations noted above.

Coverage of State and Local Government Employment

Employees of State and local governments constitute the largest remaining group of noncovered workers. When social security was enacted in 1935, State and local government employees were not covered because of concern that it could be unconstitutional to levy employer taxes on State and local governments. However, legislation was enacted in 1950 and later to provide that employees of State and local governments could be covered at the State's option under certain conditions. The 1950 legislation limited such coverage to employees in jobs not covered under a State or local retirement system.

Since 1951, employees of State and local governments have been brought under social security by means of voluntary agreements entered into by the States. Some States have provided coverage for most or all of their employees and the employees of their political subdivisions while others have provided coverage for few or

none. Once such an agreement has been entered into, the State decides, within the limitations of the social security law, the extent of coverage of State employees, the political subdivisions whose employees are to be covered, and the types of services that are to be excluded. In 1951, States elected coverage for about 600,000 State and local government employees who were not under a retirement system.

The coverage of State and local employment has gradually expanded. In 1954, another 3.4 million employees entered the social security system when the option of coverage was extended to all employees (except police and firefighters) even if they were already covered by a pension plan. Such coverage was available only if the State made the coverage available and a majority of the members of the retirement system eligible to vote opted in favor of coverage. In 1956, certain States specifically listed in the law were permitted to extend coverage to groups of police and firefighters under a retirement plan. The 1956 legislation also permitted States specifically listed in the law to treat a group whose members were in positions under a State or local retirement system as two groups for coverage purposes—positions of members desiring coverage (plus all new members) and those who did not want it. Coverage was required for new employees. In 1967, optional coverage was extended to groups of firefighters in positions under retirement systems in all States. As a result of these coverage expansions, 10.1 million State and local government employees were in employment covered under the program during 1981. This figure represented about 68 percent of all workers whose major job was in State or local government at that time.¹⁰

Before 1984, a State could terminate a Federal-State coverage agreement by giving 2 years' advance written notice. The coverage had to have been in effect for at least 5 years at the time the notice was given. This notice could be withdrawn or extended by 1 year at any time during the 2-year period. Once the termination became effective, however, it was irrevocable and the same group could not be covered again.

Terminations of coverage increased markedly until their prohibition under the 1983 amendments. At the end of 1982, the number of terminated employers was 38 percent higher and the number of terminated employees 87 percent higher than at the end of 1979. During 1982 alone, 86 employers terminated coverage for more than 70,000 employees while States gave notice of intent to terminate coverage for another 635 employers (employing nearly 228,000 employees) between 1983 and 1985.¹¹ In addition to prohibiting terminations, the 1983 amendments permitted the States to reinstate

coverage for groups that previously had been terminated. The initial decision to provide coverage does continue to be on a voluntary basis, however.

Coverage of Self-Employment

Although self-employment was not covered under the social security program until 1951, the need for extending coverage to this group was expressed soon after the original Act was passed. The 1938 Advisory Council on Social Security stated that "An important group outside the existing program are those persons working on their own account such as business and professional men, farmers and mechanics. Not only would the inclusion of this group be socially desirable, but it would also be a marked advantage in planning the financial program of the system. At present, the shift in and out of insurance coverage among this group of individuals is an added factor of uncertainty."¹² However, coverage of the self-employed became possible only after a number of difficult administrative problems had been resolved.¹³

The 1950 amendments extended coverage to most nonfarm self-employment except that of professional groups. Specifically excluded were accountants, architects, chiropractors, Christian Scientist practitioners, dentists, physicians, funeral directors, lawyers, ministers, naturopaths, optometrists, osteopaths, professional engineers, and veterinarians. The 1950 law also required that the self-employed worker have net earnings of at least \$400 during the taxable year. Despite these exclusions, nearly 4.5 million self-employed workers became covered in 1951. The 1954 Act extended coverage further by bringing in 2.5 million self-employed farmers and 100,000 accountants, architects, engineers, and funeral directors. The law also established an optional method of reporting for farmers. Those with a gross income of \$1,800 or less could report and pay social security taxes on 50 percent of their gross; those with gross earnings of more than \$1,800 and net earnings of less than \$900 could report and pay social security taxes on \$900. The 1956 Act extended coverage to an additional 200,000 farm operators by liberalizing the optional reporting provision and to about 400,000 farm landlords who were materially participating in operating the rental farm. Physicians became covered under the program in 1966. Although the optional reporting method has been modified over the years to include nonfarm as well as farm earnings, its primary purpose was to permit social security coverage during those years for workers who had very low net earnings or a net loss.

¹⁰ See William J. Nelson, Jr., **State and Local Government Employees Covered Under Social Security, 1980** (Research and Statistics Note No. 5), Office of Research and Statistics, Office of Policy, Social Security Administration, 1983, page 1.

¹¹ *Ibid.*, page 2.

¹² See **Final Report of the Advisory Council on Social Security**, December 10, 1938, pages 40-41.

¹³ See Harold P. Packer and George J. Leibowitz, "Coverage of the Self-Employed Under the Old-Age and Survivors Insurance Program," **California Law Review**, 1948.

There were approximately 9 million workers whose major job in 1981 was in self-employment. About 6.8 million, or 75 percent, were covered. The remaining 2.2 million workers had net earnings from self-employment of less than \$400.

Other Coverage Extensions

The 1950 amendments extended coverage to workers employed in Puerto Rico and the Virgin Islands. Workers employed in Guam and American Samoa were covered under the 1960 Act.

Ministers and members of religious orders not under a vow of poverty were first permitted to elect coverage as self-employed workers under the 1954 amendments. The 1967 amendments made coverage for this group automatic unless the individual claimed an exemption based on conscience or religious principles. The 1972 amendments extended coverage to members of religious orders under a vow of property, at the election of the order.

Methodology for Coverage Estimates

The data on total employment in 1981 were obtained from the March 1982 Current Population Survey (CPS) conducted by the Bureau of the Census.¹⁴ This survey of 63,000 households covers the civilian noninstitutionalized population and members of the Armed Forces living off post or with their families on post in the 50 States and the District of Columbia. Each person in the survey aged 15 or older was asked questions on the amount and sources of income received during 1981. Survey questions focused on the types of employment, class of work, industry, and occupation.

These workers were grouped by type of work of their longest job and a determination was made as to whether such earnings were covered under social security. This was done by using a method called the Payroll Tax Algorithm (PTA), which was developed for estimating social security tax liability. Coverage status for all workers depends on the type of wage job, for some workers on size of wage income, and for government workers at the State and local levels on the State of residence. Type of job depends primarily on information about the longest wage job, such as class of worker, industry, and occupation.

Generally, workers in the CPS are grouped by type of work of longest job in which there is full coverage (such as military, railroad, part-time Federal), no coverage

(full-time Federal), or partial coverage (such as farm and domestic). Coverage ratios of 100 percent are applied to those categories in which all workers are covered, 0 percent to those in which no workers are covered, and variable percentages to all other categories.

The variable percentages are obtained by using estimating techniques that vary depending on the coverage group. Coverage ratios for farm and domestic workers are obtained by dividing the number of covered workers with the highest wages in either farm or household employment (as shown in SSA records and adjusted to the CPS concept) by the corresponding number of workers in the CPS. Thus, the number of workers whose primary source of covered wages was from farm employment, for example, was divided by the number of workers in the CPS for whom farm employment was their longest job. Federal civilian workers who are indicated as temporary or part-time in the CPS are considered as covered and all others are noted as noncovered. Coverage for State and local government workers is determined by applying coverage ratios obtained in the Census of Governments (conducted every 5 years by the Bureau of the Census) to the total number of State and local employees on a State-by-State basis. The number of covered workers in nonprofit organizations is obtained by counting as uncovered all who earned less than \$100 and by applying previous estimates of non-coverage to the remaining number of workers in these organizations.¹⁵

The estimate of 105 million workers with covered earnings based on their major job differs from the 115 million¹⁶ who had any earnings in employment covered under the social security program during 1981, for several reasons. The lower figure of covered workers, obtained using CPS data, does not include civilians living outside the 50 States and the District of Columbia, workers under age 15, workers who died before the survey date, and persons institutionalized in March 1982 who had worked in 1981. All of these excluded workers are included in the SSA data base. In addition, CPS estimates of the number of workers are low by about 2-3 percent because CPS weights fail to fully adjust for population undercounts. Finally, because type of work is identified only for the longest job, there is no record of any secondary employment. Therefore, any worker whose secondary or minor job was in covered employment while the longest job was in noncovered employment would not have had such covered earnings recorded.

The methodology used to obtain coverage based on

¹⁴ See Bureau of the Census, "Money Income of Households, Families, and Persons in the United States: 1981," **Current Populations Reports** (Series P-60, No. 137), 1983.

¹⁵ See **Estimation of Social Security Taxes on the March Current Population Survey** (Studies in Income Distribution, No. 4), Office of Research and Statistics, Social Security Administration, 1976.

¹⁶ See **Annual Statistical Supplement to the Social Security Bulletin**, 1983, 1984, table 20, page 78.

major job is similar to that used to produce point-in-time estimates published in the 1984 edition of the **Statistical Abstract of the United States**. These point-in-time estimates of total employment are taken each quarter, then averaged to produce an annual figure. Coverage ratios for each of the primary coverage groups, such as nonprofit, State and local government, farm, and so forth, were also calculated using the Social Security Administration's 1-percent Continuous Work-History Sample data. These ratios, when applied to the CPS data published by the Department of Labor's Bureau of Labor Statistics, indicate that there were an "average" of 89.7 million covered workers in 1981 (90.1 percent of all workers).¹⁷ Because the survey counts reflect only those persons who were in the labor force at the time of the survey, however, they exclude many seasonal and intermittent workers as well as those who were temporarily unemployed.

¹⁷ See Bureau of the Census, **Statistical Abstract of the United States 1984** (104th edition), 1983, table 613, page 375.

The 1984 Amendments to the Longshore and Harbor Workers' Compensation Act*

The Longshore and Harbor Workers' Compensation Act provides workers' compensation for disabilities suffered by maritime workers in inland navigable waters. On September 28, 1984, President Reagan signed into law the 1984 amendments to the act (Public Law 98-426). The current amendments are intended to reduce excessive costs to employers incurred following the previous amendments, make clear those eligible for coverage, prevent improper claims and litigation, provide more protection to workers who develop work-related diseases after a protracted period, and curb the rising costs of the Special Fund to the Longshore and Harbor Workers' Compensation Act.

Before the 1984 legislation, the Longshoremen's and Harbor Workers' Act had most recently been amended in 1972 (Public Law 92-576). The 1972 amendments raised the maximum weekly benefit amount in stages from 1972 to 1975 and instituted an automatic escalator. The automatic feature kept the maximum weekly benefit amount at 200 percent of the national average wage so that most disabled workers would receive a

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benefit of two-thirds of their weekly earnings. Also, benefit and eligibility provisions were liberalized for survivor and other benefits. These changes all added to the costs of the program to employers. The 1972 amendments extended the jurisdiction of the longshore program to cover certain shoreside workers who were previously subject to constantly changing jurisdiction as they went between ship and shore. Some 500,000 workers are covered under this act. At the same time, the amendments placed limits on third-party suits¹ to reduce multiple liability by employers.

The 1984 Amendments

Coverage and Liability

The 1984 amendments exempt several groups from coverage: (1) Persons performing clerical, data processing, and other office work exclusively; (2) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet; (3) those employed by a marina but not engaged in construction work on the marina except for routine maintenance; (4) employees of suppliers, transporters, or vendors who are temporarily on the premises of a covered employer but not doing the usual work of that employer; (5) aquaculture workers; and (6) individuals employed to build, repair, or dismantle recreational vessels under 65 feet long. The exclusion of these categories is intended to make clear that coverage applies only to those whose work is closely involved with the movement and processing of ocean cargo. On the other hand, workers are exempt from the Longshore and Harbor Workers' Compensation Act only if they are within the jurisdiction of State workers' compensation laws.

The new law enacts a rule of exclusive liability so that shipbuilders and other employers who are liable to pay compensation under the Longshore Act are not also liable under another workers' compensation program or the Jones Act. Under the 1984 amendments, multiple liability is controlled, therefore reducing costs to employers.² The law provides rules governing contractor and subcontractor liability and immunity under the Longshore Act. One rule, for example, makes the obligation of a contractor to secure compensation for the employees of a subcontractor contingent on the failure of the subcontractor to secure compensation for its own employees. But, if the contractor does have to assume

¹ Third-party suits are those that the injured worker may file against a party other than the employer (because of an unsafe work place, defective equipment, or other conditions that may have caused the injury). In some instances, the third party could then recover its losses by bringing suit against the employer.

² The Jones Act enables merchant seamen who are injured to sue their employers for negligence. Such suits severely limit the three major defenses previously available to employers: the fellow servant rule, contributory negligence, and assumption of risk.