

MUNITIONS INDUSTRY

REPORT ON WAR DEPARTMENT BILLS S. 1716-S. 1722 RELATING TO INDUSTRIAL MOBILIZATION IN WARTIME

BY THE

SPECIAL COMMITTEE ON INVESTIGATION OF THE MUNITIONS INDUSTRY UNITED STATES SENATE

PURSUANT TO

S. Res. 206 (73d Congress)

A RESOLUTION TO MAKE CERTAIN INVESTIGATIONS
CONCERNING THE MANUFACTURE AND SALE
OF ARMS AND OTHER WAR MUNITIONS



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MUNITIONS INDUSTRY

JUNE 1 (calendar day, JUNE 2), 1936.—Ordered to be printed

Senator CLARK from the Special Committee Investigating the Munitions Industry submitted the following

REPORT ON WAR DEPARTMENT BILLS

[Pursuant to S. Res. 206 (73d Cong.)]

INTRODUCTORY STATEMENT

The following bills, prepared by the War Department for enactment immediately upon declaration of war by Congress, were introduced, without prejudice, by Senator Clark on February 6, 1935, and were referred to the Special Senate Committee Investigating the Munitions Industry. The purpose of their introduction was to secure public discussion of their merits before any emergency might arise.

1. S. 1716 (74th Cong., 1st sess.) is a bill to create a capital-issues committee.

2. S. 1717 is a bill giving the President control over industry, the power to fix prices and wages, establish priorities of manufacture and distribution, to purchase and sell any products, to requisition any products, to license production, sale, and distribution, to regulate speculation and profiteering, and to suspend laws.

3. S. 1718 authorizes the President to take over any personal or real property and to sell it.

4. S. 1719 is a bill to establish a marine war-risk insurance bureau.

5. S. 1720 is a bill authorizing an administration of war trade with power to control exports and imports, secure their distribution, provide for ocean transportation, etc.

6. S. 1721 is a universal draft bill for all male citizens above the age of 18, providing that all persons registered shall remain subject to induction into the public armed force of the United States, and placing under military law all persons who are called during and also 6 months after the emergency, making all citizens over 18 liable to service in the armed forces, deferring liability to legislative and judicial officers and certain other public offices, giving courts martial

concurrent jurisdiction to try registrants failing to report for duty, etc.

7. S. 1722 is a bill creating a war-finance corporation with a capital stock of \$500,000,000 authorized to issue bonds up to \$3,000,000,000, to extend loans to banks to finance war needs, etc.

The examination of these bills referred to the committee is closely allied with the duty imposed upon the committee by the Senate of reviewing the findings of the War Policies Commission. This duty was discharged in part by the committee's amendments to H. 5529, Seventy-fourth Congress, and by its reports no. 944 and no. 577.

These War Department bills proposed to enact the foundation upon which the industrial mobilization plans of the War Department can be erected, but they also include bills for other purposes, such as a draft of men into the military service.

Analysis of the workings-out of the methods of control used in the past war shed much light upon the intent and probable effects of the enactment of these bills in the event of any future war.

FINDINGS AND RECOMMENDATIONS

Finding (1).—The committee finds that the subject-matter covered in S. 1716, S. 1717, S. 1718, and S. 1722 is covered, respectively, in titles V, III, III, and V of the H. R. 5529 as amended by the Senate Committee on Military Affairs.

This bill was passed by the House on April 9, 1935, referred to this special committee on April 11, 1935, amended there, and reported out unanimously on May 1, 1935. It was referred to the Senate Military Affairs Committee, which amended it in important particulars and reported it out on May 13, 1935, when it was referred to the Senate Finance Committee.

Recommendation (1).—The committee, therefore, recommends no action on S. 1716, S. 1717, S. 1718, and S. 1722, in view of the legislative progress of H. R. 5529, in which the subject matter of these bills is covered.

Finding (2).—S. 1719, providing for a bureau of marine war-risk insurance in the Treasury Department, was not subjected to study by the committee.

S. 1720, providing for the control of exports from and imports to the United States, was not subjected to study by the committee.

Recommendation (2).—The committee, therefore, recommends that these bills be studied in connection with H. R. 5529 and be referred to the appropriate standing committees.

S. 1717 is the chief basis for the industrial mobilization plan.

The industrial mobilization plan is founded upon certain general principles. Among them are that victory and its prerequisite, increased production, are the primary object of a nation at war to which all other aims are subsidiary, that any controls undertaken in war should not be so drastic as to cause any change in normal economic conditions, and that a major part of the planning effort should be devoted to effecting a smooth functioning of the procurement machine rather than profit limitation. Starting from these assumptions, the effectiveness of the plan in eliminating the economic evils of war will be limited.

Specifically three methods of dealing with war evils are contemplated—Government procurement terms, price control, and taxation. These methods cannot eliminate entirely profiteering or inflation for the following reasons:

1. Major accounting factors, such as costs and valuations, are extremely difficult to determine. To a large extent the Government must rely upon industry for information. In the pressure of war-time, these accounting items are inevitably determined on a basis advantageous to industry.

2. There are always many loopholes in profit-limitation schemes designed to apply uniformly to our immense and complicated industrial structure.

3. No matter how effective a scheme may be on paper, it will be tremendously weakened by the administrative difficulties inherent in a wartime situation characterized by the necessity for speed and the vast volume of work which must be done.

4. Because of the necessity for flexibility, the character of war regulation is largely determined by negotiation between Government officials and industry. Industry inevitably has the upper hand in these negotiations because of its superior information and the existence of a seller's market in war.

There are two reasons for believing that even theoretically full powers to eliminate profiteering actually would not be used for this purpose. (1) Industry, through its control over production, can strike against the Government which is, in fact, in no position to commandeer any industry or plant, and thus force compliance with its wishes in regard to prices and contracts. (2) The control agencies must necessarily be administered by men who are industrially trained and presumably sympathetic to private industry's contentions.

The committee notes the testimony of the War Department representative that he did not "know how to take the profits out of war and get the material we have to get."¹

Finding (3).—The committee finds little experience in the last war to indicate that this bill (S. 1719) will successfully take the profits out of war and much evidence to indicate that it will not do so.

The committee finds that under this bill a strict censorship of the press is possible, and finds such censorship undesirable.

The committee finds that this bill would give the President the power to fix wages throughout the country and that such fixing of wages could not, in fact, be accompanied by equally successful limitation of prices or profits, and that, in effect, the employees under this bill and under S. 1721, taken together, would suffer unequally as against owners and management.

Recommendation (3).—The committee, therefore, recommends nonconcurrence in S. 1719, a large part of which bill is also covered by the H. R. 5529, as amended. Such amendments, however, as were made by the Special Committee and the Military Affairs Committee, permit of wage fixing by Executive order.

Finding (4).—S. 1721 is a proposed bill for a draft of men into military service which also allows for the extension of military

¹ Senate Munitions Hearings, Part 15, p. 3704.

control over all male citizens above 18 years of age in industry or elsewhere.

In case of a major war, the cooperation of labor is very important to the successful functioning of the war machinery. The problem of securing such cooperation without necessarily infringing upon established liberties is a difficult one. Testimony covering the industrial mobilization plan indicates that the War Department expects to secure such cooperation by laws and rules which are in fact, although not in name, orders to industrial and other labor to either work or fight or starve.

The industrial mobilization plan (see ch. V below) sets up as a controller of labor an administrator of labor who is to be an outstanding industrial leader.

The war industries administration does not provide for any labor representation at all, except on an advisory council which has neither authority nor actual responsibility.

S. 1721 and the industrial mobilization plan puts the entire male population of the Nation under military control by giving the War Department the power to cancel the deferment of men not inducted into the military force in case such men do not work "continuously" in such places (at such wages as are fixed under S. 1717) as the Government finds they should work, under penalty of being drafted into military service or being cut off from food, fuel, and the other necessities of life.

The committee finds that S. 1721, which puts all male labor under registration and provides for such penalties and also for courts martial in case any of the registrants "fail or neglect fully to perform any duty required of him" can be used to effect and enforce a draft of labor and to remove, in effect, the right of any laborer to refuse employment in private industry under conditions or at wages which do not satisfy his needs. The power to call into military service any union or other representatives of labor who become spokesman for other employees in attempts to secure higher wages, is the power to break strikes. This can also be done through the use of military force in removing the spokesman from the plant involved to other plants or into active service or cutting off the food allowances of all strikers.

There is nothing in S. 1721 to prevent the use of men in the military forces to operate industrial plants while in uniform, which was done in at least one case in the last war (see ch. V below). There is also nothing to prevent the War Department from inducting all the workers in any plant in the country into military service, forcing them to work in that plant under military orders.

The democratic treatment of labor, under the Constitution, is essential to the survival of our institutions, and should not be replaced by a military control over labor unless a change in our institutions has been previously authorized by the people in the form of amendments to the Constitution.

In view of the increasing growth in the world of governmental dictatorship, enforced by the military powers, over large groups of the population, and the constant temptation therewith presented to certain elements in democracies, such as ours, to solve their own problems by force, the committee finds that it is not advisable in the

permanent interests of the Nation to attempt in wartime to draft civilian labor, directly or indirectly, nor is it advisable to continue military control over labor for a period of 6 months after any date which the President shall in his judgment fix as the end of the emergency. By deferring a proclamation declaring the emergency terminated (S. 1721, sec. 3) for several years, the President can, if he wishes, maintain an effectual military control over the whole Nation long into the peace period.

Recommendation (4).—The committee recommends, in view of the seriousness of the possible effect of such wartime controls that the Nation and Congress consider the draft bill, with all its implications of control over labor, prior to the moment of emergency. Congress is now considering a bill which allows all taxpayers to know their status prior to any such emergency and is planning that, if possible, any war emergency shall be met with the minimum of inflation or other harm to the economic structure of the Nation and with a maximum of taxation on profits.

It appears to the committee equally just and proper that all citizens should know before the event of an emergency their status in regard to their lives and the conditions of their employment.

It will be very difficult in wartime, even through the high taxation recommended by the committee in H. R. 5529 (as reported from the committee), to put capital on a level with men drafted for front-line service.

The draft of men for the trenches will not, under the War Department plans, be lifted until 6 months after such time as the President chooses to declare an end to the emergency. The draft of labor, under one name or another, will continue for the same length of time. During all this period there will be censorship of the press.

In view of the growth of dictatorships in the world using labor under military control, it is very important that the people weigh the grave dangers to our democracy involved in the draft of manpower and labor under the conditions proposed. The price of a war may be actual operating dictatorship, under military control, in this country. Possibly, under certain circumstances, that price will not be too high for the people to desire to pay it.

But in this matter the committee suggests that Congress consider putting a limitation upon its own powers, and submit a national referendum at the election in 1938 on the military draft of men for service outside continental America.

The matter is certainly of sufficient importance to warrant Congress in asking the consent of the Nation before imposing the type of draft indicated to be part of the War Department plans.

I. INDUSTRIAL MOBILIZATION IN WARTIME

The Special Senate Committee Investigating the Munitions Industry was directed by the Senate, among other things, to review the findings of the War Policies Commission.

The primary obligation imposed upon the War Policies Commission by Public Resolution 98 of the Seventy-first Congress was—

to study and consider amending the Constitution of the United States to provide that private property may be taken by Congress for public use during war, and methods of equalizing the burdens and removing the profits of war, together with a study of policies to be pursued in the event of war.

Much has already been done toward discharging this obligation. (See S. Repts. 944, pt. 2, and 577, 74th Cong., 1st sess.; also H. R. 5529 as amended.) The following section of this report constitutes an analysis of the committee's investigations into the relations between the Government and war industry.

It has frequently been pointed out that even in time of peace the line of demarcation between the munitions industry and other industries is not clear and fixed. In time of war such a line has no significance. Practically every important industry in the country is necessary for the supply of the armed forces.¹ The war effort involves "working to the end of directing practically all our material resources to the single purpose of victory."²

War is no longer simply a battle between armed forces in the field, it is a struggle in which each side strives to bring to bear against the enemy the coordinated power of every individual and every material resource at its command. The conflict extends from the soldier in the most forward lines to the humblest citizen in the remotest hamlet in the rear.³

In a consideration of Government regulation in wartime, all industry must be included rather than any arbitrary segment of it.

A.—GENERAL

There is general acceptance of the fact that war is the most terrible calamity which may befall a country. There is a tendency, however, to stress the horrors of the battlefield and to neglect the tragic economic consequences which also take their toll in human suffering and unhappiness. Both should be kept in mind. The committee has attempted to contribute toward an understanding of the economic evils which are attributable to the World War—the staggering inflation with its consequent industrial dislocation and depression; the tremendous mountain of Government debt, a large part of which must be borne by our children; the tragic waste of resources; the shameless profiteering and the increase in maldistribution of income; the strengthening of the strong at the expense of the weak. These are ugly facts when considered by themselves. But the committee's main interest in them arises out of its desire to

¹ Special text no. 229, Industrial Mobilization, Army Extension Courses, p. 8.

² Statement of B. M. Baruch, War Policies Commission, Hearings, p. 31.

³ Industrial Mobilization Plan, 1933, p. vii.

learn whether there is a chance that such a catastrophe may again occur.

This problem involves consideration of the economic policies which are likely to be pursued by the Government in the event of another war. There exists a fairly definite program outlining such policies. It is based primarily on the Industrial Mobilization Plan of the War Department, but includes the thinking done by prominent civilians interested in the subject which is to be found chiefly in the documents of the War Policies Commission.⁴ Some differences of opinion as to details exist, but there is general agreement on the essential points.⁵

Rather sweeping claims have been made as to the efficacy of this program to correct the evils of war. Mr. Bernard Baruch has said that the passage of certain statutes embodying his proposals "would be notice to the world that we will enter the next world conflict effectually organized and that we shall conduct it *without inflation and with no war profit to any man*."⁶ The War Policies Commission stated in its report of December 4, 1931:

The Commission has formulated a plan which if further developed in peace and followed in war, will minimize the profits and to a great extent equalize the burdens of war.⁷

General Douglas MacArthur has said that "profiteering based on Army contracts is eliminated" by the War Department's plans.⁸

The plans for which these claims are made are the result of long and serious study by intelligent men who are authorities in this field. Since 1921,⁹ a period of 14 years, a number of specially qualified officers in the War Department¹⁰ have been engaged in their preparation. They have been assisted by the Navy Department, which has placed its official seal of approval upon the Industrial Mobilization Plan, by other governmental agencies and by civilians.¹¹ In addition, the War Policies Commission gave serious and detailed consideration to this subject. It is difficult to conceive any men and any circumstances under which a better program could be worked out.¹²

It is the clear intention of those responsible for these plans to put them into effect in the event of another war. General MacArthur told the War Policies Commission:

In case of need the War and Navy Departments must be ready to place these plans before the President and before Congress with the recommendation that they be adopted to govern the conduct of the war.¹³

It is recognized that they cannot be put into effect without action by Congress; but they represent the only program available, and

⁴ H. Doc. 271, 72d Cong., 1st sess.

⁵ Mr. Baruch stated before the War Policies Commission that he approved the Industrial Mobilization Plan. War Policies Commission Hearings, p. 67. He was joined by many other witnesses. See documents by War Policies Commission, p. 27.

⁶ Ibid, p. 51. Italics added.

⁷ Ibid, p. IX.

⁸ Ibid, p. 366.

⁹ Munitions Committee Hearings, Part 15, p. 3617.

¹⁰ Fourteen officers are assigned to planning full time in the planning branch, office of Assistant Secretary of War. Fifty officers in the supply branches are assigned to planning either full or part time. Ibid, p. 3611.

¹¹ War Policies Commission, op. cit. p. 376.

¹² In the Tentative Draft for Consideration by Members of the War Policies Commission it is stated that "the assumption is justified that the United States has as good a plan as can be devised", p. 43.

¹³ Hearings, p. 376.

in the rush and confusion of the emergency, Congress will have no alternative but the adoption of the recommendations of these military and civilian authorities.

In view of these facts, it follows that it is of the utmost importance that this program should be carefully examined to determine as accurately as possible what will happen under it if we should go to war. Will the claims of its proponents be fulfilled so that the next war will be different from the others, or will we suffer the same terrible evils that war has always brought in the past?

As is the case with any system of governmental regulation of industry, there are certain basic principles which underlie the specific and detailed proposals of the industrial mobilization plan. Most of these have received explicit formulation in one or another of the documents dealing with planning.

Among these perhaps the one most continually stressed is included in a paragraph from the forward of the Industrial Mobilization Plan.

The objective of any warring nation is victory, immediate and complete. It is conceivable that a war might be conducted with such great regard for individual justice and administrative efficiency as to make impossible those evils whose existence in past wars is well known. It is also conceivable that the outcome of a war so conducted might be defeat. In all plans for preparedness and policies to be pursued in event of war it must never be overlooked that while efficiency in war is desirable, effectiveness is mandatory.

Among the War Department's official conclusions presented to the War Policies Commission was this:

The greatest need of a nation at war is immediate and decisive victory.¹⁴

Now, it is obvious that the most important contribution toward victory to be made in the economic sphere is the bringing about of the tremendous and rapid increase in production that is needed.¹⁵ Yet it is extremely unlikely that this production will be forthcoming without the evils of profiteering, mountainous debts, and inflation.¹⁶ The above quotations indicate that whenever attempts to eliminate these evils conflict with the efforts to stimulate production, it is the former rather than the latter which must be sacrificed.

Large profits and inequality are prevalent in peace as well as in war. It is not likely that efforts to eliminate these deep-seated, general conditions will succeed when they are only half-hearted and subsidiary to a more important aim. The committee takes no exception whatsoever to the War Department's view on this point but it feels constrained to point out that the implications of such a view are not favorable to the prospects of reform in conducting future wars.

The following occurs on page 10 of the plan:

No radical changes in normal economic relationships between individuals and between an individual and the Government should be instituted. The methods and customs of peace must be employed as far as practicable, otherwise confusion and chaos will result. The attempt should be to guide and to influence the operation of natural forces rather than to oppose them by arbitrary and unfair regulations.

¹⁴ *Ibid.*, p. 376.

¹⁵ See Committee Report No. 944, pt. 2, p. 55.

¹⁶ See *ibid.*, p. 11.

Mr. Baruch has said with regard to his proposals:

I shall recommend no principle that was not in actual practice and accomplishment in 1918.¹⁷

Thus the contemplated program is very similar in its essentials to that which was in effect during the last war.¹⁸ It proposes to curb the tremendous forces of war inflation without radical changes. It follows that it is unlikely to solve any of those problems which the regulatory program of the last war found insoluble.

The only legislative authority for the planning which is carried on by the War Department is found in two sections of the National Defense Act. Section 120 was contained in the original act passed June 3, 1916, and the pertinent paragraph is no. 4. Official representatives of the War Department testified before the committee that this paragraph authorized only the listing of arms and ammunition factories and that it was considered a part of the preparations for the possibility of our participation in the World War.¹⁹ It was also testified that, as a consequence, section 5-A, which was included in the amendments to the National Defense Act passed in 1920, is really the particular provision under which planning is carried on. This section reads:

Hereafter, in addition to such other duties as may be assigned him by the Secretary of War, the Assistant Secretary of War, under the direction of the Secretary of War, shall be charged with supervision of the procurement of all military supplies and other business of the War Department pertaining thereto and the assurance of adequate provision for the mobilization of material and industrial organizations essential to wartime needs.

The first part of this sentence refers to peacetime procurement so that the words, "and the assurance of adequate provision for the mobilization of material and industrial organizations essential to wartime needs", constitute the legislative authority for the elaborate planning activity carried on by the planning branch of the office of the Assistant Secretary of War.²⁰

The character of this legislative authority becomes important when considered in conjunction with the broad scope and far-reaching effect of the industrial mobilization plan. The planning branch has said that its "problem consists in making *all the prearrangements* necessary to insure effective use of material resources in war."²¹ Under this broad interpretation of its task it has deemed it necessary, in conjunction with other interested authorities in the Army and Navy, to proceed upon certain assumptions as to the character of the war to be waged. These assumptions involve extremely important matters of policy. The starting point from which all the planning proceeds is "determining how many men are estimated to be necessary for the organization of military and naval units *under a given situation* * * *"²² General MacArthur, with reference to this point, said:

It (the plan) contemplates the mobilization, by successive periods, of six field armies and supporting troops, or approximately 4,000,000 men. This is a force approximately equal to that we had under arms on November 11, 1918.²³

¹⁷ War Policies Commission, op. cit., p. 31.

¹⁸ See General MacArthur's statement, *ibid.*, p. 369.

¹⁹ Munitions Committee Hearings, Part 15, pp. 3615-3616.

²⁰ *Ibid.*, p. 3616.

²¹ Army Extension Courses, special text no. 229, p. 4, italics added.

²² *Ibid.*, p. 5, italics added.

²³ War Policies Commission, op. cit., p. 357.

It is also assumed that a general draft act similar to that passed in 1917 will again be adopted.²⁴

It seems undeniable that in the course of determining the "given situation" referred to, the planning authorities must consider the nature of the contemplated war, dealing with such questions as the location of the theater of operations and the strength of the enemy. The above quotation indicates that situations similar to that faced by the nations in the World War are receiving consideration. If this is the case then it is of the utmost importance for Congress and the country to know it. If this whole complex of planning is based upon the assumption that our next war will have certain characteristics, then a strong tendency for it to follow those outlines is created.

The Industrial Mobilization Plan is separated into two main divisions—planning for the procurement of the material necessary for the supply of the armed forces and planning for the control and mobilization of industry in general.²⁵ To a large extent the first division, procurement planning, deals with such subjects as determination of the type of equipment needed, determination of requirements both primary and contributory, survey of plants where these requirements can be produced, allocation of plants to various needs, etc. The second division, general control of industry, deals among other things with priority control, organization of Government corporations, labor, power, etc.²⁶ Planning with regard to these subjects would undoubtedly be of benefit in the event of war. Some of the gains to be expected from this work were outlined by General MacArthur in stating the principles upon which procurement planning is based:

(a) Provisions for procuring equipment must be detailed and exact and essential production must begin immediately upon the outbreak of war.

(b) Army procurement must be coordinated with that of the Navy.

(c) The least possible disturbance must be caused in the normal economic life of the country. The production load must be intelligently distributed to all parts of the country.

(d) There must be no competitive bidding by Government agents for the products of industry.²⁷

Much of the confusion in procurement activity of the early days of the last war will be eliminated. But gains of this sort have to do with achieving what the War Department has designated as the primary aim of the nation at war—victory. They make the nation a more effective fighting unit. It can be readily admitted that prices might go somewhat higher, the Government might spend more, and profits in certain cases might be larger without this type of planning than will be with case with it. But it cannot be seriously asserted that these measures alone can cope with the basic economic evils of war. They are designed for a completely different purpose.²⁸ The success of the plans in eliminating these basic evils depends upon those proposals which are taken up below.

²⁴ Ibid., p. 358.

²⁵ Industrial Mobilization Plan, p. XI.

²⁶ See Plan (Industrial Mobilization Plan), pp. III and IV.

²⁷ War Policies Commission, op. cit., p. 362.

²⁸ Priorities are not an effective means of limiting profits. See Committee Report No. 944, p. 115.

II. GOVERNMENT PROCUREMENT CONTRACTS

The aspects of wartime procurement planning which are important to the possibility of eliminating profiteering have to do with the terms under which industry receives its compensation. These are stipulated in the wartime contracts. In 1921 the Secretary of War convened a board of specially qualified officers to study thoroughly the problem of war contracts and to draw up a set of forms which should embody the best thought on the subject. This was finally accomplished in 1929. Revisions were made after consultations with the Navy and the district supply offices. In 1932 the Board recommended that the revised forms be adopted for war-procurement purposes. Because of recent criticisms from industrialists and others, the forms are now in the hands of the Board for further study.²⁰ In drawing up these forms an effort was made to "minimize the profits of war."²⁰

The four contract forms which the committee has entered in the record are as follows:

(1) Adjusted-compensation contract for noncommercial items (exhibit 1226-A).

(2) Evaluated-fee contract for large-scale construction (exhibit 1226-B).

(3) Fixed-price contract for small-scale construction (exhibit 1226-C).

(4) Fixed-price contract for commercial supplies (exhibit 1226-D).

1. PROFITS OF GOVERNMENT CONTRACTORS

The adjusted compensation contract provides for a fee or profit of 6 percent per annum on the "estimated value" of that part of the contractor's plant to be used in connection with the Government work.^{30a} It is the official view of the War Department that this is a fair rate of profit.³¹ There are several features about this contract which make it possible for the contractor to receive more than 6 percent on a true valuation of his plant.

(A) VALUATION

The method to be followed in determining the value of the plant is not specified in the contract. This means that the Government negotiators will have to face an extremely difficult problem without any fixed standards. The procedure followed will necessarily be hit

²⁰ Munitions Committee Hearings, Part 15, pp. 3790-3791.

²⁰ Ibid., 3621.

^{30a} Ibid., p. 3820.

³¹ Ibid., p. 3637; also Policies Commission Hearings, p. 366.

or miss. Lt. Col. C. T. Harris, the representative of the War Department before the committee, described it thus:

Senator CLARK. How are you going to find value, Colonel?

Lieutenant Colonel HARRIS. Senator, I am not acquainted with this contract form at all.

Senator CLARK. I am just interested to know that.

Lieutenant Colonel HARRIS. I would say it would be by mutual agreement and by disinterested advice. It would have to be a negotiated sum, arrived at within a reasonable time or else we could not go to war.³²

One possible method of valuation would be to determine the replacement value of the plant. The executive assistant of the Pittsburgh ordnance district points out with regard to this method that the wartime inflation will have caused a considerable increase in this replacement value by the time many of these contracts are let.³³ So in such cases the valuation upon which the fee is based would be much in excess of normal.

The method contemplated under this contract is very different from that followed by bodies experienced in valuation work such as the Interstate Commerce Commission or the Bureau of Internal Revenue. Colonel Harris testified that the War Department did not contemplate any elaborate judicial determination of value such as they have employed.³⁴ Yet these bodies have met tremendous difficulties in attempting to value properties in industries, such as the railroads, long accustomed to rate-making and standardized accounting. The Interstate Commerce Commission spent 13 years and more than \$27,000,000 at that task.³⁵ Any accurate valuation in other industries would be even more difficult, and would become impossible in wartime.

The Bureau of Internal Revenue has found great divergence between the views of Government and industry as to a proper valuation. The valuation on 47 copper mines claimed by the copper companies was \$1,456,327,002. A valuation by Government officials resulted in a total of \$323,707,404, a difference between the two of \$1,132,619,598.³⁶ This is important since valuation under the adjusted compensation contract is to be determined by hurried negotiations between the War Department and the company.

In many cases the War Department will have the further problem not faced by these other bodies of having to determine what proportion of the value of the entire plant enters into the contract under consideration. Under these circumstances the Birmingham Ordnance District concluded that, "This appraisal of plant never should have been in the contract. It could never be determined, would be subject to violent fluctuations, and would be a constant source of argument and disagreement."³⁷

If the valuation agreed on in the contract is in excess of the true valuation, then the contractor's profit will be greater than 6 percent on that true valuation.³⁸

³² Munitions Committee Hearings, Part 17, p. 4168.

³³ Ibid., p. 3828.

³⁴ Ibid., p. 4168.

³⁵ Ibid., p. 4167.

³⁶ See Senate Munitions Committee Report No. 944, p. 19 ff and p. 147 ff.

³⁷ Senate Munitions Committee Hearings, Part 15, p. 3823.

³⁸ Ibid., p. 4275.

(B) DETERMINATION OF COST

Accurate information as to the contractor's costs is of crucial importance in any effort to minimize profiteering no matter what type of contract is used. This information is necessary if the Government is to be sure that the spread between these costs and what the contractor receives is not too large. It becomes even more important when the use of cost-plus contracts is contemplated.³⁹ Under this type of contract if the costs as determined are more than the true costs, then the Government automatically pays more than is fair for its purchases.

In spite of these considerations the War Department contract forms are quite vague on the subject of costs.⁴⁰ The adjusted compensation contract does not indicate what costs the Government will pay for but it does specify certain elements which will not be allowed.⁴¹ The disallowance of even these items has been criticized by both prospective contractors and Army and Navy procurement officials. Officials of the du Pont Co., one of the major contractors in the event of war, believe that bonus payments under the company's highly developed bonus system should be considered an item of cost. The company would not be reimbursed for these under the present form of contract.⁴²

Interest on debts or appropriations to reserves for debts are excluded as cost items. After pointing out that many companies include considerable funded debt in their capital structures, the St. Louis Ordnance District says:

If the Government expects any production from companies with above described investment, it will either have to increase the reward or reimburse the contractor for appropriations to reserves for outstanding debts.⁴³

The Navy Department believes that paragraphs a, g, h, and l of article III, section 2, which prohibit reimbursement for general research and experimental work, entertainment, contributions, and patent expense, should be stricken out since it considers that these are legitimate expenses.⁴⁴

The evaluated fee contract, after listing certain items for which the Government will reimburse the contractor, provides that the contracting officer may, at his discretion, depart from these limitations and include any further item not specifically listed.⁴⁵

As a result of this vagueness with regard to what are legitimate costs, it is certain that in the rush of wartime many dubious items will be included as costs and paid for. It was testified that among the items to be reimbursed under the adjusted-compensation contract would be royalties paid to foreign corporations⁴⁶ and the costs

³⁹ Any contract which guarantees the payment of the contractor's costs plus a fee or profit, no matter how determined is a cost-plus contract. (See Munitions Committee Hearings, Part 15, p. 3791.) The adjusted-compensation contract does this and therefore is a cost-plus contract. (See Ex. 1226-A.) It is not a cost-plus a percentage of cost contract. (See p. 22 seq.)

⁴⁰ Hearings of Senate Munitions Committee, Part 15, p. 3791 (4 b).

⁴¹ Ibid., p. 3796.

⁴² Ibid., p. 3654-5.

⁴³ Ibid., p. 3824.

⁴⁴ Ibid., p. 3826.

⁴⁵ Ibid., Part 17, p. 4287.

⁴⁶ Ibid., p. 3635. The Remington Arms Co. pays royalties of this character to the Dynamit Actien Gesellschaft of Germany, *ibid.*

of making out claims against the Government in case of termination of the contract.⁴⁷

In addition to disagreements of this character there is the fact that the proper amounts of several important items,⁴⁸ which will undoubtedly be included as costs, are not readily ascertainable and are bound to cause further disagreements. The determination of these items is sufficiently difficult when the governmental agency can consider each company or industry as a unit.⁴⁹ Under these contracts, it is further complicated by the necessity of ascertaining what part of a company's total costs are allocable to one or more particular contracts.

(1) *Depreciation*.—The adjusted-compensation contract provides that the amount to be paid the contractor on account of depreciation of that part of his plant used on Government work shall be determined during the negotiations prior to the signing of the contract.⁵⁰ This means, as was testified, that like the valuation this item will have to be determined by hurried negotiations between the contractor and the contracting officer.⁵¹

Machinery, buildings, and the like wear out after a period of years. They must then be replaced. This future expense is considered a part of the cost of any goods for the production of which the equipment is used. In order to determine how much depreciation is allocable to the goods produced under a particular Government contract, it is necessary to ascertain the value of the equipment and to determine a certain proportion of this based on the length of time required to fulfill the contract. Consequently, all the uncertainties of valuation referred to at pages 13-14 above apply with equal force to depreciation. They are an integral part of any cost-plus contract no matter how the profit is determined since there is no question that the contractor will always be reimbursed for depreciation.⁵²

Uncertainty also appears in determining the proportion of the total valuation of plant or machinery allocable to the particular contract. This applies particularly to the attempt to fix the amount of depreciation before the contract is completed. The Navy Department commented as follows on this: "The period of performance will in many cases be indefinite and the amount of depreciation indeterminable."⁵³

(2) *Rehabilitation costs*.—Considerations similar to those referred to in connection with depreciation apply to this item—the costs of "restoring the plant to its original condition, due to changes to be made in the buildings and the arrangement of the machinery for the performance of the work."⁵⁴ These costs are to be determined by negotiation before the contract is signed. Estimating them involves forecasting a situation which in many cases will be far in the future across an uncertain period of time.⁵⁵

⁴⁷ *Ibid.*, p. 4215-4216.

⁴⁸ It is obviously impossible to take up all the difficulties of cost determination. Only those which caused most trouble in the last war are considered here.

⁴⁹ Cf. the experience of Price-Fixing Committee and the Bureau of Internal Revenue in the last war. Senate Munitions Committee Report 944, pp. 27, 33-34, 90.

⁵⁰ Part 15 of the Senate Munitions Committee Hearings, p. 3802.

⁵¹ Part 17 of the Senate Munitions Committee Hearings, p. 4285.

⁵² See discussion of this problem in connection with taxation. Senate Munitions Committee Report 944, Part 2, pp. 27-28.

⁵³ Senate Munitions Committee Hearings, Part 15, p. 3826.

⁵⁴ Senate Munitions Committee Hearings, Part 15, p. 3802.

⁵⁵ Senate Munitions Committee Hearings, Part 17, p. 4281-4282.

(3) *Overhead*.⁵⁶—It is extremely difficult to determine accurately how much of the general overhead of a plant or company should be allocated to a particular contract. This uncertainty opens the way for the contractor to make all sorts of dubious charges on account of this item. The New York Shipbuilding Co. was allowed 50 percent of cost for overhead on its wartime cost-plus contracts with the Emergency Fleet Corporation. After the war auditors for the Bureau of Internal Revenue calculated that this allowance was \$2,152,976 in excess of the amount which the company actually expended on account of overhead under the contracts.⁵⁷ The company included in this overhead, which was paid for by the Government, the expenses of securing a contract with Japan for a naval oil tanker.⁵⁸

A further instance of the difficulties with regard to overhead has arisen in connection with the attempt to limit profits on naval shipbuilding under the Vinson bill.⁵⁹ Soon after this act was passed representatives of the important companies interested in Navy work, both prime contractors and subcontractors, held meetings to consider the situation created by this attempt at profit limitation. They recognized that if they could get the Government⁶⁰ to allow them amounts on account of overhead which were sufficiently larger than their actual expenditures, the 10-percent limitation would be ineffective. Mr. Powell of United Dry Docks stated:

Suppose three or four yards take contracts on a competitive basis. Then one fellow turns in actual and has a very low overhead and he turns back a lot of money—it simply throws out your whole idea of competitive bidding. It seems to me you have almost got to come to a basis of agreeing with the Treasury Department on some fixed overhead. If we could spread our overhead over 10 years, I would say it would be high enough. *I think it would be high enough so that you would not have to worry about your 10-percent profit. The average overhead would be plenty high enough to satisfy anybody.*⁶¹

In order to achieve this desirable end it was thought to be necessary for all the contractors to join forces and come to an agreement among themselves as to a percentage for overhead which the Government would be forced to accept.

Mr. GILLMOR.⁶² If the shipbuilders, boiler manufacturers, and electrical manufacturers act in accordance with uniform rules, it will be so strong that I think the Income Tax Bureau would have a hard time resisting it.⁶³

Newport News Shipbuilding Co. did get the Navy to agree to a 10-percent increase in overhead for changes in ships and to permit it to charge \$900,000 worth of new plant into overhead.⁶⁴

It is difficult to see how the Government could prevent exorbitant allowances for cost items such as overhead in wartime when the main consideration is increased production, if contractors should follow

⁵⁶ Major Wilkes testified before the War Policies Commission that the War Department contemplated paying for overhead under these cost-plus contracts (72d Cong., 1st sess., House Doc. 163, p. 387).

⁵⁷ Senate Munitions Committee Report on Naval Shipbuilding, p. 364.

⁵⁸ *Ibid.*, p. 362.

⁵⁹ H. R. 5529; it provides that profits shall not be in excess of 10 percent of the cost to the Government. This is 11.1 percent of the cost to the contractor.

⁶⁰ The Navy is making no efforts to enforce profit limitation. The Bureau of Internal Revenue will have to undertake that responsibility. Committee Report on Naval Shipbuilding, p. 331.

⁶¹ *Ibid.*, p. 326 (italics added).

⁶² President of Sperry Gyroscope Co., an important subcontractor.

⁶³ Senate Munitions Committee Report on Naval Shipbuilding, p. 327.

⁶⁴ *Ibid.*, p. 324.

the course they have adopted here in peacetime of joining forces to gain their demands.

(4) *Difficulties of auditing contracts.*—Contractors revealed at length during the last war their attitude toward the opportunities for cost padding offered by cost-plus contracts. The shipbuilding companies almost without exception attempted to charge the Government for such items as entertainment expense, contributions, plant improvements, and tools not required under the contracts, income taxes, interest, and even in some cases dividends on preferred stock.⁶⁵

Contractors in other industries did the same thing. There is every indication that this attitude remains unchanged today.⁶⁶ Contractors will charge all sorts of improper and dubious items into cost if they can possibly get away with it.

Those engaged in war planning recognize that the only hope of dealing with this situation lies in the possibility of detailed and thorough auditing by the Government.⁶⁷ Both the adjusted-compensation contract and the evaluated-fee contract provide that the contractor shall permit Government auditors free access to its records and accounts.⁶⁸ However, the experience of the last war indicates that in spite of such provisions the Government must expect auditing difficulties due to lack of cooperation from contractors.

There have been instances where this noncooperation was open and announced. The assistant treasurer of the New York Shipbuilding Corporation withheld certain schedules from Treasury auditors in spite of having promised them "almost daily" and finally admitted that he had been "stalling" upon the advice of the company's attorneys.⁶⁹ If such a situation should arise under a half-completed contract for a material desperately needed, the contractor could probably prevent adequate auditing.

But it is not necessary for a contractor to resort to such forthright methods. Auditing can be hampered in more subtle ways. The announced policy of the Bethlehem Shipbuilding Corporation in connection with its Emergency Fleet Corporation contracts was one of whole-hearted cooperation with the Government auditors. In spite of this, subordinates at one of the company's many shipyards tried to block an effective audit in all sorts of annoying petty ways. They gave "misleading replies" to questions, made journal entries without any explanatory reference, and generally made the task of auditing as difficult as possible.⁷⁰

⁶⁵ *Ibid.*, secs. VII and VIII. In many cases these attempts were successful. It is impossible to get detailed information on this point since this would involve a complete audit of these contracts. It is obvious that such items were disallowed only to the extent that Government auditing was detailed and effective.

⁶⁶ The contractors under the Vinson bill have asked the Treasury that many of these same items be included as cost. *Ibid.*, p. 325.

⁶⁷ See statement on necessity of auditing by student officers at the Army Industrial College. Senate Munitions Committee Hearings, Part 15 p. 3791.

⁶⁸ Ex. no. 1226-A, arts. II and IV; ex. no. 1226-B, art. V, Committee Hearings, Part 15.

⁶⁹ Senate Munitions Committee Report on Naval Shipbuilding, p. 361.

⁷⁰ The following is taken from the final report of C. C. Colldower, traveling auditor of United States Shipping Board Emergency Fleet Corporation, on audit of operating expenses of Harlan plant, Bethlehem Shipbuilding Corporation:

"The working conditions at this plant were very unsatisfactory.

"The works accountant was far from even being agreeable and his assistance during the whole period of reaudit was practically useless and of no value whatever. The writer cannot recall even one instance where anything but misleading replies were

The number and complexity of contractor corporations makes it impossible to deal effectively with this sort of guerilla sabotage in the rush of wartime.

The accounting methods of corporations are sometimes of a character which makes it difficult or impossible for outside auditors to determine costs accurately. A Treasury Department memorandum relating to the New York Shipbuilding Co. states:

After a very careful study of conditions, viz., the system of bookkeeping and record keeping, the practices of the corporation, etc., it is the opinion of your examiners that it is an utterly impossible task to attempt to determine correct costs in connection with each contract. It is our unqualified opinion that even a large corps of men working for an indefinite time could not even approach accuracy. Thousands and probably hundreds of thousands of vouchers, labor tickets, store requisitions, etc., would have to be examined and reanalyzed, and the books all recast. During the war emergency the plant employed in the neighborhood of 22,000 men.⁷¹

The adjusted compensation contract provides that the cost accounting system of the contractor must be approved by the contracting officer. However, Lieutenant Colonel Harris testified that it would be difficult and would cause delay to force a change in accounting methods.⁷²

Even under the most favorable circumstances the mere physical task of auditing the accounts of large corporations is a staggering one.⁷³ Many contracts will extend over a period of several years.⁷⁴ Under war conditions slips in administration are inevitable. Many audits are bound to be superficial and inadequate as checks on cost.

The contract between the War Department and the du Pont Co. for the Old Hickory Powder Plant, one of the largest and most important contracts of the war, is a case in point. No really complete current audit of this contract was ever made.⁷⁵ Instead a spot check was made of 10 percent of the vouchers submitted to the Government for payment. If the supporting papers behind this 10 percent were found to be satisfactory, the other 90 percent were accepted without inspection of the supporting papers behind them.⁷⁶ Maj. Arthur Carnduff, who was connected with this contract while

given to questions asked pertaining to a proper solution of the various questionable conditions that were brought to light throughout the entire course of the reaudit. * * *

"Certain valuable cost records pertinent to our needs on the overhead audit were withheld, some were never handed over, and others given after we were forced to build up the costs from amounts shown on controlling-journal vouchers.

"Of those cost records which we were unable to obtain, the entire stores requisitions for the years 1916 and 1917 and a part of 1918, 1919, and 1920, totaling about \$30,000, were an outstanding feature.

"Of those records which the contractor withheld until we had completed our build-up, the following were the most important:

"1. Detail cost ledger for repair and renewal orders.

"2. Contractors' detailed statement of items credited cost and charged disallowed cost.

"The time employed to work up these two features practically covered a period of 6 months for each of three auditors. This is a conservative estimate.

"Many journal entries were made without any explanatory reference; this feature consumed considerable time in order to determine the true nature of such entries; working papers showing detail were evidently destroyed; in fact Bethlehem relied on memory to give an explanation of these entries. Other entries purporting a description were entirely misleading.

⁷¹ Ex. no. 1435. Senate Munitions Committee Hearings, Part 18, p. 4873.

⁷² Senate Munitions Committee Hearings, Part 15, p. 3635.

⁷³ It took approximately 22 men 5 years to audit the 1917 and 1918 income-tax returns of the U. S. Steel Corporation, Ex. no. 1740, Senate Munitions Committee Hearings, Part 22, p. 6555.

⁷⁴ It requires from 3 to 4 years to complete a large naval vessel.

⁷⁵ Senate Munitions Committee Hearings, Part 14, p. 3236.

⁷⁶ Senate Munitions Committee Hearings, Part 15, p. 3609.

in the Department of Justice, testified that an audit of this sort was not satisfactory.

Mr. HISS. Would you have recommended a thorough audit or accounting at that time, Major Carnduff?

Mr. CARNDUFF. I certainly would, for the reason that our auditing and accounting of various reputable concerns as well as disreputable concerns had disclosed large sums of money due the United States. Up to that time I personally had collected back over \$2,000,000 that had been wrongfully paid by the United States on war contracts. In many instances, where the evidence of this overpayment was shown to the contractor, he freely and gladly paid the amount due the United States without further trouble. Before we could set up a bill as to what we thought was due, we had to have a thorough auditing and accounting and proof of the amount due. We did not have that with reference to the du Pont Co. in December 1923.⁷⁷

The committee agrees with the testimony of Lieutenant Colonel Harris that in all cost-plus contracts "the accounting responsibility placed upon the Government is enormous and leads to difficulties. That is a bad feature of a contract of that kind."⁷⁸

(C) BONUS OR PENALTY BASED ON PRIOR ESTIMATE

Under the adjusted compensation contract an estimate of the cost to the contractor of performing the work is to be reached by agreement and negotiation between the Government and the contractor at the time the contract is let. If the actual cost is less than this estimate the contractor is to receive a bonus amounting to somewhat less than one-fourth of this saving in cost in addition to the 6 percent fee described above.⁷⁹ This provision creates a strong incentive for the contractor to make the estimate as high as possible since this would result in larger savings and a larger bonus when the actual costs were determined later. There would be ample opportunity for padding the estimate due to the method of negotiation used in determining it, and the Government's lack of information.⁸⁰

⁷⁷ Senate Munitions Committee Hearings, Part 14, p. 3257.

⁷⁸ Senate Munitions Committee Hearings, Part 15, p. 3621.

It should be noted that extensive auditing is so expensive that it adds to the cost of war and materially reduces the savings made by disallowances. For example, it cost the Emergency Fleet Corporation \$118,000 to make a saving of \$253,000 in connection with expenditures at Fore River Plant of the Bethlehem Shipbuilding Co. Senate Munitions Committee Report on Naval Shipbuilding, p. 364. It took 7 years and cost more than \$1,250,000 to audit and settle Old Hickory contract. Hearings, Part 14, p. 3236.

⁷⁹ See ex. 1226-A, art. 3, par. 4, for method of determining bonus.

⁸⁰ Note the following testimony on this point:

Mr. HISS. Is it not true that under that particular scheme the tendency, and in certain cases the result, was to cause contractors to boost their estimated costs beyond any reasonable relation to actual costs, in order to increase their fees?

Lieutenant BRANNON. Of course, this was not the contractor's estimate. It was the estimate agreed upon between the contractor and the representative of the Government.

Mr. HISS. But just as in the case of the estimate of the valuation, that would have to be determined by negotiation, would it not?

Lieutenant BRANNON. Yes.

Mr. HISS. And, as in the case of the estimate, the contractor would have considerably more knowledge than the War Department, since there will not be a big staff of valuation experts, such as the Interstate Commerce Commission has?

Senator CLARK. It would be very much to the interest of the contractor, leaving aside any patriotic or ethical considerations, from purely a monetary standpoint—it would be very much to the interest of the contractor, to the financial interest of the contractor—to pad his costs in every way in the negotiations leading up to the agreement on cost, would it not?

Lieutenant BRANNON. That is correct. (Senate Munitions Committee Hearings, Part 17, p. 4276.)

Note also this comment from the Pittsburgh ordnance district: "On the other hand, it must be recognized that in estimating the cost of production of articles not currently manufactured and for the production of which costs have not been ascertained, the contractor will protect himself by increasing the estimates, especially in view of the penalty in case the costs exceed the estimate. It must also be recognized that certain types of contractors will furnish very high estimates in the hope that, after compromise

This bonus provision of the adjusted-compensation contract is similar to the cost, plus a fee, plus a percentage of savings contracts used in the World War and it is subject to the same abuses.⁸¹ Yet under these contracts profiteering was rife in 1917 and 1918.

The contracts under which Liberty motors were manufactured for Army airplanes furnish a striking example. The estimated cost determined by negotiation prior to beginning manufacture was \$6,087 per motor. The actual cost turned out to be approximately \$3,200, slightly more than one-half of the estimate. The profit based on the fee and the percentage of savings was so large that some contractors were making 50 percent on cost and 100 percent on plant investment.⁸²

A further illustration is found in the contracts between the Bethlehem Shipbuilding Co. and the Emergency Fleet Corporation. These contracts are still in litigation 17 years after the end of the war. The Government is attempting to have these contracts set aside and the company's compensation reduced on the ground that they provide for more than just compensation. Both sides admit that if the contracts are fulfilled the company will receive as a result of a fixed fee and a percentage of savings 23.2 percent of actual cost as profit. Bethlehem now claims that this is fair in spite of the fact that Chairman Schwab, as a wartime director of the Emergency Fleet Corporation, declared that 10 percent was the most that could be considered just compensation.

Most of this excess profit arises from Bethlehem's share of the discrepancy between estimated and actual costs. The Government charges that this estimate was "not honestly determined", is "grossly excessive" and was the result of "deliberate padding."⁸³ Regardless of the merit attaching to these charges, they illustrate the difficulties of this provision of the adjusted compensation contract.

(D) PROFITS OF INTEGRATED COMPANIES

A number of the important contractors of the War Department are large integrated companies which produce many of their own raw materials. The du Pont Co. is a concern of this sort. Its smokeless powder department draws its ingredients from several other departments of the company. It has long been the practice to effect the interdepartmental transfer of these materials at a price which gives each successive department a profit over its manufacturing cost.⁸⁴ It is in evidence that "there is nothing in the (adjusted compensation) contract to prevent the contractor from obtaining the market price for such raw materials or component parts as are produced by him."⁸⁵ To the extent that integrated companies are reimbursed for raw materials at market prices which are in excess of their actual

and adjustment, they will still be above the proper level. In both such instances the percentage provided for may be too high." (Hearings of Committee, Part 15, p. 3827.)

⁸¹ Part 17, pp. 4297-4298, Senate Munitions Committee Hearings.

⁸² Part 17, p. 4277, Senate Munitions Committee Hearings.

⁸³ Senate Munitions Committee Report on Naval Shipbuilding, pp. 378-379. Prolonged litigation will be inevitable as a result of contract provisions of this sort and represents another obstacle in the way of effective profit limitation. For a consideration of the attitude of the courts toward profit limitation see Senate Munitions Committee Report No. 944, Part 2, p. 112.

⁸⁴ Senate Munitions Committee Hearings, Part 15, p. 3630.

⁸⁵ Senate Munitions Committee Hearings, Part 15, p. 3629.

costs, they will receive a profit which is in addition to that provided for in the contract.⁸⁶

(E) PROFITS UNDER THE EVALUATED FEE CONTRACT

The method of determining the fee under this contract is quite elaborate.⁸⁷ It may fluctuate between a minimum of 1 percent of cost and a maximum percentage which varies inversely with the size of the contract. Within these limits the actual fee is determined by an officer of the War Department after the completion of the work. It was testified that this is in essence the cost plus a percentage of cost principle, and that even after 14 years of experimenting the War Department feels that it must rely upon this type of contract for large construction projects.⁸⁸

It is generally admitted that exorbitant profits were made under cost plus a percentage of cost contracts in the World War. It should be pointed out that in some cases the same company which constructed a plant as agent for the Government would also operate it under the same arrangement. The profits from operation were likely to be much larger than those from construction and to result in very satisfactory returns on the transaction as a whole. The du Pont Co. received as profit for operating the Old Hickory powder plant \$1,961,000 in the short period of about 4 months. If the war had lasted longer the profit would have been greatly increased.⁸⁹ Bethlehem Shipbuilding Co. had a similar contract with the Navy.⁹⁰

(F) PROFITS UNDER FIXED PRICE CONTRACTS

It might be argued that only a relatively small proportion of the Government's total purchases will be on a cost-plus basis, and that therefore the above criticisms are not particularly important. However, the total spent by the War Department on account of cost-plus contracts was not a negligible amount. The Ordnance Department spent under this principle over a billion dollars,⁹¹ to which must be added another billion spent on account of construction.⁹² In addition most of the procurement handled by the Navy and the Emergency Fleet Corporation was on a cost-plus basis.⁹³ Cost-plus expenditures in the next war may well be a larger proportion of the total than in the last, since recent military trends, such as mechanization, will increase the number of noncommercial items.

⁸⁶ The du Pont Engineering Co. made considerable purchases from du Pont subsidiaries in constructing the Old Hickory Powder Plant. Senate Munitions Committee Hearings, Part 15, pp. 3592-3593.

⁸⁷ *Ibid.*, Ex. 1226-B, art. III.

⁸⁸ Senate Munitions Committee Hearings, Part 17, p. 4287-4288. The profiteering under cost plus a percentage of cost contracts in the last war was so flagrant that Congress has expressly disapproved of their use for Government procurement. See Part 15, p. 3622. The War Department holds the view that this type of contract should not be used. *Ibid.* However, the evaluated fee contract does not differ in principle but only in details from the World War type.

⁸⁹ Senate Munitions Committee Hearings, Part 15, p. 3604.

⁹⁰ Committee Report on Naval Shipbuilding, p. 365.

⁹¹ Senate Munitions Committee Hearings, Part 16, p. 3936.

⁹² Senate Munitions Committee Hearings, Part 15, p. 3627.

⁹³ Total Navy Department procurement expenditures follow: 1917, \$258,148,087.10; 1918, \$1,370,477,407.61; 1919, \$2,019,045,766.57; grand total, \$3,647,671,261.28. Munitions Committee Hearings, Part 12, p. 2836. Emergency Fleet Corporation figures for the same year are for the period ending June 30, 1919, \$2,512,692,002.95. Third Annual Rept. U. S. Shipping Board, p. 99.

The Industrial Mobilization Plan states that ordinary fixed-price contracts were "found generally inapplicable to war conditions."⁹⁴ A prominent procurement officer has given as one reason for this that "it was necessary, in order to get munitions, that we guarantee the contractor his costs."⁹⁵ Many contractors will not bid on a fixed price basis in wartime. Even if they are willing to bid on this basis, they can make the fixed prices so unconscionable that the Government will be forced to turn to the cost-plus basis to protect itself.⁹⁶

It is not at all certain that fixed-price contracts will be any more effective in limiting war profits than cost-plus contracts. Lieutenant Colonel Harris testified as follows:

Mr. Hiss. Colonel Harris, how do you expect to arrive at a fixed-price contract? Will that be the subject of negotiation?

Lieutenant Colonel HARRIS. Yes; that will bring in the question of the estimated cost, proper cost of the material.

Mr. Hiss. So you will have to go into the same old question of estimated costs, just as you do under the adjusted compensation.

Lieutenant Colonel HARRIS. I will admit there is a tremendous volume of work. I guess that is what you want to show.

Mr. Hiss. If those costs are not accurately stated, the same possibility of profiteering takes place there as it would if the valuation of the plant under the adjusted-compensation contract and the estimated-cost schedules under the adjusted-compensation contract do not truly reflect the value and the costs?

Lieutenant Colonel HARRIS. If the Government negotiators are not on the job, there is a possibility of the Government being gyped.⁹⁷

Mr. Homer Ferguson, president of the Newport News Shipbuilding Co., included this paragraph in a letter to the owner of the company relating to war contracts:

We are engaged in shifting our two transports from a cost-plus-fixed-fee basis to a fixed-price basis, which will give us a greater profit than we would otherwise make, and, I am quite sure, relieve us of a great deal of annoyance in having the Fleet Corporation auditors around the place.⁹⁸

Furthermore, due to the necessity for speed and flexibility in wartime, many safeguards which exist in peace for the protection of the Government will have to be abandoned. The War Department has stated that in order to adapt the peacetime forms of fixed-price contract to war conditions certain changes will be necessary. Among these is the transfer of authority over changes in the contract and the settlement of disputes from the Secretary of War to subordinate officials.⁹⁹ It was testified that the War Department believes that certain statutes governing procurement will have to be suspended or amended in war.¹ It is important to note that under the relatively rigid peacetime procedure the profits of such important munitions companies as du Pont, Remington, and Winchester on recent sales to the Army have been considerably in excess of the 6 percent which the War Department considers as fair return.²

⁹⁴ P. 3 of this plan.

⁹⁵ Senate Munitions Committee Hearings, Part 15, p. 3829.

⁹⁶ Recently in time of peace the Navy was forced to abandon the fixed-price principle because, as the shipbuilders admitted, they were bidding so high as to make it impossible for the Navy to accept their bids. Committee Report on Naval Shipbuilding, p. 323.

⁹⁷ Senate Munitions Committee Hearings, Part 17, p. 4281.

⁹⁸ Committee Report on Naval Shipbuilding, p. 355.

⁹⁹ Special Text 229, Army Extension Courses, p. 67.

¹ Senate Munitions Committee Hearings, Part 15, p. 3621.

² Senate Munitions Committee Hearings, Part 16, pp. 3985-3990. This is profit after paying costs, such as selling expense, which will not be allowed under the adjusted-compensation contract.

In conclusion, these contract forms contain a number of loopholes through which contractors may squeeze in order to obtain profits that are in excess of 6 percent. The exact percentages which will be gained in the next war cannot be determined. But in the light of the above analysis the committee holds that General MacArthur's statement that profiteering is "eliminated" by these contracts is unwarranted unless the War Department is willing to consider as legitimate, gains in excess of its considered maximum.

2. GAINS TO CONTRACTORS IN ADDITION TO LARGE PROFITS

Cash profits arising directly out of contracts are not the only advantages which business receives from war procurement. These other gains may not be so tangible, the returns may be delayed, but they are none the less important.

(A) ELIMINATION OF RISK

In an effort to justify large war profits it has been urged that the risks of business in wartime are correspondingly great. However, an analysis of war contracts shows that the companies making them assume practically no risk. Even the post-war upheaval fails to shake them.

The number of receiverships and bankruptcies among prime contractors * * * may, it is believed, be counted upon the fingers of two hands.³

All the proposed contract forms have in common a provision which guarantees the contractor against loss due to increases in the cost of labor or materials by governmental agencies.⁴ It has been stated that the plan is for the Government to control the prices of basic raw materials and wages⁵ so that contractors have nothing to fear from fluctuations in these items.

There is no possibility of an actual loss under the cost-plus contracts. The contractor will be reimbursed for all legitimate expenditures and more than likely for some doubtful items. (See pp. 15-20 above.) The fee, as finally determined, is a guarantee regardless of the business ability or circumstances of the individual contractor, regardless of whether he was making that rate of profit in ordinary competition before.⁶ This policy of guaranteeing against loss is carried so far under the adjusted compensation contract that the Government agrees to reimburse the contractor for the cost of all defective work unless it is proved that there was negligence upon the part of the contractor and the burden of proof is put upon the Government.⁷

The Old Hickory contract furnishes a striking example of the ability of contractors to make considerable profit without the slightest risk. This contract contained the following sentence:

The United States shall hold and save harmless the contractor from all loss by accident, fire, flood, explosion, or otherwise, arising or growing out of the construction or operation of the plant.⁸

³ Senate Munitions Committee Hearings, Part 13, p. 2918.

⁴ See Exs. 1226-A to 1226-B. Ibid, Part 15.

⁵ Senate Munitions Committee Hearings, Part 17, p. 4274. Statement of Lieutenant Colonel Harris.

⁶ Ibid., p. 4275.

⁷ Ibid., pp. 4285-4286.

⁸ Senate Munitions Committee Hearings, Part 15, p. 3581.

It was the interpretation of one of the Army officers connected with the contract

* * * that, under the contract, the du Pont Engineering Co. was authorized to incur any expenses in connection with the building of the plant which it deemed necessary, and that the company was to be reimbursed for all such expenditures, even if it should later develop that mistakes had been made.⁹

As if these provisions were not sufficient, the company was authorized to take out insurance against loss and charge the premiums to the Government.¹⁰

(B) FINANCING OF CONTRACTORS BY GOVERNMENT ADVANCES

Undoubtedly if contractors had to finance these contracts themselves on borrowed money at a time when capital is expensive and difficult to obtain, it might cause them considerable hardship. But there is evidence that prime contractors have never been forced to borrow extensively in war and it is the policy of the War Department to save them from any difficulties arising out of the tightness of credit.

The cost-plus contract forms provide that the contractor shall be reimbursed currently for his expenditures so that as his bills fall due he is receiving funds from the Government with which to meet them.¹¹ Under the fixed-price contracts payments will be made upon acceptance of partial deliveries and, at the discretion of the contracting officer, payment may be made in full before the contract is completed.¹² These provisions practically eliminate any need for working capital.

It has been the policy in the past to make advances of funds in addition to the regular payments in order to help finance important contracts. The War Department advanced a total of \$354,837,568.10 in the last war.¹³ The Government advanced \$108,693,672.68 to the du Pont Co. and its subsidiaries alone.¹⁴

Holding these huge sums of Government money gives the contractor a marked strategic advantage in its relations with the Government. The du Pont Engineering Co. had the custody of a larger amount of Government funds than it expected to receive in final payment for its construction activities, even under its own extremely liberal interpretation of the contracts.¹⁵ This meant that the burden of settling the contracts and getting its interpretation of them considered was placed on the Government. The company was completely protected at all times.

The gains to the du Pont Co. as a result of these advances, both from the Allied Governments¹⁶ and from the United States Government, coupled with the huge profits from military business, are little short of astounding. A vast reservoir of ready cash was available for use at all times. It made possible tremendous capital expenditures. The company built millions of dollars' worth of new powder

⁹ Ibid., Part 15, p. 3602.

¹⁰ Ibid., Part 15, p. 3581. It is the policy of the War Department to eliminate also risk arising out of possible termination of these contracts. See p. 26, *infra*.

¹¹ See Ex. 1226 A and B, Munitions Committee Hearings, Part 15.

¹² See Ex. 1226 C and D, Munitions Committee Hearings, Part 15.

¹³ Senate Munitions Committee Hearings, Part 14, p. 3286.

¹⁴ Senate Munitions Committee Hearings, Part 13, p. 3151.

¹⁵ Senate Munitions Committee Hearings, Part 14, pp. 3253-3254.

¹⁶ For a list of the total advances received by the du Pont Co. on military contracts, see Senate Munitions Committee Hearings, Part 13, p. 2982.

plants, made substantial investments in the dye, paint, and automobile industries, and financed its own insurance, all without a single bit of financing from banks or private investors.¹⁷

(C) TERMINATION OF PROCUREMENT AFTER ARMISTICE

The task of industrial demobilization after an armistice is as stupendous as that of gearing industry to war production. Yet no such detailed consideration has been given to the former problem as the latter has received in the War Department planning. The experience of the last war indicates that two things are sure to occur during the period of readjustment: The Government will incur huge losses due to waste, and certain businesses will reap important gains.

Industry is operating at war pitch and straining every nerve for even greater production when the armistice comes, generally without any warning. It is impossible to slow down this vast machine at a moment's notice. It rolls along on its own great momentum. Goods in process must be completed or they are valueless. Admiral Pratt, referring to the great volume of spending by the Navy after the armistice, has said:

If you start a big machine moving, such as this production is, it takes a certain amount of time before it gets slowed up and working normally; and I should think that that had about as much to do with it as anything. We just got swept into it, and before we could get our breath and stabilize and get together, there we were with our output.¹⁸

The tremendous expenditures of 1919 were an inevitable concomitant of the war, to the winning of which they contributed nothing. War contracts continued to influence Federal spending even up until 1921.¹⁹

This inevitable momentum would create a problem for the contractors if it were not for the termination provisions in all the contracts. The Government agrees to pay for any necessary expenses resulting from termination of the contract.²⁰ The contractor is relieved of all risk due to the possibility of termination.²¹

The cancelation of thousands of contracts at the end of a war places a huge task of settlement upon the Government. Upward of 26,000 claims arising out of canceled contracts were filed with the Ordnance Department alone after the last war.²² The claims boards are subjected to great pressure to wind these up quickly. As a result, there is a tendency to compromise with the contractor on the doubtful points which a cancelation inevitably brings up. The Graham committee described the process as follows:

Those claims were going through the claims boards at the rate of about 35 a day, aggregating millions of dollars. Therefore, little time was given to their examination. The process was largely mechanical. In most cases, also, the contractors were shrewd businessmen, well versed in their line, and were more than a match for the comparatively inexperienced members of the settling boards; most of whom knew nothing at all—and so admitted to the committee—about the business they were dealing with.²³

¹⁷ Senate Munitions Committee Hearings, Part 13, pp. 2916-2917.

¹⁸ Committee Report on Naval Shipbuilding, p. 374. For figures on naval contracts let after the armistice, see *ibid.*, p. 345.

¹⁹ Senate Munitions Committee Hearings, Part 13, p. 2905.

²⁰ This applies to both fixed-price and cost-plus types.

²¹ Senate Munitions Committee Hearings, Part 17, p. 4213.

²² Ex. 1345. *Ibid.*, Part 17.

²³ Senate Munitions Committee Hearings, Part 17, p. 4218.

As an example of this bargaining arising out of canceled contracts, a war contract between the Navy and Newport News Shipbuilding Co. may be cited. It was testified that the company put in a claim for \$14,973,165, whereas the president of the company stated privately at the time that he would be willing to accept \$6,635,000. The larger figure was for trading purposes. Part of this claim was for overhead, which was contributing nothing to Navy construction.²⁴

Due to the momentum of the procurement mechanism, the Government is certain to have on hand at the conclusion of the war large stocks of materials of all sorts for which it has no need.²⁵ One course which might be followed in attempting to minimize this loss would be to sell these stocks in the open market for the best prices they would bring. Even this would probably involve loss, since they would have been bought at inflated war prices and would have to be sold at post-war prices. However, the loss would be smaller than under other possible alternatives.

But there is no likelihood of such a course being followed. The political pressure against such Government competition with private industry in the precarious post-war economic situation would be too powerful. After the last war it was the fixed policy of the departments, at the direction of the President, not to market surplus stocks in competition with private industry.²⁶

Another alternative is provided by the termination clause in the contracts which says that the Government may transfer to the contractor the ownership of stocks held by him but belonging to the Government at "salvage value." This salvage value must be a matter of appraisal at the time. The Graham committee stated that in the last war these prices were "fixed only by the comparative honesty of the contractor."²⁷

If the stocks are not sold in this fashion, then they must be stored until they can be disposed of at a more propitious moment. This generally involves even greater loss. For example, the War Department had on hand 200,000,000 pounds of surplus powder at the conclusion of the war. Over 20,000,000 pounds of this was stored under water at the Old Hickory Powder Plant. This storage under water at that place ruined the powder for Army purposes. Along with other millions of pounds, it was declared scrap and sold. The du Pont Co., which had sold most of this powder to the Government during the war at upward of 47½ cents per pound, bought 16,643,279 pounds of the scrap for use in manufacturing its lacquers and other products at an average price of 4.2 cents per pound.²⁸

These considerations just discussed with regard to stocks of materials apply also to plants and equipment which the Government has had to construct. Examples of losses to the Government and gains to the contractors in connection with plants built during the World War are numerous. New York Shipbuilding Co. built a shipyard for the Emergency Fleet Corporation for \$14,000,000 and then paid about \$500,000 for it after the Armistice. This transaction was defi-

²⁴ Senate Munitions Committee Report on Naval Shipbuilding, pp. 337-338. The same pressure to compromise and settle controversial war matters that exists in a post-war period with regard to taxes. (See Committee Rept. 944, p. 37 ff.) Applies also to canceled contracts.

²⁵ For figures, see ex. 1366, Senate Munitions Committee Hearings, Part 17.

²⁶ Senate Munitions Committee Hearings, Part 17, p. 4212, and Part 15, p. 3716.

²⁷ Senate Munitions Committee Hearings, Part 17, p. 4212.

²⁸ Senate Munitions Committee Hearings, Part 17, pp. 4218-4220.

nately arranged with Director Schwab of the Emergency Fleet Corporation before construction was started. The company was certain to get the yard since it stood on land which "belonged to the New York Shipbuilding Corporation." It looked upon this sale as being "in the nature of a gift or added fee" for its Emergency Fleet Corporation work.²⁹

The Navy agreed to turn over to Newport News Shipbuilding Co. free a plant for which the Government had paid about \$2,500,000, as extra compensation. According to the company's president, they did this because they "are not willing to show on the face of a contract that they are paying more than 10 percent as profit."³⁰ Mason & Hanger, subcontractors for the du Pont Engineering Co. on the Old Hickory contract, built a village and a short spur railroad at a cost of \$21,000,000 to the Government. The du Pont Fibersilk Co.³¹ bought back the village at a price of \$650,000.³²

In theory the Government could continue to operate these plants in time of peace and amortize them out of its sales to itself. In the past there has been no practical possibility of such a solution. Many plants, as in the case of the New York Shipbuilding Corporation, were built on land owned by the companies. It was impossible for the Government to operate them. Opposition to the Government's supplying its own munitions has been strong and effective.

3. THE RELATIVE STRENGTH OF GOVERNMENT AND INDUSTRY IN CONTRACT NEGOTIATIONS

The War Department has stated that it intends to settle a number of very important points in these contracts such as the amount of valuation, depreciation, and the prior estimate of cost, by negotiation between the contracting officials and the contractor.³³ It is quite likely that the real character of the contract—its effectiveness in limiting war profits—will be determined by these negotiations rather than by the contract form itself, which is only a skeleton. The bargaining position in which the two parties will find themselves during these negotiations becomes, therefore, a very vital matter.

(A) ALLOCATION AS THE BASIS FOR WAR PROCUREMENT

The normal procedure in peacetime procurement is for the Government to announce its requirements, call for competitive bids from a number of concerns, and award a contract to the lowest bidder.³⁴ The War Department has decided that this system is not applicable to war conditions. Instead it plans to substitute a system of allocation which frankly abandons whatever protection for the Government competitive bidding may afford.³⁵ The plants which are likely to be producers of munitions in the event of war are assigned to the various procurement agencies of both the Army and the Navy.

²⁹ Senate Munitions Committee Report on Naval Shipbuilding, pp. 345-346.

³⁰ *Ibid.*, p. 351.

³¹ A subsidiary of E. I. du Pont de Nemours & Co.

³² Senate Munitions Committee Hearings, Part 17, pp. 4224-4227.

³³ See pp. 14, 16, and 20, *supra*.

³⁴ Even this system does not always insure active competition. (See Senate Munitions Committee Report on Naval Shipbuilding, p. 18 ff.)

³⁵ See Industrial Mobilization Plan, p. 2.

Each agency plans definitely to get the major proportion of its requirements from the concerns allocated to it.³⁶

For the supply of noncommercial items at least, the War Department is depending upon a very few contractors which, in its opinion, constitute the only concerns capable of meeting its unusual needs. Present plans for the procurement of one of these items call for three contractors, each to supply approximately 29 percent of the requirements. Another item is to be divided among four contractors, one to furnish 30 percent, two 16 percent, and the fourth 38 percent. Other items show a similar situation.³⁷ These represent some of the most important items both from the military standpoint and from the point of view of money involved.³⁸

Each of these contractors knows that it is to receive large Government orders in time of war. It knows that the Government is absolutely dependent upon the portion of the total production which it furnishes and that there is no other source of supply for these vital war needs since all the important producers are included in the allocations. Under these circumstances there will be an overwhelming preponderance of bargaining strength on the side of the contractor when the many doubtful points which must be settled by negotiation arise.³⁹

(B) NORMAL COMPETITIVE SITUATION IN IMPORTANT WAR INDUSTRIES

There is little price competition in some of the industries which are important in war procurement, even in time of peace. The powder and explosives industry is an example. A departmental report of the du Pont Co., after describing a general revision of dynamite prices just undertaken by the company, states, "All competitors have promulgated similar price schedules." Mr. Lammot du Pont testified as follows:

Mr. HISS. Is there any substantial uniformity in the prices quoted in the dynamite business?

Mr. LAMMOT DU PONT. I believe there is among the larger companies; yes, sir.⁴⁰

If this is the situation in peace, there will certainly be no increase in competition to give the Government protection in time of war when a seller's market is universal.

It is worthwhile noting that war strengthens and quickens the tendency toward monopoly which destroys the foundations of active competition. The enforcement of the antitrust laws was relaxed during the World War. In line with this policy the Attorney General on January 3, 1917, asked the Supreme Court to defer argument on seven large antitrust suits then pending. Among the concerns benefiting from this reprieve was the United States Steel Corporation.⁴¹

³⁶ Ibid.

³⁷ Because of interlocking corporate control these few companies can be regarded as even fewer when the question of competition is considered. There are a few cases in which the Government plans to get 100 percent of its requirements from a single concern. Senate Munitions Committee Hearings, Part 17, p. 4171.

³⁸ Senate Munitions Committee Hearings, Part 17, pp. 4170-4171.

³⁹ Colonel Harris testified that this statement has "weight." Senate Munitions Committee Hearings, Part 17, p. 4171.

⁴⁰ Senate Munitions Committee Hearings, Part 17, p. 4172.

⁴¹ News dispatch quoted in Turner, J. K.: "Shall It Be Again?" p. 309.

The organizational structure created by the war effort minimizes competition. Harry A. Wheeler, as president of the United States Chamber of Commerce, wrote in August 1918:

Organization for war service is giving business the foundation for the kind of cooperative effort that alone can make the United States economically efficient enough to take its place with the nations in world trade. * * * Creation of war service committees promises to furnish the basis for a truly national organization of industry whose proportions and opportunities are unlimited. * * * The integration of business, the expressed aim of the national chamber, is in sight.⁴²

The following quotation appears in the report of the Graham Committee:

It will be seen from the facts hereinafter stated that the plan originally was—and which plan has been fully consummated in the subsequent proceedings—that the copper industry, as well as other producing industries, should be so centralized that it could be dominated and controlled by one man, or a very small number of men, and that this control, once established over the industries, continued throughout the war, was the paramount influence toward price fixing and price control and is one of the causes of high-priced commodities at this time (1921). The plan of the Government was to centralize all industries, irrespective of the results that might ultimately follow.⁴³

It is likely that this hastening of industrial integration will occur again in the next war. Because of their greater stability it is the policy of the War Department to plan to procure its supplies from large corporations rather than the smaller concerns.⁴⁴ This and all the other monopolistic tendencies will again become operative.

(C) BARGAINING POSITION OF CONTRACTING OFFICIALS

During most of the last war contracts were being made in the Ordnance branch alone of the War Department at the rate of approximately 100 a day. No matter how conscientious the contracting officials may be in attempting to protect the Government⁴⁵ such a volume of work imposes a terrific burden upon them. If they are to be successful in negotiating fair contracts they must have available detailed information regarding the various companies and industries. Costs, capital structures, and financial set-ups are of particular importance. Yet after 15 years of planning the War and Navy Departments have practically none of this information. The Navy Department does not know what it costs private shipbuilders to construct naval vessels. It has no information on their profits.⁴⁶ The War Department is no better off. A committee of officers which engaged in study of the war contract forms has said:

Practically, it is difficult to form a satisfactory estimate of costs without a carefully prepared factory plan. Little progress is being made at present in preparing such plans.⁴⁷

If the contracting officials lack this information, they cannot whittle down the demands of industry.

⁴² Quoted in Report of the War Industries Board, p. 24.

⁴³ Quoted in Senate Munitions Committee Hearings, Part 17, p. 4389.

⁴⁴ Senate Munitions Committee Hearings, Part 17, p. 4171.

⁴⁵ For a consideration of the attitude of governmental administrative officials in war-time see p. II, *infra*.

⁴⁶ Senate Munitions Committee Report on Naval Shipbuilding, p. 3.

⁴⁷ Senate Munitions Committee Hearings, Part 15, p. 3792. In filling out a factory plan the prospective contractor gives basic information on the proposed contract.

4. POSSIBILITY OF EVEN MORE FAVORABLE PROCUREMENT TERMS FOR CONTRACTORS

The procurement arrangements as just discussed offer very favorable terms to contractors when considered in the light of their practical application in the event of war. But there is a strong likelihood that the terms actually offered to industry if war should come would be even more favorable.

Certain contracts will be of such crucial importance to the prosecution of the war that there will be a strong tendency for the Government to modify any previously conceived contracting arrangements if the contractor urges it. Mr. Brookings, of the War Industries Board, in a letter to the Secretary of War concerning the Old Hickory contract, wrote:

On leaving the conference General Crozier announced that he felt that, regardless of price, the Government must have immediate action on this, and immediate action could only be had through the du Ponts, and therefore he would urge upon you the emergency necessity which, in his judgment, overshadowed all question of cost.⁴⁸

It was testified that there is need for flexibility and elasticity in these plans since war conditions cannot be foreseen in exact detail and it must be possible to meet changing conditions promptly.⁴⁹ Some of the clauses in the contracts providing for wide flexibility have already been discussed.⁵⁰ They make possible considerable modification in the procurement terms to the advantage of industry.

As has already been pointed out, a large volume of spending will probably be undertaken by an agency similar to the Emergency Fleet Corporation which will have no previously prepared procurement terms.⁵¹ In the last war this purchasing was carried out under conditions which resulted in some of the most flagrant profiteering of the war.⁵² The Navy Department engages in procurement planning but it believes that the proposed War Department procedure is not sufficiently favorable to the contractor in certain particulars.⁵³

Most important of all is the attitude of the prospective contractors themselves toward these proposed terms now in time of peace. The contract forms were submitted to many of the major industrial concerns which are likely to be war contractors and their comments invited through the various ordnance districts.⁵⁴ The comments on the adjusted compensation contract in the St. Louis ordnance district are summarized as follows:

Some of the firms are frank to state it would be extremely different for them to voluntarily enter into such a contract in either peace or wartime.

* * * * *

There is no question but that the proposed contractors in the vicinity think the reward inadequate and unjust.⁵⁵

⁴⁸ Senate Munitions Committee Hearings, Part 14, p. 3176.

⁴⁹ Senate Munitions Committee Hearings, Part 15, p. 3620-1. Also Industrial Mobilization Plan, p. XI.

⁵⁰ See pp. 14, 16, and 20, *supra*.

⁵¹ See p. 22, *supra*.

⁵² See Senate Munitions Committee Report on Naval Shipbuilding, sec. VII.

⁵³ See p. 15, *supra*.

⁵⁴ The country is divided into geographical districts for decentralized procurement in war.

⁵⁵ Senate Munitions Committee Hearings, Part 15, p. 3824.

The chief of the legal staff of the Pittsburgh ordnance district stated that, assuming that none of the loopholes of the contract were utilized,

profit at the rate of 6 percent per annum would not tempt successful industrial companies * * * It seems to me that * * * it would not be out of line to increase the rate of the fee from 6 percent to 10 percent as representing a reasonable profit.⁶⁶

Other districts reported a similar attitude.

The committee notes this statement of the committee of student officers on contract forms:

The committee believes that some increase in the present figure might well be made, but doubts the advisability of attempting to determine the exact amount until war is imminent. It can then be decided on the basis of then existing conditions.⁶⁷

It concurs in the following testimony of Colonel Harris:

Mr. Hiss. Colonel Harris, we cannot be sure at the present time that the present 6-percent provision in the adjusted-compensation contract can, as a matter of practical necessity, be retained in the event of war?

Lieutenant Colonel HARRIS. To be perfectly frank, I am very doubtful.⁶⁸

⁶⁶ Senate Munitions Committee Hearings, Part 15, p. 3827.

⁶⁷ Senate Munitions Committee Hearings, Part 15, p. 3792.

⁶⁸ Senate Munitions Committee Hearings, Part 15, p. 3704.

III. PRICE CONTROL AND TAXATION

The foregoing discussion has been confined to industries which have direct contractual relations with Government procurement agencies. To check profiteering by industry in general and to eliminate the basic war evils of inequality and inflation, both the Industrial Mobilization Plan and the findings of the War Policies Commission place reliance on the twin controls of price fixing and taxation.⁵⁹

The Committee has given careful consideration to the problems presented by these controls in its Report No. 944, Part 2, which it wishes to incorporate by reference in this final report. It wishes also to repeat and emphasize here its findings and conclusions on price control and taxation.

1. It must be recognized that war inevitably involves waste and increased living costs. The increase of costs due to the shift of production from peacetime to war purposes, to the use of untrained labor to replace men drafted into the army, to the high risks of war-time production in many industries, and to the necessity for rapid production and delivery, requires an increase in some prices in war time whatever form of price control is exercised. The interrelation of our industries will spread the effect of these increases throughout our economy. This means that no arbitrary plan of keeping all prices at a given level is practicable and individual prices must be fixed by governmental agencies.

2. The necessity that the governmental price-control agencies must largely rely upon industry for their information as to costs, capacity, production needs, and other fundamental information, and the fact that the personnel of these agencies must be largely made up of men who have been industrially trained and who are sympathetic to private industry's contentions, when added to the critical importance of increasing industrial output in wartime, prevent the fixing of prices below such a level of profitability as the bulk of the producers in any industry agree is fair.

3. The fact that costs are in the last analysis matters of opinion and are not susceptible of scientific determination, and the gigantic nature of the administrative task involved in enforcing any price provisions opposed by a substantial portion of industry make it impossible to eliminate war profits by price control except to the extent that industry agrees to accept a limitation of its profit-making potentialities.

4. There are large profits and there is inequality in peacetime. The strain and stress of war is not conducive to the adoption of fundamental reforms which cannot secure acceptance even in time of peace. We must guard against a blind belief that all profiteering can be ended by proposals for war-time taxes and industrial control.

5. Severe wartime taxation ensures the subjecting of the administrative officials responsible for its operation to heavy direct and indirect pressure for the alleviation of tax burdens, it increases resistance to tax collection, and, if it reaches a level which the majority of business men feel is con-

⁵⁹ Industrial Mobilization Plan, p. 11, and 72d Con., 1st sess., H. Doc. No. 271. It is recognized that the statements of the War Department on procurement methods and on general industrial regulation must be considered as having a different status since the former is a direct responsibility of the Department while the latter is not. However, it is important to consider the thought of both civilian and military authorities with regard to price control and taxation since their thought may well be controlling in the event of war. See pp. 8-9, *supra*.

fiscatory, will discourage or prevent the volume of production so essential to the successful prosecution of a major war, and thus defeat its own ends.

6. Because of the difficulties of determining in any exact manner the costs of all business, and, hence, the profits from business, and because of the impossibility of closing all loopholes in legislation designed to apply uniformly to our immense and complicated business and industrial structure, income taxation cannot eliminate all war profits.

These conclusions are supported by a wealth of evidence contained in that report.

The foregoing discussion has been confined to the main question of the munitions industry. It is evident that the same principles apply to the production of other war materials. The Commission has given careful consideration to the problem presented by these controls in its report No. 24, Part B, which it wishes to incorporate by reference in this final report. It wishes also to repeat and emphasize here its findings and conclusions on price control and taxation.

1. It must be recognized that war inevitably involves waste and increases other costs. The increase of cost due to the shift of production from peace time to war purposes to the use of materials hitherto to produce non-essential goods, to the high costs of wartime production in many industries and to the necessity for rapid production and delivery, requires an increase in the price of war materials. It is a fact that the Government has increased the price of war materials to the extent of the increase in cost. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs.

2. The necessity that the Government subsidize the munitions industry is a fact. The Government must subsidize the munitions industry to the extent of the increase in cost. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs.

3. The fact that war is a business is a fact. The Government must subsidize the munitions industry to the extent of the increase in cost. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs.

4. There is a large number of war materials which are not produced in the United States. The Government must subsidize the munitions industry to the extent of the increase in cost. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs.

5. The Government must subsidize the munitions industry to the extent of the increase in cost. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs.

6. The Government must subsidize the munitions industry to the extent of the increase in cost. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs. This means that the Government is not only paying for the cost of the materials but also for the cost of the waste and other costs.

IV. FUNDAMENTAL DIFFICULTIES OF THE ATTEMPT TO ELIMINATE PROFITEERING

The Committee has considered in detail the factors which make it impossible for the present planning proposals with respect to procurement terms, price control, and taxation to eliminate war profits. It now wishes to emphasize two fundamental reasons for believing that even a scheme of controls theoretically capable of achieving this goal would not be so used in an actual war. These considerations raise the same fundamental difficulties for all three of the controls studied.

1. STRIKES BY INDUSTRY

A strike is a stoppage of production in order to gain certain demands. The term has been generally applied to the actions of labor. But the committee has pointed out that in time of war corporations and industries can and will take a course of action which really a "strike" by industry against the Government.⁶¹ Those who control the policy of business units hold a strategic position in modern economic life. They make the decisions upon which depends the functioning of the industrial machine. They can decide to produce or not to produce, and at a word from them important cogs in the machine may slow down or come to a halt. In time of war the Government is in a peculiarly weak position to deal with such a deliberate slowing down of production. As has been stressed, its main consideration must be the maintenance of an adequate supply of goods.⁶²

If industry strikes or threatens to strike to gain its demands the Government must yield as it yielded in the last war.

During the World War industry struck in connection with Government procurement.

The War Department became convinced that there was desperate need for vast additional powder manufacturing capacity in the fall of 1917. The du Pont Co. by its own admission controlled "about 90 percent of the smokeless powder producing capacity of the United States." It had constructed the large plants from which the Allied Governments had been supplied during the period of our neutrality. So it had practically a monopoly of the construction and operating experience necessary for the contemplated plant. Naturally the Government turned to this company for assistance. It could not do otherwise. Yet for 3 months the building of this powder factory was delayed because the du Pont Co. would not accept the liberal contract terms offered it. When asked about the critical character

⁶¹ This term was used in the hearings by Senator Nye. See Munitions Committee Hearings, Part 22, p. 6418.

⁶² See p. 9, supra.

for the prosecution of the war of the period when this delay occurred, Lieutenant Colonel Harris testified:

It is hard to say which was the most critical time of the war, but that was a very critical time.

The Government offered to pay "every dollar of expense", to advance \$1,000,000 on account of profit, and to pay additional profit as determined by arbitration. This was rejected by the company's board of directors upon the recommendation of Mr. Pierre du Pont. He wrote that, "* * * we cannot assent to allowing our own patriotism to interfere with our duties as trustees" for the stockholders. At the time, he was one of the 10 largest holders of the company's common stock.

The Government threatened to build the plant itself but it had no real alternative to accepting the terms of the du Ponts. A man was appointed to undertake the work who apparently had no prior experience in powder manufacture. The du Pont Co. refused to cooperate in assisting the Government effort. Finally a contract was signed under which the du Pont Engineering Co., a wholly owned subsidiary of the du Pont Co., built the Old Hickory powder factory without risk to itself and made a profit on operation of the plant amounting to \$1,961,560. If the war had continued the profit per year would have been about \$15,000,000.^{62a}

In November 1917, the Ordnance Department wished to place an order for powder to be manufactured in a certain plant of the Aetna Explosives Co. According to the minutes of the War Industries Board, the company "refused to operate this plant unless they received an order at over 64 cents per pound which was 15 cents higher than the price being paid the du Pont Co." The Board approved a contract for powder with the Hercules Powder Co., at what it considered "a high price" for the reason that "it was either necessary to pay the 70 cents per pound or go without this powder."⁶³

Admiral Bowles, manager of the Division of Steel Ship Construction of the Emergency Fleet Corporation and G. S. Radford, manager of the Contract Division, wrote during the war of the Bethlehem Shipbuilding Co.'s attitude in negotiating contracts:

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to, and their attitude has been characterized by the arbitrary refusal to stand behind delivery dates. * * *

While the prices we have agreed to with representatives of the Bethlehem Shipbuilding Corporation are not satisfactory to us, nevertheless they represent a material reduction from the prices quoted by that corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated, and we believe that we have made the best compromise possible under very difficult conditions.⁶⁴

These are the contracts already discussed under which Bethlehem made a profit of 23.2 percent under procedure questioned later by the Government.⁶⁵

^{62a} This is a summary of a statement which appears in full with citations in Senate Munitions Committee Report 944, Part 2, pp. 107-111.

⁶³ Senate Munitions Committee Hearings, Part 17, p. 4369.

⁶⁴ Senate Munitions Committee Report on Naval Shipbuilding, p. 376.

⁶⁵ See p. 21, *supra*.

Industry struck in connection with Government price fixing.

On August 8, 1917, the War Industries Board offered the copper producers a tentative price of 22½ cents per pound for copper. This was refused although the "copper emergency required immediate action necessary to secure a supply for our Government and our Allies."⁶⁶

The matter hung fire until in September the Federal Trade Commission reported that 97 percent of the production was costing the companies less 20 cents per pound. The average cost was 13.6 cents and important companies were producing for 7 and 8 cents. Under these circumstances the price of 22 cents per pound, which the Board then suggested, was liberal, to say the least. Again the producers refused, holding out for a 25-cent price. Mr. Ryan, of the Anaconda Copper Co., a spokesman for the industry, stated that if the price was fixed at 22 cents "it would be impossible to obtain the voluntary cooperation of the majority of mine owners." On September 21, a month and a half after the Government's first offer, the price was fixed at 23½ cents, which represented a splitting of the difference between the opposing views.⁶⁷

Even before war was formally declared negotiations leading toward price fixing were begun with the steel industry. One Government official told Judge E. H. Gary, who represented the steel producers, that he thought the price for steel plates should be \$2.90. Judge Gary offered a price of \$3.50 in a letter to Secretary of the Navy Daniels which the latter declined on the ground that the highest price heretofore paid by the Government was \$2.90. Mr. Baruch has stated that "almost immediately after the declaration of war" he got in touch with the steel people and found them insisting upon a price of 4½ cents a pound for ship plates. He "urged them not to insist upon that price because it was too high and unfair in the circumstances", but they were adamant. By June this obstinacy was "handicapping the work" of Government procurement very seriously because "the steel companies will not accept an order without a price." It was stated in the minutes of the General Munitions Board that "practically everything is held up because of the unsettled condition * * * and * * * the delay was seriously hampering the preparations for war." As late as August 6, Mr. Scott, chairman of the Board, stated that he "did not believe Bethlehem (Steel Co.) would agree to accept only Army forgings at the prices agreed upon." Prices were finally fixed on September 24, 1917, at levels which permitted large profits even to so-called low-cost producers. As Judge Gary summarized the attitude of the industry, "manufacturers must have reasonable profits in order to do their duty."⁶⁸

When asked by the Chairman if there were more instances of this sort during the war, Mr. Baruch testified, "Yes, sir."^{69a}

Industry might strike in connection with taxation if the Government should seriously attempt to enforce a drastic tax law. Under such circumstances the Government might face also a strike by inves-

⁶⁶ Minutes of the War Industries Board, quoted Senate Munitions Committee Report No. 944, Part 2, p. 98.

⁶⁷ Senate Munitions Committee Report No. 944, Part 2, pp. 95-100.

⁶⁸ Ibid., pp. 100-106.

^{69a} Senate Munitions Committee Hearings, Part 22, p. 3360.

tors, a refusal to invest capital. The committee wishes to repeat the following observations from its report on taxation:⁶⁹

In time of war increased production in many lines of industry and uninterrupted output in most fields of industry are essential and are far more important than eliminating profiteering or preventing a heavy debt being passed on to post-war administrations. Consequently, if the absolute rate of any war-time tax is so severe as to discourage investment required for reconditioning idle plants, converting plants from nonessential production, building new facilities, financing larger purchases of raw materials and increased pay rolls—to name a few of the wartime requirements for capital in expanding production and eliminating any consideration of the effect of such a tax on existing production—it cannot be permitted.

The operation of investment in our economy is quite distinct from any question of the willingness of any individual to forego profits for a patriotic reason. The scale of profit is the routine method by which industrial activity is carried out. The investor is guided not by general questions of usefulness or national need, about which he is in most cases not advised, but simply by the prospect of profit held out to him.⁷⁰ If this is cut off, expansion of industrial activity may cease, and will in any event be seriously curtailed, and even existing production will be reduced. In such an event the financing of a large part of the needed expansion, without considering existing production, by the Government, might well mean a greater financial burden on the Government than would be the case under a more moderate rate of tax. Government expenditures in loans would be increased without any assurance that Government expenditures for supplies would be correspondingly decreased. Government revenue from a tax at a lower rate applied to a larger volume of privately financed business might actually be greater than the revenue from a tax fixed at a rate so high as to discourage expansion of private business. The administrative burdens imposed on the Government in carrying out such financing, and the resultant necessary supervision of operations, would in addition be enormous and would be imposed at the very time when administrative capacity would already be sorely overburdened by other war duties.

Once the country has been launched upon a major war any serious threat to the stability of production would be disastrous and the introduction of the Government into business on the large scale that might be required by a confiscatory tax rate could not be effected without such a threat.

These strikes by industry were an important feature of the last war. But the evidence reveals only occasional instances because in general industry got what it wanted without having to resort to any such drastic tactics. There was no occasion for it to strike. If the wartime controls should ever begin to bite rather deeply into profits, the use of this weapon would undoubtedly increase.

Apparently the Government could deal with these strikes by using its war power to commandeer. Actually commandeering is not an effective method of compelling industry to come to terms. Industry need not fear it because the courts have so interpreted the fifth amendment to the Constitution that commandeered companies are sure to be just as well off as if they had been let alone. In *L. Vogelstein v. U. S.*, the Supreme Court ruled that the company should be paid for its requisitioned copper stock at the liberal price fixed by the War Industries Board. In some cases a company may even find it an advantage to be commandeered. The court, in *U. S. v.*

⁶⁹ Senate Munitions Committee Report No. 944, Part 2, p. 11.

⁷⁰ See letter of B. M. Baruch to committee dated Apr. 12, 1935: "Much as it may be desired, the cold fact remains that ours is an economy motivated by profits. A certain return on money is necessary to make our industrial system work * * *. Much was said at the hearing about this being a new war psychology * * *. Our whole industrial system is a complex massive machine built and geared to run on investment and profit. There is no proof that it will run on psychology and there is much that it will not. Certainly we should not select an hour when the enemy is at the gates to find out whether it will or not * * *. Money will not invest and run the extreme risks of war production for a fraction of 3 percent."

New River Collieries, permitted the use of export prices rather than domestic contract prices which were lower.⁷¹

Even if commandeering could carry an effective penalty the administrative obstacles in the way of its application on a large scale reduce its effectiveness as a means of compelling cooperation. Mr. Baruch stated before the War Policies Commission that he could not recall a single case of an important industrial concern being taken over by the Government because the personnel was not available and "the mere process of change would destroy efficiency at the outset." The War Industries Board talked of commandeering the steel industry. Yet Mr. Baruch testified he did not know how commandeering would have been put into execution if the Board had tried to make good on this threat. Industry was aware of how highly improbable it was that the Government could get the personnel and create the organization necessary to operate a large number of plants all at a time when it was imperative to prevent a break in production. When the Board was talking of commandeering the copper industry, they were bluntly told by its representative, Mr. Ryan, that "it would be impossible to commandeer all of the small high-cost mines as there are such a great number."⁷²

The one case of commandeering on a large scale in the last war was the railroads. But under the terms given by the Government the companies could lose nothing and perhaps they benefited by Federal control.

Finally any effective action against a strike by industry is made more difficult because it is not open and public as a labor strike is. Some of the strikes against the Government described above were not generally known until the hearings of this committee 16 years later. In such cases it is impossible to use the pressure of public opinion in order to compel cooperation.

The War Department recognizes that the difficulties of commandeering are insuperable. It intends to "depend for enforcement upon the popular morale and collective patriotism."⁷³ When Senator Vandenberg asked Colonel Harris what the war plans provided as a means of dealing with a strike like that of the du Pont Co., he testified:

Lieutenant Colonel HARRIS. As a matter of fact, whether we are right or wrong, we are counting on the cooperation of industry in our plans. Personally, I do not think we can fight a war unless we can depend on industry to meet us in fair agreements.⁷⁴

It has been shown that the Government cannot necessarily get a fair deal from industry by depending upon voluntary cooperation. Yet it has no other alternative.⁷⁵

2. PERSONNEL OF GOVERNMENT AGENCIES CHARGED WITH REGULATING WAR INDUSTRY

This necessary dependence of the Government upon the cooperation of industry is the principal reason for believing that no scheme

⁷¹ *Ibid.*, p. 112.

⁷² *Ibid.*, pp. 113-114.

⁷³ Statement of General MacArthur before War Policies Commission Hearings, p. 392.

⁷⁴ Senate Munitions Committee Hearings, Part 17, p. 4282.

⁷⁵ For a more extended discussion of the difficulties of commandeering see Report 944, pp. 111-115.

of regulation can eliminate profiteering. A subsidiary but very important reason arises from the fact that the administration of industrial controls must be put in the hands of men who are industrially trained and sympathetic to industry's contentions. It has been pointed out that the present war plans, in an effort to achieve flexibility, leave much to the discretion of those who will administer the wartime machinery.⁷⁶ Therefore their attitude is of particular importance in appraising the present program. But it seems likely that the problem of personnel will figure largely in any program of war control. Because of the stupendous character of war regulation and the constantly changing conditions to be met, there must always be a large degree of administrative flexibility.⁷⁷ Consequently the question of personnel will always be important since the men in charge of such a program can make or break it. Referring to the possibility of checking war profits by taxation, discussion centered on the will or power of the Treasury to enforce tax collections rigorously, and Mr. Baruch testified as follows:

MR. RAUSHENBUSH. It all comes back to the judgment of one man, does it not?
MR. BARUCH. It always has, and particularly in war.⁷⁸

Even if the Government officials are the most able and well-intentioned men available, there is grave doubt as to whether it would be humanly possible for them to accomplish the stupendous task of eliminating profiteering. In the discussion of procurement reference was made to the enormous physical difficulties involved.⁷⁹ The scope of the activities of the general regulatory agencies, such as the War Industries Board, was even greater. The committee has studied the activities of the Board for a representative period from December 10, 1917, to January 10, 1918, and tabulated them as follows:

December 10, 1917: Special meeting to consider steel prices with representatives of the steel industries.

December 13, 1917: (1) Plan from war minerals committee to increase supply of pyrites; (2) arrangements covering royalties for Lewis machine gun patents; (3) compact for power for Muscle Shoals nitrate plant.

December 14, 1917: Special meeting with the copper industry to consider conditions as bearing on possible revision of prices.

December 20, 1917: Royalty agreement with Flurschelm for manufacture of T. N. A.

December 21, 1917: Order for smokeless powder with Aetna Explosives Co.

December 22, 1917: Price fixing of steel.

December 24, 1917: Price fixing of steel.

December 28, 1917: Price fixing of steel.

January 2, 1918: (1) Attitude of Swiss manufacturers; (2) order for 30,000,000 pounds of smokeless powder from the Hercules Powder Co.; (3)

⁷⁶ See p. 31, supra.

⁷⁷ In this connection note the following testimony:

Is it not important to have a large amount of flexibility in wartime contracts to take care of changing conditions and other exigencies of wartime?

Lieutenant Colonel HARRIS. It is important for the Government particularly to have flexibility in contracts to meet changing conditions; yes, sir.

Mr. HISS. I meant the Government.

Lieutenant Colonel HARRIS. Yes, sir.

Mr. HISS. That puts an increased responsibility upon the personnel involved in supervising the contractual relations; does it not?

Lieutenant Colonel HARRIS. It adds to the heavy responsibility they are already carrying; yes, sir. (Senate Munitions Committee Hearings, Part 16, p. 3991.)

⁷⁸ Senate Munitions Committee Hearings, Part 22, p. 6332.

⁷⁹ See p. 19, supra.

action to secure necessary raw materials for explosive program; (4) request for assistance in securing explosives from Ordnance Department; (5) cooperation of Allies.

January 4, 1918: (1) Crude TNT explosives; (2) price fixing of nickel.

January 9, 1918: (1) Price fixing of copper; (2) price fixing of aluminum.

January 10, 1918: Price fixing of aluminum.⁸⁰

In the short period of a month this board of five men⁸¹ considered and made vital decisions on 15 problems of very different character and great complexity. The single problem of fixing steel prices could have occupied all their time and effort over the whole period. It is at least open to question whether they could thoroughly safeguard the public interest in dealing with these problems under such circumstances.

It must be remembered that the Board had to meet the representatives of various industries one after the other. These business men were thoroughly familiar with their own trade and its sometimes very intricate characteristics. The Government officials could not hope to match this knowledge in the way necessary to protect the Government, especially in view of the limited time at their disposal. The Graham Committee described this situation as follows:

In the matter of the production of copper as in all other industries and trades, the various cooperative committees who were appointed were selected, not by the Government, but by the respective trades and interests, and, as naturally would be expected, these gentlemen had in mind the condition of their various trades and were supposed and expected to represent them in their various transactions with the Government. On the other hand, on the part of the Government, there was no one who knew anything about the various trades or interests involved, excepting in the most casual and fragmentary way, and this condition continued to a very considerable extent throughout the entire war and certainly throughout the war so far as the purchases of copper were concerned.⁸²

These considerations indicate the difficulties facing Government officials no matter how conscientious they are. But these officials must and will be drawn from the very groups whose activities they are to regulate. They will be business men themselves. This is true of practically all the various war agencies.

It is true of the procurement organization.

Regular Army officers are too few in number to procure the vast amount of material needed by the Army in war, and the majority of the positions in procurement organization will be filled by others.⁸³

The Army has commissioned a large group of reserve officers attached to the various procurement branches. It selects "experienced business men for this purpose."⁸⁴ The then Secretary of War, Mr. Patrick J. Hurley, stated before the War Policies Commission that—the plan now set up by the War Department for purchasing supplies in an emergency will be operated almost entirely by those industrialists.⁸⁵

The Government must depend upon men with industrial connections for the "highly specialized contracting, inspecting, and fiscal services",⁸⁶ necessary for war procurement. No other men have the necessary training and experience. For example, when the Ordnance

⁸⁰ Exhibit No. 1271, Senate Munitions Committee Hearings, Part 15.

⁸¹ Exclusive of the Army and Navy representatives.

⁸² Quoted in Senate Munitions Committee Hearings, Part 17, p. 4391.

⁸³ Testimony of General MacArthur before War Policies Commission Hearings, p. 367.

⁸⁴ Ibid., p. 68.

⁸⁵ Ibid., p. 68.

⁸⁶ Army Extension Courses, special text no. 229, p. 7.

Department wanted a reserve officer who could take over matters pertaining to tractors and motorization of artillery, they naturally turned to General Motors Corporation and proposed to make one of its officials a colonel in the Ordnance Reserve for this purpose.⁸⁷

In addition to the ordinary reserve officers there are a number of prominent industrialists who are given official positions in the planning and procurement organization as district chiefs of ordnance and members of the ordnance district advisory boards.⁸⁸ For example, the following are members of the advisory board for the New York district:

Patrick E. Crowley, president New York Central Lines; J. M. Davis, president Delaware, Lackawanna & Western Railroad; John I. Downey, vice president Bankers Trust Co.; Malcolm Muir, president McGraw-Hill Publishing Co.; Gen. James G. Harbord, president Radio Corporation of America; William C. Dickeman, president American Locomotive Co.; B. L. Winchell, chairman Remington Rand, Inc.; Owen D. Young, chairman General Electric Co.; James A. Farrell, former president United States Steel Corporation; Hon. Nathan L. Miller, of the law firm of Hornblower, Miller, Miller, and Boston.

The following for the Philadelphia district:

Samuel M. Vauclain, chairman of board, Baldwin Locomotive Works; W. W. Atterbury, president Pennsylvania Railroad; George Horace Lorimer, editor Saturday Evening Post; Josiah Penniman, president University of Pennsylvania; Charles R. Richards, president Lehigh University; A. Atwater Kent, president Atwater Kent Manufacturing Co.; Irénée du Pont, president E. I. du Pont Co.; Eugene G. Grace, president Bethlehem Steel Co.⁸⁹

A chart appearing as Exhibit No. 1336, Senate Munitions Committee Hearings, Part 16, indicates the industrial connections and sources of income of important procurement officials during the war period. It indicates how completely the procurement organization was controlled by men sympathetic to industry.

The general regulatory agencies, the War Industries Board or Administration, and the Price-Fixing Committee, will also be composed of business men. The industrial mobilization plan states that it is necessary for "a special organization to be made available to the President promptly upon the outbreak of the war."⁹⁰ The essence of this organization consists of a director of war industry "assisted by an industrial advisory board composed of a few prominent industrialists, all selected by the President."⁹¹

Mr. Baruch has described the organization thus:

Our industry must at last analysis mobilize itself. * * * It is a spontaneous sort of function utterly inappropriate to any imaginable form of bureaucratic organization.⁹²

There are indications that planning as to the industrial personnel for this general organization have taken even more definite shape. The War Policies Commission stated:

It is contemplated that in the event of war civilians will be brought into the war organization in great numbers. It is expected that these civilians will include the most able men in American industry.

The War Department recognizes this contingency and provides for a continuous contact with leading industrialists during peacetime. But the War Department plan does not go far enough. Up to this time its selections

⁸⁷ Senate Munitions Committee Hearings, Part 15, p. 3656.

⁸⁸ *Ibid.*

⁸⁹ Senate Munitions Hearings, Part 16, p. 4016. See exhibit 1340 for complete list of the members of the district advisory boards.

⁹⁰ P. 13 of Industrial Mobilization Plan, italics added.

⁹¹ Testimony of General MacArthur, War Policies Commission Hearings, p. 370.

⁹² War Policies Commission Hearings, p. 38.

necessarily are from men in industry who are known personally to those who do the selecting. Industries as a whole, or through their national organizations, are not consulted as freely as they should be.⁹³

The War Department has stated that the selection of a War Industries Board "will be facilitated by the preparation and keeping up to date in time of peace of a list of names of men with the special qualifications necessary. A program of this description is now being initiated by the Department, and in which the cooperation of national industrial associations and other Government agencies will be sought."⁹⁴

A chart giving the same information for officials of the general regulatory war agencies as is given by the one referred to above for the procurement officials appears as Exhibit No. 1338, Senate Munitions Committee Hearings, Part 16.

Since the industrial connections of the Government officials are so widespread and important, it is inevitable that in some cases individuals will engage in activity affecting the profits of corporations in which they have a direct financial interest. This applies to both procurement and price fixing.

Lt. Col. William Williams as a contracting officer of the Ordnance Department signed contracts with subsidiaries of the du Pont Co. while at the same time he was a stockholder in that company.⁹⁵ The ordnance district advisory boards, composed for the most part of officials of prospective contracting corporations, have been advisers of the War Department in the shaping of the planning program.⁹⁶ The following testimony referring to the use of these boards as advisers on war-time contract forms is significant:

Senator CLARK. Yes; but I understand that a committee or a body has been created to advise the Government as to what they should accept and what they should not accept.

Lieutenant Colonel HARRIS. No, no; to advise the Government what they think.

Senator CLARK. What they think as to what they should accept and what they should not accept.

Lieutenant Colonel HARRIS. Yes, sir.

Senator CLARK. It comes back to that. Now, how can one man sit on one side of the table as an adviser of the Government and on the other side of the table as an officer of an interested company, either as stockholder, director, or paid employee, and at the same time exercise the same disinterested view as to both bodies? Do you not see a conflict of interests there?

Lieutenant Colonel HARRIS. I can see the point you are making, Mr. Senator.⁹⁷

It has been already noted that due to criticism from these industrialists the War Department has agreed to reconsider contract forms which it had previously approved.⁹⁸

Mr. Eugene Meyer, who was chief of the nonferrous metals section of the War Industries Board, and in that capacity had considerable to do with fixing the price of copper, received a large proportion of his income during the war years in the form of dividends from his holdings of stock in copper companies.⁹⁹ At least in the

⁹³ H. Doc. No. 271, 72d Cong., 1st sess., p. 32.

⁹⁴ War Policies Commission Hearings, p. 370.

⁹⁵ Senate Munitions Hearing, Part 16, pp. 4002 and 4012. Sec. 41 of the Criminal Code forbids such action. See also, p. 4031.

⁹⁶ Senate Munitions Hearings, Part 16, p. 3996.

⁹⁷ Senate Munitions Hearings, Part 16, p. 3997.

⁹⁸ See p. 13, *supra*.

⁹⁹ Exhibit 1338, Senate Munitions Committee Hearings, Part 16. See also report of Graham committee quoted in Senate Munitions Hearings, Part 17, p. 4391.

early months of the war, a group of prominent business men from each important industry were engaged in selling to the Government and at the same time were advising it as to "the question of fair prices and suitable methods for making equitable distribution of Government orders" in their industry as members of the commodity committees of the Council of National Defense.^{99a} This arrangement was subjected to so much criticism, particularly from the firms not represented on the committees, that a change had to be made.¹

Two organizations were created, one to represent the industry and the other the Government, but, as has been indicated, the Government representatives came from the industries and maintained many of their industrial connections.²

The War Department has stated that it is opposed to permitting Government officials to engage in activities directly affecting corporations in which they are financially interested.³ This opposition can affect only procurement officers and does not touch the general regulatory officials. Furthermore, it will be extremely difficult to prevent completely even such flagrant actions as an officers' signing contracts with his own company. There is bound to be considerable confusion in the procurement organization due to the war. Men must be accepted from wherever they are available and assigned to whatever they are needed. The War Department estimates that about 6,800 additional officers will be needed to carry on the procurement activities. Yet after 16 years of planning only about 2,300 have been commissioned as reserve officers.⁴ Industry does not recognize the necessity for this separation of financial interest. Mr. P. S. du Pont wrote during the war:

We have been somewhat disturbed over section 3 of the Lever Food Act, which forbids any person acting either as a voluntary or paid agent in the employ of the United States in any capacity where he has in any sense a pecuniary interest in contracts or belongs to any firm or company directly or indirectly interested in contracts. We assume, however, that as the Government has requested of this company assistance in the way of men, this difficulty can be overcome so that it will not subject either the company or these men to criticism.⁵

Lieutenant Colonel Harris testified as to the difficulty of getting men who would not be financially interested in the companies they were dealing with as follows:

It would be very difficult to get a group of responsible, intelligent, and able men and not have them own something that is involved in the form there.⁶

Even if no Government officials actually sign contracts with corporations in which they own stock, the problem of their pecuniary interest and its effect on their attitude still remains. It is in evidence that in the last war many of them, both in the procurement and the general organizations, received considerable income in the form of dividends from corporations.⁷ The activities of the Government which these men were directing vitally affected the profits of these

^{99a} Senate Munitions Committee Rept. No. 944, p. 75.

¹ Final Report of the War Industries Board, p. 21.

² See Exhibit No. 1338, Senate Munitions Committee Hearings, Part 16.

³ General MacArthur's testimony before War Policies Commission Hearings, p. 367. See also testimony of Lieutenant Colonel Harris, Senate Munitions Hearings, Part 15, p. 3624.

⁴ Senate Munitions Hearings, Part 15, p. 3657.

⁵ Ibid.

⁶ Senate Munitions Hearings, Part 16, p. 4009.

⁷ See Exhibits Nos. 1336 and 1338, Senate Munitions Committee Hearings, Part 16.

companies. It would be contrary to both their self-interest and their root convictions for them to do anything calculated drastically to curtail these profits.

Even if these officials should not receive income from the war profits they still remain interested in the welfare of their companies, since in many cases they will return to them after the war. Col. William C. Spruance left the du Pont Co. in December 1917, to become an officer in the Ordnance Department and returned to it in February 1919.⁸ It was generally recognized in the company that his absence would be only temporary. Mr. Pope Yeatman was an engineer with the Guggenheim copper interests prior to the outbreak of the war. After his work with the nonferrous metals section of the War Industries Board, he returned to this same position.⁹

If the technical experience of these men is to be of value to the Government, they must be assigned to work with the industries from which they come and with which their financial connections lie. It was testified that in the last war officials were so used.¹⁰

The attitude with which the Government officials approached their problems is illustrated by certain statements of Mr. Robert Brookings, chairman of the price-fixing committee. At a meeting with the representatives of the nickel producers to consider fixing the price for nickel, he stated:

Of course we know that our war needs have enormously increased the consumption of nickel. The Navy program and the Army program have required nickel for alloying certain steel and has doubled your production and has, of course, enormously increased your profits. We are not in an attitude of envying you your profits; we are more in the attitude of justifying them if we can. That is the way we approach these things.¹¹

He told the copper producers that when an increase in the price of copper seemed likely, the price-fixing committee had attempted to postpone large orders by the Government so that the companies would get the benefit of the higher rather than the lower price.¹²

The influence of such an attitude upon the attempt to eliminate profiteering has been made clear in the many references above to the history of the war years. This influence may be illustrated again here by an example from each of the three control measures—procurement, price fixing, and taxation.

Mr. Edward R. Stettinius was a partner in the firm of J. P. Morgan & Co. all during the war. He was in charge of the purchasing of munitions which that firm carried on for the Allies from 1915 on.¹³ In this capacity he had extensive business dealings with the du Pont Co. which sold most of the powder bought by the Allies in this country.¹⁴ After the United States entered the war, Mr. Stettinius became Second Assistant Secretary of War. In this capacity he had supervision over the Old Hickory contract between the Ordnance Department and a subsidiary of the du Pont Co.¹⁵

⁸ Exhibit No. 1336, Senate Munitions Committee Hearings, Part 16.

⁹ Senate Munitions Hearings, Part 22, p. 6318.

¹⁰ Testimony of Lieutenant Colonel Harris, Senate Munitions Hearings, Part 15, p. 3656.

¹¹ Senate Munitions Hearings, Part 15, p. 3711.

¹² *Ibid.*, p. 3712.

¹³ Exhibit No. 1336, Senate Munitions Committee Hearings, Part 16.

¹⁴ For sales of powder to the Allies by the du Pont Co., see Senate Munitions Hearings, Part 14, p. 3209.

¹⁵ Senate Munitions Hearings, Part 15, p. 3542.

It was this contract which was delayed 3 months by the refusal of the du Pont Co. to accept the liberal terms offered them by the Government and which afforded a profit of \$1,961,560 after only a few weeks of operating the plant.¹⁶

The International Nickel Co. has a monopoly on nickel production in this country. The War Industries Board fixed a price for nickel which was more than twice as great as the company's costs. This price was never changed. The company made a profit of 23 percent on its invested capital for the year ended March 31, 1918.¹⁷

When the question of revising the price downward came up, the opinion of Mr. Pope Yeatman,¹⁸ chief of the nonferrous metals section of the Board, naturally carried great weight. He recommended against any revision because the 10 percent profit on investment allowed in the Federal Trade Commission figures was too small, because before the war prices almost as high as the price fixed had been received, and because "there has been nothing savoring of profiteering" even though these pre-war prices also were double the costs.¹⁹

During the war Mr. L. C. Gratton was secretary of the copper producers' committee. After the war he entered the Bureau of Internal Revenue as an expert valuing copper properties. His valuations were later characterized by the Bureau as being too high.²⁰

¹⁶ See pp. 35-36, supra.

¹⁷ Senate Munitions Committee Report No. 944, Part 2, p. 17. The percentage profit is according to the final determination of the Bureau of Internal Revenue.

¹⁸ See Exhibit No. 1338, Senate Munitions Committee Hearings, Part 16.

¹⁹ Exhibit no. 1749, Senate Munitions Hearings, Part 22, p. 6595.

²⁰ Senate Munitions Hearings, Part 22, p. 6319 et seq.

V. THE POSITION OF LABOR IN WAR

The committee wishes to turn now from the discussion of attempts to limit war profits and inflation in order to consider briefly two special fields of war regulation contemplated by the War Department planning. First, the problem of the position in which labor will find itself in the event of war is just as important as the problems pertaining to industry.

1. ORGANIZATION AND PERSONNEL OF WAR-TIME LABOR CONTROL

The Industrial Mobilization Plan provides for the creation of an "Administration of War Labor" to deal with labor problems.^{20a} This organization is to be independent of the Labor Department and other peacetime agencies affecting labor. Such functions as the placement of workers in jobs and the conciliation of industrial disputes normally exercised by the peace-time agencies are to be transferred to it.²¹ As a reason for this transfer the plan states that—

Several of the more important departments exist to serve particular classes, both in peace and war. It would be unfair to expect them to exercise emergency restrictive control over the people that they were created to serve.²²

This seems to indicate that in time of war placement and conciliation are to be carried on with less attention to the interests of labor than in peacetime.

The Administrator of War Labor "should be an outstanding industrial leader."²³ He is to be assisted by a deputy nominated by himself who presumably would also be an industrialist. He will be assisted in the control of labor by the labor division of the War Industries Administration. This body is composed primarily of men chosen by the industrialists heading the general control agencies or the military departments. There is no provision for a single direct representative of labor, either organized or unorganized, on it.²⁴

This agency is to deal with some of the most important differences of interest of modern times and is to have powers vitally affecting the well-being of millions of working people. Yet, as planned, it is completely dominated by one party in the case—the employer side. It is not planned to offset this by representation of the labor side in positions of authority or even to include neutral individuals representing the public.²⁵ Such an organization may be very antagonistic to aims with which labor is concerned. For example, of the five representatives of employers on the National

^{20a} Industrial Mobilization Plan, p. 34.

²¹ *Ibid.*, p. 44.

²² *Ibid.*, p. 13.

²³ *Ibid.*, p. 35.

²⁴ *Ibid.*, p. 27. See also Part 17 of Senate Munitions Hearings, pp. 4298-4300.

²⁵ The National War Labor Board of the last war was composed of five representatives each for the employers and for the American Federation of Labor and two for the public. Final Report of the War Industries Board, p. 85.

War Labor Board of the World War, only one had ever dealt with labor unions in his business.²⁶

The only representation for labor provided in the plan is in connection with an advisory council for the labor administrator. This is to be composed of five representatives for industry and the same number for labor. Final authority rests with the "prominent industrialist" who is to be the administrator rather than with the advisory board. And there is a strong possibility that whatever influence the board may have will be nullified. The matters with which it will be concerned, such as collective bargaining, labor disputes, wage rates and hours, are extremely controversial. Experience under the N. R. A. shows that settlement of such problems may in some cases require a year. In war such delay would be impossible. So if the advisory board should deadlock the administrator would have to settle such issues himself. Colonel Harris testified on this point as follows:

Senator CLARK. In other words, Colonel, is there not the strongest kind of probability that while this 50-50 council is considering these very much controverted questions, that the Administrator of Labor will have already decided them, and the head of this department, this prominent industrialist, as was stated a while ago, will already have put them into operation?

Lieutenant Colonel HARRIS. The Administrator will undoubtedly, if he finds it is holding up.²⁷

2. REGULATION OF LABOR ACTIVITY

As has been pointed out, the Industrial Mobilization Plan provides for a general draft law.²⁸ Under this law every male person in the country over 18 must be registered with the draft authorities.²⁹ All able-bodied male citizens between the ages of 18 and 45 are made members of an "unorganized militia" and as such are liable to military service.³⁰ What particular individuals in this militia are to be drafted into the armed forces depends largely on the system of "deferments." Local draft boards will classify men as those available for immediate draft and those whose induction into the armed forces is deferred for one reason or another.³¹ The War Department has stated that "a deferment once made is not final * * * and any man can be reclassified and called when circumstances require."³²

This system gives the war-time authorities a powerful influence on the activities of private individuals, particularly workers. Under the principle of "work or fight", which was invoked during the final months of the last war,³³ they can largely determine where men whose draft has been deferred are to work. Mr. Baruch has described the work-or-fight order as saying to these men:

No matter what the grounds for your deferment may be, unless you are faithfully, continuously, and usefully employed in a capacity and for an enter-

²⁶ Ibid.

²⁷ Senate Munitions Hearings, Part 17, p. 4303.

²⁸ Industrial Mobilization Plan, p. 81.

²⁹ Ibid., sec. 2.

³⁰ Statement of General MacArthur before War Policies Commission, Hearings, p. 358.

³¹ Ibid., p. 359. The chief reasons for deferment contemplated by the Army are "industrial and humanitarian."

³² Ibid., p. 360.

³³ Ibid., p. 44.

prise determined by the Government to be essential to the prosecution of the war, your deferment will be canceled and you will immediately be called for service with the colors.³⁴

He has said that the Government—

can go much further. It can say that if a man be called and found unfit for military service but fit for other work in the essential lists (of industries), he must so employ himself or be cut off from rations, transportation, fuel, and supplies.³⁵

He favors the use of this principle in the next war and states that it "is capable of immense expansion."³⁶

The committee believes that if the work-or-fight principle is authorized by law, along with a draft act such as the War Department contemplates, then this country will have for all practical purposes a draft of labor. The military and industrial authorities are interested in two things in connection with labor—an adequate supply of workers in the jobs where they are needed and continuity of employment with no stoppage of work.³⁷ Under the above set-up they can achieve these aims. They cannot perhaps order every individual to work at a particular job picked out for him specifically but they can order him not to work in certain industries and they can specify certain industries in which available men must be employed if they want to stay out of the Army. If they refuse to allow men to remain idle at all, as they would have a right to do, then workers would have to accept the particular jobs indicated to them by the Government, since even in war, it requires some time for a man who has just lost one job to find another without assistance. Furthermore, the Government authorities could break any strike simply by canceling the deferments of the strike leaders and as many of their men as necessary and drafting them into the Army.³⁸

Mr. Baruch has said that the work-or-fight plan is even more effective than the draft of labor in achieving the aims of war control of labor.

The draft of men for industrial employment is not only impossible; it is wholly unnecessary. The work-or-fight method is a better way. It is compatible with our institutions and far more effective than any chain-gang or impressment that could be invented.

There is no doubt that in any future emergency there must be just such a control of human effort as has here been suggested. The productive effort of war must be very much greater than the productive effort of peace, and it must be made at a time when the very cream of the country's physical manpower is being withdrawn by millions from productive effort. Such vast demands can be met only if everybody goes to work.³⁹

³⁴ Ibid., p. 44.

³⁵ Ibid., p. 45.

³⁶ Industrial Mobilization Plan, p. 35.

³⁷ Ibid.

³⁸ Mr. Raushenbush, after outlining the work-or-fight proposal, asked Lieutenant Colonel Harris: " * * * doesn't that mean that if any labor leader or representative decides that the wages of his people are insufficient for a decent living and calls a strike, if he and his men are not continuously employed, then under a work-or-fight order as described by Mr. Baruch, that labor leader and such of his men as the Government may see fit to take will be immediately called to service with the colors?"

"In other words, here is a provision for breaking strikes by having the Government in the heat of the war pressure take whatever men are not continuously employed and send them into the Army immediately." Lieutenant Colonel Harris did not consider himself qualified to answer this question for the War Department. Senate Munitions Hearings, Part 17, p. 4316-7. See also, pp. 52, 53 infra.

³⁹ War Policies Commission hearings, p. 45. Mr. Baruch testified before this committee that he believed there was a difference between the work-or-fight order and the draft of labor. Senate Munitions Hearings, Part 22, p. 6420.

Even if there should be no specific legislative authorization for this sort of control, it is still quite possible that labor's freedom of action may be severely limited. Considerable restrictive control may be achieved through the functioning of the selective-service system.

The Honorable David Lloyd George, war-time Premier of Great Britain, has stated that there was no need for special legislation to control British labor after general conscription was put into effect.⁴⁰ In this country, as has been pointed out, there will be considerable flexibility as to who is drafted and who is deferred under the War Department's selective-service law. The decisions on this point are entirely in the hands of the draft authorities. "With 5,000 local boards engaged in selecting fighting men, mistakes are to be expected."⁴¹

It will be quite possible for these draft boards to use their power of canceling deferments for the purpose of regulating the activities of workers in the same manner as under a work-or-fight bill, the only difference being that the real reasons for the cancelations will not be officially recognized. Especially will this be true if the personnel of the draft boards is like that of the other war agencies in being composed mainly of men sympathetic to the employer's point of view.⁴²

Further possibilities of control are recognized by the Industrial Mobilization Plan. It describes the employment service which is to be a part of the War Labor Administration as follows:

This service is an operating agency. Its function is to bring the job and the worker together.

The operations of this service differ materially from the operations of similar services in peacetime, in that ordinarily the latter do not mobilize labor for a particular purpose. Peacetime employment services merely direct an applicant to a probable market for his labor and there the applicant must both sell and prove himself.

In wartime this lost motion should be avoided and the employment service must know the applicant's qualifications, as the result of tests or otherwise, and the certainty of the existence of the job before assigning him.⁴³

This indicates that once a worker has presented himself to this Government agency as unemployed, he must accept the job to which they "assign" him.⁴⁴ The discussion of deferment has shown the extent to which pressure can be put upon workers to force them into this Government employment system.

These proposals in the plan are aimed at, among other things, "the prevention of unethical competition for labor by war industries."⁴⁵ Depending upon the interpretation given to "unethical", this might go so far as to prevent any attempt by employers to attract labor through raising wages.⁴⁶ It is also proposed to minimize "excessive migrations of labor."⁴⁷ In the last war the committee of coal operators attempted to do this by plans designed to reduce labor turnover among miners.⁴⁸ If such proposals are

⁴⁰ War Memoirs of David Lloyd George, vol. 4, p. 192.

⁴¹ Statement of General MacArthur, War Policies Commission Hearings, p. 360.

⁴² See pp. 39-46, supra, for a discussion of the general problem of personnel.

⁴³ Industrial Mobilization Plan, pp. 40-41.

⁴⁴ See Senate Munitions Hearings, Part 17, pp. 4296-4297.

⁴⁵ Industrial Mobilization Plan, p. 12.

⁴⁶ See Senate Munitions Hearings, Part 17, p. 4308.

⁴⁷ Industrial Mobilization Plan, p. 12.

⁴⁸ Lorwin, L. L., "The American Federation of Labor", p. 156. The efforts of the operators failed due to the strong protest from the powerful miners' union.

effective they may seriously limit the right of workers to change their jobs in search of higher wages.

There are two primary ways in which the naturally weak position of labor as compared with that of employers may be strengthened. One is Government legislation, such as the Adamson 8-hour-day law for railroad workers or the wage and hour provisions of the N. R. A. codes. It was the opinion of a group of student officers delegated at the Army Industrial College to study the war plans in the light of the changes brought about by the N. R. A., that while in general planning had been facilitated by N. R. A., "undoubtedly such provisions of emergency codes as apply to maximum hours of labor and minimum wages would have to be scrapped."⁴⁹ There may be a strong movement to eliminate legislative provisions favorable to labor in the next war.

Labor's second means of improving its position is through labor organizations and collective bargaining. Undoubtedly labor unions gain in a war period. The American Federation of Labor increased its membership considerably in 1917 and 1918. It should be noted, however, that the greatest increase came after the war and that much of the war and post-war gain was only temporary.⁵⁰ Moreover, there are certain considerations which prevent labor from taking full advantage of war opportunities and which curtail the protection which unions might give.

The necessity for increased production may bring the Government into conflict with organized labor. The Industrial Mobilization Plan provides that the War Labor Administration shall consider the question of—

Maintenance of maximum production in all war work, and the suspension for period of the actual emergency and a reasonable adjustment thereafter of all restrictive regulations not having the force of law which unreasonably limit production.⁵¹

This might include the abrogation of union contracts pertaining to wages, hours, and conditions of work. In an effort to hurry production the War Department undertook in the last war to allow contractors for cantonments to hire nonunion labor. This stand was modified following a protest from the American Federation of Labor.⁵²

Labor organization by itself does not guarantee the worker his rights in a war-time situation. Much depends on what use is made of the organization. In war, labor unions may not be as militant in seeking to gain their ends as they are in peace. Labor leaders

⁴⁹ Senate Munitions Hearings, Part 17, p. 4307.

⁵⁰ The war and immediate post-war membership record of the American Federation of Labor is as follows:

Year	Average annual membership	Increase (+) or decrease (—) over preceding year	
		Membership	Percentage
1916.....	2,072,702	-----	-----
1917.....	2,371,434	+298,732	+14.4
1918.....	2,726,478	+355,044	+15.0

⁵¹ Industrial Mobilization Plan, p. 36.

⁵² Lorwin, op. cit., pp. 157-158.

are particularly subject to the patriotic pressure of war time.⁵³ Samuel Gompers, president of the American Federation of Labor during the World War, in the spring of 1917 called a conference of both labor and industrial leaders which reached an agreement that "neither employers nor employees shall endeavor to take advantage of the country's necessities to change existing standards."⁵⁴ As a result the Washington labor leaders ceased to push organizing campaigns⁵⁵, as vigorously as they might otherwise have done, according to some who also hold that if it had not been for the activities of the rank and file, the situation in industrial relations might have become frozen and labor would have gained much less from the war. The officers of the Federation "put aside their roles of organizers and strike leaders to become conciliators and mediators."⁵⁶

This question of patriotic pressure has an important bearing on the use of labor's most fundamental means of gaining its demands—the strike. A strike by labor cannot be secret like those strikes by industry discussed above.⁵⁷ It will be open and subject to public scrutiny. This fact is bound to reduce the readiness of labor leaders to resort to strikes in war.

Even if labor does feel it necessary to resort to strikes, there is no guarantee that it will be free to do so. In Great Britain the right to strike was abridged by law.⁵⁸ In this country one of the principles adopted by the Labor Conference Board was that "there should be no strikes or lockouts during the war."⁵⁹ The War Department has said that problems—

that arise from differences between employers and employees * * * can be minimized by foreseeing and wherever possible *forestalling such disputes.* * * *

If a strike should break out, ways of dealing with it are available to the Government authorities. It has been pointed out that the deferment system of the general draft act, either with or without a work or fight bill, constitutes a tremendously effective strike-breaking weapon.⁶¹ It is also possible for the military authorities to take soldiers in uniform, order them to work for private employers, and break a strike in this fashion. According to the minority report of the Graham Committee, soldiers were set to work in this manner in the lumber mills of the Pacific Northwest during the last war with the knowledge of Mr. Gompers and the Secretary of War.⁶² Mr. Howard Coffin testified regarding this incident before the War Policies Commission as follows:

Mr. COLLINS. Now you spoke about labor. What do you think about the Government drafting about twice as many men as it needs and then taking those that it does not need for strictly fighting purposes and using them as labor?

Mr. COFFIN. Entirely impractical, except in some specialized instances, as, for instance, our timber situation in the Northwest. That was a situation that,

⁵³ For a consideration of the ability of certain employers to resist patriotic pressure, see p. 35 ff. *supra*.

⁵⁴ Final Report of the War Industries Board, p. 83.

⁵⁵ Lorwin, *op. cit.*, 161.

⁵⁶ *Ibid.*, p. 170.

⁵⁷ See p. 35 ff., *supra*.

⁵⁸ War Memoirs of David Lloyd George, vol. 4, p. 179.

⁵⁹ Final Report of the War Industries Board, p. 357.

⁶⁰ Army Extension Courses, Special Text No. 229, p. 63. *Italics added.*

⁶¹ See p. 49, *supra*.

⁶² Senate Munitions Hearings, Part 17, p. 4318.

late in 1917, had to be met in just that way, and it probably was the wisest way to meet it.

Mr. COLLINS. You believe that in certain circumstances?

Mr. COFFIN. Where a condition of alien activity existed which could not be overcome in any other way.⁶³

The attitude of military men may be hostile to strikes even in peace. According to testimony before the committee, a Captain Williams of the Navy was sent up to Camden in connection with a strike then in progress at the plant of the New York Shipbuilding Corporation. He was reported to have "intimated very strongly" to labor officials that unless the strikers returned to work upon the company's terms, the Navy would remove an unfinished cruiser from the yard.⁶⁴

(3.) THE CONTROL OF WAGES AND THE RELATIVE SHARE OF LABOR IN WAR PROSPERITY

The Industrial Mobilization Plan clearly contemplates control over wages in the next war. Among the points to be considered by the War Labor Administration are "standards of wages, hours of labor, and working conditions."⁶⁵ The actual control over wages is delegated to the price-control committee.⁶⁶ Mr. Baruch has specifically recommended the fixing of all wages.⁶⁷ A determined effort to keep wages down is possible in the next war. If the methods of preventing labor from protecting its rights described above⁶⁸ are employed, it may be successful. The committee has pointed out that any effort to prevent a wartime rise in prices and profits is unlikely to be effective.⁶⁹ If wages should be stabilized and there should be a wartime increase in the cost of living, the position of labor would become intolerable.

Even under the relatively mild control of the last war, the gains of labor did not reach such phenomenal heights as is commonly supposed. To a large extent, increases in money rates of wages were wiped out by increases in the cost of living. The following figures illustrate this fact:

Average annual earnings of employed wage earners in all industries

Year	Money earnings	Real earnings	Year	Money earnings	Real earnings
1914.....	100	100	1917.....	130	101
1915.....	100	102	1918.....	163	104
1916.....	111	104	1919.....	187	105

¹ Douglas, Paul, *Real Wages in the United States, 1896-1926*, p. 391. Bureau of Labor Statistics computations, similar results. See U. S. Bureau Labor Statistics Monthly Review, vol. 32, p. 145.

While money earnings increased 87 percent from 1914 to 1919, real earnings increased only 5 percent. Wages are one of the slowest

⁶³ War Policies Commission Hearings, p. 306.

⁶⁴ Senate Munitions Committee Report on Naval Shipbuilding, pp. 385-386.

⁶⁵ Industrial Mobilization Plan, p. 36.

⁶⁶ *Ibid.*, p. 64.

⁶⁷ War Policies Commission Hearings, p. 34.

⁶⁸ See p. 52, *supra*.

⁶⁹ See Senate Munitions Committee Report No. 944, Part 2.

elements in the economy to rise during a war inflation, and they never do go up nearly as high as prices.⁷⁰

Special studies undertaken by the committee indicate that wages increased much less than salaries and profits. Charts showing the wage rates, salaries, and profits during the war period of certain major industrial companies⁷¹ appear in the appendix on pages 57-61. These data show variations among the companies, but in each case the inflation in salaries or profits came first and was greater than that in wages.

Labor actually lost ground to management during the war period as regards shares in the national income. The following table illustrates this fact:

Estimated percentages of the entire realized income of the people of the United States obtained from various sources

Year	Share of property owners	Salaries	Wages
1914.....	48.06	16.30	34.77
1915.....	47.96	15.93	35.26
1916.....	48.09	14.73	35.18
1917.....	49.73	14.93	34.56
1918.....	46.49	18.59	13.79

¹ King, W. I., *The National Income and Its Purchasing Power*, p. 80.

The share of labor was smaller in 1918 than in 1914, while that of management was considerably larger.

⁷⁰ See testimony of John T. Flynn, Senate Munitions Committee Hearings, Part 22, p. 6212 et seq.

⁷¹ Senate Munitions Committee Hearings, Part 22, p. 6617, et seq.

VI. CONTROL OF THE PRESS IN WAR

The committee wishes to point out that under the legislation and administration activity proposed for the next war by the War Department in the Industrial Mobilization Plan, strict control of the press is possible. This may even go as far as censorship. One of the contemplated bills gives the President power to require any business "over which Government control is necessary" to secure a license as a condition of continuing in operation.⁷² Senator Clark raised the following questions concerning the possibility of establishing control of the press, either directly or indirectly, under this bill:

Colonel, without any suggestion that the present President of the United States, or any particular President of the United States would desire to use that bill in time of war, it is perfectly practicable and perfectly feasible under that section for absolute control of the press of the United States to be established, is it not?

Lieutenant Colonel HARRIS. If the press is a material resource of the Nation. Senator CLARK. The President is to determine that, according to the first section. All that would be necessary is for the President to declare printers' ink, or white print paper, or Mergenthaler type, as essential in the publication of newspapers, an essential commodity, and, therefore, it would be unlawful to use any of them without a license, would it not?

Lieutenant Colonel HARRIS. He could deprive them of going into the newspaper.

Senator CLARK. That is, any ingenious man, familiar with the newspaper business, could in 2 hours work out 40 different ways to establish a press censorship?

Lieutenant Colonel HARRIS. With the President's approval, I think he could.⁷³

The plan provides for an administration of public relations "on the one hand to control the giving of information to the public regarding matters of military import and, on the other hand, to make known in an authoritative manner such information as it is right and proper that the public should have."⁷⁴ Among the functions of this agency are the following:

To establish rules and regulations for censorship. To enlist and supervise a voluntary censorship of the newspaper and periodical press.⁷⁵

Under the Espionage Act and the Sedition Act of the last war, the Post Office Department suppressed newspapers that "failed to measure up to its standards of propriety and taste."⁷⁶ Similar legislation will probably be passed in the event of a future war.

⁷² Industrial Mobilization Plan, p. 85, sec. 7.

⁷³ Senate Munitions Committee Hearings, Part 16, pp. 3932-3933.

⁷⁴ Industrial Mobilization Plan, p. 45.

⁷⁵ *Ibid.*, p. 46.

⁷⁶ Beard, C. A., *the Rise of American Civilization*, vol. 2, p. 641.

APPENDIX

AMERICAN ROLLING MILL CO.

Date	Wages (per hour)		Salaries and bonuses			Net earnings	Pay roll
	Common labor	Skilled labor	President	Vice president	Secretary		
1914							
First quarter-----	\$0.185	\$0.55	\$17,250	-----	\$11,500	\$363,906.10	\$2,163,530.19
Second quarter-----	.185	.55					
Third quarter-----	.185	.55					
Fourth quarter-----	.185	.55					
1915							
First quarter-----	.185	.55	16,500	-----	11,000	1 555,439.91	2,541,312.33
Second quarter-----	.185	.55					
Third quarter-----	.185	.55					
Fourth quarter-----	.185	.55					
1916							
First quarter-----	.20	.55	56,146	\$28,930	43,430	3,605,560.85	4,443,890.53
Second quarter-----	.22	.605					
Third quarter-----	.22	.605					
Fourth quarter-----	.24	.60					
1917							
First quarter-----	.24	.66	86,636	31,182	53,257	4,408,619.54	6,886,582.02
Second quarter-----	.26	.715					
Third quarter-----	.26	.715					
Fourth quarter-----	.29	.798					
1918							
First quarter-----	.29	.798	55,735	33,536	32,757	2,644,182.91	8,945,267.79
Second quarter-----	.34	.88					
Third quarter-----	.38	.935					
Fourth quarter-----	.38	.935					
1919							
First quarter-----	.38	.935	41,879	21,253	22,189	2,278,104.81	8,083,721.18
Second quarter-----	.38	.935					
Third quarter-----	.38	.935					
Fourth quarter-----	.38	.935					

¹ Fiscal year to June 30 changed to calendar year. Earnings June 30-Dec. 31, 1915, \$836,020.

ATLAS POWDER CO.

Date	Wages (per hour)		Salaries and bonuses			Net earnings	Pay roll
	Common labor	Skilled labor	President	Vice president	Secretary		
1914							
First quarter-----	\$0. 19½	\$0. 36½	\$16,000	\$7,500	-----	\$294,149. 88	\$308,052. 08
Second quarter-----	. 19½	. 36½					
Third quarter-----	. 19½	. 36½					
Fourth quarter-----	. 19½	. 36½					
1915							
First quarter-----	. 19½	. 36½	17,500	9,374. 97	-----	1,705,851. 18	608,580. 01
Second quarter-----	. 19½	. 36½					
Third quarter-----	. 22	. 41					
Fourth quarter-----	. 22	. 41					
1916							
First quarter-----	. 22	. 41	19,499	11,874. 93	-----	2,939,789. 84	1,364,080. 49
Second quarter-----	. 22	. 41					
Third quarter-----	. 25	. 41					
Fourth quarter-----	. 25	. 42					
1917							
First quarter-----	. 25	. 42	56,179. 94	41,200. 00	-----	3,050,481. 31	1,612,862. 99
Second quarter-----	. 27½	. 45					
Third quarter-----	. 27½	. 45					
Fourth quarter-----	. 27½	. 45					
1918							
First quarter-----	. 42	. 57	48,240.00	36,600. 00	-----	2,262,293. 97	2,670,803. 14
Second quarter-----	. 42	. 57					
Third quarter-----	. 42	. 60					
Fourth quarter-----	. 42	. 70					
1919							
First quarter-----	. 42	. 70	69,090. 00	51,600. 00	-----	1,660,089. 02	1,973,656. 90
Second quarter-----	. 42	. 70					
Third quarter-----	. 46	. 77					
Fourth quarter-----	. 46	. 77					

GOODYEAR TIRE & RUBBER CO.

Date	Wages per hour		Salaries		Net earnings	Pay roll
	Common labor	Skilled labor	President	Vice-president		
1914						
First quarter.....	\$0.201	\$0.479	} \$12,000	\$12,000	\$3,274,666.82	\$3,361,636.95
Second quarter.....	.201	.550				
Third quarter.....	.201	.516				
Fourth quarter.....	.200	.513				
1915						
First quarter.....	.202	.440	} 12,000	14,000	4,036,652.07	4,617,569.05
Second quarter.....	.200	.574				
Third quarter.....	.200	.517				
Fourth quarter.....	.201	.550				
1916						
First quarter.....	.201	.520	} 12,000	18,000	5,557,315.08	8,983,829.35
Second quarter.....	.204	.553				
Third quarter.....	.287	.664				
Fourth quarter.....	.288	.550				
1917						
First quarter.....	.341	.594	} 75,000	23,000	10,860,865.29	17,360,947.15
Second quarter.....	.330	.670				
Third quarter.....	.363	.650				
Fourth quarter.....	.370	.693				
1918						
First quarter.....	.442	.712	} 75,000	36,000	8,938,337.80	15,647,286.00
Second quarter.....	.402	.720				
Third quarter.....	.420	.827				
Fourth quarter.....	.430	.837				
1919						
First quarter.....	.489	.891	} 75,000	36,000	15,267,031.39	26,628,767.10
Second quarter.....	.473	.942				
Third quarter.....	.481	.988				
Fourth quarter.....	.517	1.04				

MUNITIONS INDUSTRY

HERCULES POWDER CO.

Date	Wages (per hour)		Salaries and bonuses		Net earnings	Pay roll
	Common labor	Skilled labor	President and chairman of board	Vice president and general manager		
1914						
First quarter.....	\$0.20	\$0.27	\$20,000	\$10,500	{ \$227,251.85 270,148.27 339,266.84 424,682.18	{ (2) (2) (2) (2)
Second quarter.....	.20	.27				
Third quarter.....	.20	.27				
Fourth quarter.....	.20	.27				
Total.....					1,261,349.14	(2)
1915						
First quarter.....	.20	.27	54,800	13,000	{ 454,207.88 804,325.72 1,088,095.69 2,588,613.11	{ (2) (2) (2) (2)
Second quarter.....	.20	.27				
Third quarter.....	3.20	3.32				
Fourth quarter.....	3.20	3.32				
Total.....					4,935,242.40	(2)
1916						
First quarter.....	3.20	3.32	116,600	109,400	{ 4,990,643.41 4,947,813.57 5,060,328.63 4,023,945.29	{ (2) (2) (2) (2)
Second quarter.....	3.22	3.33				
Third quarter.....	3.22	3.33				
Fourth quarter.....	3.22	3.33				
Total.....					19,022,730.90	
1917						
First quarter.....	3.23	3.33	41,600	34,400	{ 2,060,139.34 1,638,879.45 1,183,644.24 1,984,197.04	{ (2) (2) (2) (2)
Second quarter.....	3.25	3.35				
Third quarter.....	4.31	4.43				
Fourth quarter.....	4.31	4.43				
Total.....					6,866,860.07	
1918						
First quarter.....	4.37	4.48	34,000	29,000	{ 1,619,334.87 1,828,975.47 1,922,821.67 2,358,741.78	{ (2) (2) (2) (2)
Second quarter.....	4.37	4.48				
Third quarter.....	.41	.53				
Fourth quarter.....	.41	.65				
Total.....					3,012,390.23	
1919						
First quarter.....	.41	.65	25,000	19,833	{ 146,842.14 340,891.51 664,656.93 562,792.52	{ (2) (2) (2) (2)
Second quarter.....	.41	.65				
Third quarter.....	.41	.65				
Fourth quarter.....	.41	.65				
Total.....					1,715,183.10	

¹ Not supplied.

² Bonuses of 20 percent of wages paid for 2 weeks or more service.

³ Bonuses of 10 percent of wages paid for 2 weeks or more service.

⁴ Red figures.

INTERNATIONAL HARVESTER CO.

Date	Wages (per hour)		Salaries and bonuses		Net earnings	Pay roll (includes salaries)
	Common labor	Skilled labor	General manager	President		
1914						
First quarter.....	\$0. 20	\$0. 375	\$87, 833	\$10, 000	\$11, 725, 826. 10	\$ 27, 265, 565. 67
Second quarter.....	. 20	. 375				
Third quarter.....	. 20	. 375				
Fourth quarter.....	. 20	. 375				
1915						
First quarter.....	. 20	. 375	92, 000	10, 000	10, 676, 435. 57	\$ 26, 321, 160. 55
Second quarter.....	. 20	. 375				
Third quarter.....	. 20	. 375				
Fourth quarter.....	. 20	. 40				
1916						
First quarter.....	. 22	. 45	95, 000	10, 000	12, 782, 159. 84	\$ 33, 665, 690. 95
Second quarter.....	. 25	. 50				
Third quarter.....	. 265	. 50				
Fourth quarter.....	. 285	. 54				
1917						
First quarter.....	. 285	. 54	117, 500	10, 000	14, 009, 593. 33	\$ 45, 517, 144. 90
Second quarter.....	. 315	. 57				
Third quarter.....	. 315	. 57				
Fourth quarter.....	. 35	. 63				
1918						
First quarter.....	. 35	. 67	161, 667	10, 000	14, 985, 325. 12	\$ 55, 127, 103. 85
Second quarter.....	. 37	. 735				
Third quarter.....	. 45	. 81				
Fourth quarter.....	. 45	. 81				
1919						
First quarter.....	. 45	. 81	185, 000	25, 000	12, 608, 726. 30	\$ 61, 179, 936. 95
Second quarter.....	. 45	. 81				
Third quarter.....	. 50	. 86				
Fourth quarter.....	. 50	. 86				

* Includes salaries.

[S. 1716, 74th Cong., 1st sess.]

A BILL To provide further for the national security and defense, and for the purpose of assisting in the prosecution of war, to provide for the creation of a Capital Issues Committee, to define its powers and duties, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall take effect whenever the President shall have approved an Act or joint resolution of Congress declaring war against any nation or recognizing a state of war to exist with any nation and declaring a national emergency to exist.

There is hereby created a committee to be known as the "Capital Issues Committee" (hereinafter referred to as the Committee), which shall be composed of three citizens of the United States appointed by the President. The terms during which the respective members of the Committee shall hold office shall be determined by the President. No officer or employee of the United States, or director of a Federal Reserve bank, or member of the Federal Reserve Board shall be appointed a member of the Committee. Each member of the Committee shall receive a salary of \$7,500 a year, payable monthly. One of the members of the Committee first appointed shall be designated by the President as chairman of the Committee. Two members of the Committee shall constitute a quorum for the transaction of business.

SEC. 2. (a) In order to carry into effect the purposes of this Act and after a date publicly announced by the President, all securities, not specifically exempted by the terms of this Act, shall, prior to their being sold or offered for sale or subscription, be submitted to the Committee under such rules and regulations as the President from time to time may prescribe. After such public announcement it shall be unlawful to sell or offer for sale or subscription any securities not exempted by the terms of this Act which have not been passed upon by the Committee and their sale, or offer for sale or subscription determined by the Committee to be compatible with the national interest.

(b) The Committee shall, under rules and regulations to be prescribed by it from time to time, investigate, pass upon, and determine whether it is compatible with the national interest that there should be sold or offered for sale or for subscription in the United States, any issue or any part of any issue of securities, foreign or domestic, hereafter issued by any government or other body politic, or by any individual, partnership, corporation, or association (except securities issued by the Government of the United States or any corporation in which the United States or its representatives shall own the entire outstanding capital stock), the total or aggregate par or face value of which issue, and any other securities issued by the same Government, body politic, individual, partnership, corporation, or association since the enactment of this Act, is in excess of \$100,000. Shares of stock without nominal or par value shall, for the purposes of this section, be deemed to be of the par value of \$100 each. Any securities which upon the date of the enactment of this Act are in the possession or control of the Government, body politic, individual, corporation, or association issuing the same shall, for the purposes of this section, be deemed to have been issued after the enactment of this Act.

(c) Nothing in this section shall be construed to authorize the Committee to pass upon (1) any borrowing in the ordinary course of business as distinguished from borrowing for capital purposes, (2) the renewing or refunding of indebtedness existing at the time of the enactment of this Act, or (3) the resale of any securities the sale or offering of which the Committee has determined to be compatible with the national interest.

(d) Nothing done or omitted to be done by the Committee under this section shall be construed as carrying the approval of the Committee or of the United States of the legality, validity, worth, or security of any such securities.

(e) The term "securities", as used in this section, includes shares and certificates of stock, bonds, debentures, notes, certificates, or other evidences of indebtedness, and other obligations.

SEC. 3. No Federal Reserve and/or national bank shall purchase or accept for rediscount or as collateral for any loan made by it in any security of an issue or part of an issue of securities which may be investigated under section 2, unless the Committee has found that the offering for sale or subscription of such issue or part of an issue is compatible with the national interest.

SEC. 4. No member, officer, or employee of the Committee shall in any manner, directly or indirectly, in the discharge of his official duties under this Act participate in the determination of any question affecting his personal inter-

ests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

SEC. 5. The principal office of the Committee shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Committee may, by one or more of its members or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 6. In order to enable the Committee to carry out the provisions of this Act, the Treasury Department, the Comptroller of the Currency, the Federal Reserve Board, the Federal Reserve banks, and the Interstate Commerce Commission are hereby authorized, under such conditions as the President may prescribe, to make available to the Committee in confidence such reports, records, or other information as they may have available.

SEC. 7. The Committee is authorized to appoint such officers and employees as are necessary to execute its functions under this Act.

SEC. 8. The Committee may make such expenditures as are necessary to execute its functions under this Act, which shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman of the Committee.

SEC. 9. That whoever willfully violates any of the provisions of this Act or of any of the rules and regulations promulgated in accordance therewith shall, upon conviction in any court of the United States of competent jurisdiction, be fined not more than \$10,000 or imprisoned for not more than one year or both, and whoever knowingly participates in any such violation, shall upon conviction be punished by a like fine or imprisonment or both.

SEC. 10. The Committee shall make a report to the Congress on the first day of each regular session, which shall include a detailed statement of receipts and expenditures and an account of its investigations and determinations under this Act, and the names and compensation of all officers and employees of the Committee.

SEC. 11. There are hereby authorized to be appointed such amounts as may be necessary for the purposes of this Act.

[S. 1717, 74th Cong., 1st sess.]

A BILL To provide further for the national security and defense by making available to the President, during the present national emergency, material resources of the Nation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall take effect whenever the President shall have approved an Act or joint resolution of Congress declaring war against any nation or recognizing a state of war to exist with any nation and declaring a national emergency to exist.

During the present emergency and until such time as Congress shall declare the emergency at an end, the President is hereby authorized to determine and proclaim and to exercise control over the material resources, industrial organizations, services, and all business relations over which Government control is necessary to the successful termination of such emergency.

SEC. 2. That the President is hereby authorized, with respect to any product, foodstuff, material, commodity, right, or service declared by him essential for the national security and defense in the prosecution of the war, to fix and establish just and reasonable, maximum, minimum, or absolute prices and/or rates at which any such product, foodstuff, material, commodity, right, or service may be bought, sold, or otherwise contracted for, whether such transaction be with the Government or between persons of the civilian population. Any such price and/or rate may be altered or modified from time to time as the President in his discretion may direct and the President may prescribe differentials based either on primary market or markets or upon zones or districts or may prescribe different prices and/or rates for different localities or for different uses in the same locality. The President is further authorized to fix and establish just and reasonable rates of profit or compensation which shall be allowed for the production, the manufacture, the sale, the marketing, or the distribution of any such product, foodstuff, material, commodity, or service. Any such rate may be altered or modified from time to time as the President in his discretion may direct.

SEC. 3. That the President is hereby authorized, with respect to any product, foodstuff, material, commodity, right, or service declared by him essential for the national security and defense in the prosecution of the war, to fix and estab-

lish the order of preference to be observed (hereinafter called priority) by any manufacturer, producer, dealer, distributor, carrier, or other person whatsoever, in manufacturing, producing, filling existing or future contracts for, complying with requisitions or orders for, transporting, distributing, or delivering any such product, foodstuff, material, commodity, right, or service, whether for the Government of the United States, for any person, or for the public generally.

SEC. 4. That whenever the President shall find it necessary for the national security and defense in the prosecution of the war to conserve or secure an adequate supply or the equitable distribution of any product, foodstuff, material, commodity, right, or service, he is hereby authorized to regulate, limit, or prohibit the purchase, sale, use, transportation, manufacture, or distribution of any such product, foodstuff, material, commodity, right, or service by any manufacturer, producer, dealer, carrier, distributor, or other person.

SEC. 5. That whenever the President shall find it necessary for the use of the Government of the United States, or for the national security and defense in the prosecution of the war, he is hereby authorized to purchase any product, foodstuff, material, commodity, right, or service and on such terms as he may deem desirable to sell or otherwise dispose of such product, foodstuff, material, commodity, right, or service. Any moneys received by the United States for or in connection with the sale or disposition of any product, foodstuff, material, commodity, right, or service, pursuant to this section may, in the discretion of the President, be used as a revolving fund for further carrying out the provisions of this section.

SEC. 6. That whenever the President shall find it necessary for the use of the Government of the United States or for the national security and defense, in the prosecution of the war, he is authorized to requisition and to take possession of any product, foodstuff, material, or commodity and on such terms as he may deem desirable to sell or otherwise dispose of such product, foodstuff, material, or commodity. For compliance with any such requisition the United States shall make just compensation, to be determined by the President. If the compensation so determined be unsatisfactory to the person entitled to receive same, such person shall be paid 75 per centum thereof, and shall be entitled to sue the United States to recover such further sum as added to said 75 per centum will make up such amount as will be just compensation therefor, and jurisdiction is hereby conferred, regardless of the amount in controversy, on the United States District Court for the district in which such product, foodstuff, material, or commodity is situated to hear and determine all such controversies in the manner provided for by section 24, paragraph 20, of the Judicial Code.

Any moneys received by the United States for or in connection with the sale or disposition of any product, foodstuff, material, or commodity pursuant to this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section.

SEC. 7. That from time to time whenever the President shall find it essential to license the production, manufacture, sale, storage, distribution, or transportation of any product, foodstuff, material, or commodity, in order to carry into effect any of the purposes of this Act, and shall publicly so announce, it shall be unlawful for any person, after a date fixed in the announcement, to engage in or carry on any such business enumerated in this section, unless he shall secure and hold a license issued pursuant to this section.

The President is authorized to issue such licenses, and to prescribe requirements for systems of accounts and auditing of accounts to be kept by licensees, submission of reports by them with or without oath or affirmation, and the entry and inspection by the President's duly authorized agents of the places of business of licensees. The President may order the revocation of the licenses of any licensee who fails to observe any price, rate, or priority fixed and established pursuant to this Act, or fails to perform or comply with any contract, requisition, or requirement of the Government of the United States or otherwise fails to comply with the provisions contained in such license.

SEC. 8. That whenever the President shall find it necessary for the national security and defense in the prosecution of the war, he is hereby authorized with respect to any product, foodstuff, material, commodity, or service to promulgate and enforce rules and regulations against waste, destruction, hoarding, speculation, and profiteering.

SEC. 9. That the authorities and powers conferred by this Act may be exercised under the direction and during the pleasure of the President, through any department, establishment, service, agency, or officer of the United States, or any person designated by the President for the purpose, and to that end

he is authorized to create or provide such additional agencies of the Government and prescribe such regulations as he may deem necessary; and for the duration of the emergency only, the President is authorized to regroup, redistribute, or reassign duties and functions of procurement of war supplies for the military and naval establishments.

SEC. 10. That the filing as a part of the records of the Department of State of any regulation, order, notice, or certificate, issued pursuant to this Act, shall be deemed notice of its contents to all the world, and all courts shall take judicial notice thereof.

SEC. 11. That whenever the President shall find it necessary for the national security and defense in the prosecution of the war he is authorized to suspend in whole or in part the operation of the following listed laws of the United States insofar as in his opinion they restrict or impede the procurement activities of the Government or the successful prosecution of the war:

R. S. _____ Act of _____

and so forth.

SEC. 12. That for the purposes of this Act the word "person", whenever necessary, shall denote the plural, and shall include an individual, partnership, association, or corporation, and any officer, agent, or employee thereof within the scope of his employment.

The word "production", when necessary, shall denote the production of materials and commodities by manufacture, agricultural, mining, and/or drilling activities.

SEC. 13. That all Acts or parts of Acts conflicting with this Act are to the extent of such conflict suspended while this Act is in force.

SEC. 14. Whoever shall fail or neglect to perform any duty required of him in the administration or execution of this Act, or shall fail or neglect to comply with any of the provisions of this Act or with any order, regulation, or direction promulgated thereunder, or shall aid, abet, advise, or assist any person or persons, in such failure or neglect, shall, upon conviction, be fined not more than \$ _____ or, if a natural person, be imprisoned for not more than _____ years, or both in the discretion of the court.

SEC. 15. If any clause, sentence, paragraph, or section of this Act shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of the Act, but shall be confined in its operation to the clause, sentence, paragraph, or section thereof directly involved in the controversy in which such judgment shall have been rendered; and nothing contained in any section of this Act shall be construed as in any way invalidating or limiting the authority granted in other sections of the Act.

[S. 1718, 74th Cong., 1st sess.]

A BILL To authorize the acquisition by the United States, of private property of any and all kinds, real, personal, and mixed, needed for the national security and defense, or the conduct of the Government, to provide a method of such acquisition, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall take effect whenever the President shall have approved an Act or joint resolution of Congress declaring war against any nation or recognizing a state of war to exist with any nation and declaring a national emergency to exist.

During the present emergency, the President be, and hereby is authorized either directly or through such executive department or agency as he may designate, to take over for and on behalf of the United States, the possession and use or ownership of any and all personal property and such use of, or such right, title, and interest in and to any and all real property, or any part or portion thereof, wherever such property, personal or real, may be situated within the United States, the Territories thereof, the District of Columbia, the Canal Zone, Puerto Rico, or the Philippine Islands, as in his opinion is necessary for the national security and defense of the conduct of the Government.

SEC. 2. That real property or any part or portion thereof taken under authority of this Act shall be acquired by and through proclamation, describing such real property with such particularity as is used in conveyances of real estate or in leases thereof and specifying whether the United States takes title

in fee or acquires a lesser estate or the temporary use thereof and specifying also the extent of the title or interest or use taken; and immediately upon the promulgation of such proclamation, such title to or interest in or use of said real estate as is described and defined by said proclamation shall vest in and become the property of the United States, and it may immediately enter into the possession thereof.

Sec. 3. That personal property taken under authority of this Act shall be acquired by written requisition therefor and thereof, describing the same with such particularity as, in the particular circumstances of each case, is reasonably practicable and setting forth whether the United States takes the ownership or the temporary use thereof. Said requisition shall be directed to and served upon the owner or owners thereof or upon the person or persons in charge thereof or, when none of these can be found, then by posting said requisition or a copy thereof upon the premises where said property is situated; and immediately upon the service or posting of said requisition as aforesaid, the right to the use of said property or the ownership thereof, according as the one or the other has been named in said requisition, shall become lodged in the United States, and it may immediately take possession thereof.

Sec. 4. That in cases in which it is impossible or difficult to determine whether the property to be taken under this Act is real or personal the procedure may be by proclamation as provided by section 2 hereof or by requisition as provided by section 3 hereof or by both proclamation and requisition.

Sec. 5. That the President, either directly or through the head of the executive department or agency though he has taken over such property or right, title, or interest herein, or use thereof, shall determine and make just compensation therefor: *Provided*, That if the just compensation so determined in any case is unsatisfactory to the person or persons entitled to receive it, such person or persons shall be paid 75 per centum thereof and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation therefor, and jurisdiction is hereby conferred, regardless of the amount in controversy, on the United States district court for the district in which such property or any part thereof is situated to hear and determine all such controversies in the manner provided for by section 24, paragraph 20, of the Judicial Code. If in any case the title to or ownership of the property taken or used is uncertain, or is held by several persons and they shall not agree among themselves as to the division of the amount to be paid, or the property is encumbered or subject to a lien or liens or rights of minors or remaindermen are involved, or if for any other reason the President or the head of an executive department or agency is of the opinion that said 75 per centum cannot safely be paid, then there shall be filed in the United States district court for the district in which such property or any part thereof is situated, in the name of the United States, a bill of interpleader against all persons who claim or are known to hold an interest in said property, requiring them to appear and have their conflicting claims to said 75 per centum settled and determined, and contemporaneously therewith said 75 per centum shall be transferred on the books of the Treasury Department into a special fund to remain available for payment to the person or persons thus determined to be entitled thereto. Any suit or suits brought to recover the difference between said 75 per centum and such sum as will constitute just compensation for the property, or right, title, or interest therein, or use thereof, as the case may be, as hereinabove provided, may be consolidated and tried with said interpleader proceedings. In cases where personal property or the use thereof is taken, an invoice of such property shall be made in the presence or with the assistance, if practicable, of the former owner or owners thereof, and where the use only of such property is taken the value of the property itself as well as the value of its use shall be determined. In all cases in which a use only of either real or personal property is taken the just compensation therefor shall be determined and fixed upon a monthly basis and payment thereof in the manner aforesaid shall be made either monthly or quarterly as the President or head of said executive department or agency may deem most expedient.

Sec. 6. That this Act shall be construed as repealing, altering, or amending any previous Act or Acts authorizing the acquisition of real or personal property by the United States, but shall be construed and considered as an additional grant of authority in those respects; and any appropriations, heretofore or hereafter made, which are available for the procuring or purchase of real or personal property may likewise be used in making payments for such property when acquired under the provisions of this Act.

SEC. 7. That the President be, and he hereby is, authorized and empowered to sell, lease, or otherwise dispose of any property, real or personal, or any right, title, or interest therein acquired under the provisions of this Act for such consideration as he may deem just and reasonable whenever, in his opinion, the property thus acquired is, or shall become, unavailable or undesirable for Government use.

SEC. 8. That in any legal proceedings against the United States growing out of the acquisition of property under the provisions of this Act wherein the value of such property is an issue in controversy, evidence as to the cost of such property to the former owner or owners shall be competent and shall be received and considered in arriving at a determination of such value.

SEC. 9. That in order to keep Congress informed as to the acquisition of property made under the provisions of this Act, a report shall be made to Congress of property taken under this Act, such report to be made within sixty days after each such taking.

SEC. 10. That section 355 of the Revised Statutes shall be, and the same hereby is, suspended during the period of the national emergency, so declared by Congress to exist, insofar as it would otherwise be applicable to real property acquired under the provisions of this Act.

SEC. 11. That the words "United States District Court", as used in this Act, shall be deemed and considered to include the district courts of the District of Alaska, the United States District Court for the District of Hawaii, the District Court of the Canal Zone, the District Court of the United States for Puerto Rico, the Supreme Court of the Philippine Islands, and the Supreme Court of the District of Columbia; and in all cases in which property situated in the District of Columbia is taken under this Act the owners of said property shall be entitled at their election to bring the suits for the compensation herein provided for either in the supreme court of said district or in the United States Court of Claims.

[S. 1719, 74th Cong., 1st sess.]

A BILL To authorize the establishment of a Bureau of Marine War Risk Insurance in the Treasury Department

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall take effect whenever the President shall have approved an Act or joint resolution of Congress declaring war against any nation or recognizing a state of war to exist with any nation and declaring a national emergency to exist,

To provide for the export shipping of the United States adequate facilities for the insurance of its commerce against the risk of war, the President is authorized to establish in the Treasury Department a bureau to be known as the "Marine War Risk Insurance Bureau."

SEC. 2. That the said Marine War Risk Insurance Bureau, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provision for the insurance of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, as well as the vessels and cargoes of States friendly to the United States engaged in export and import trade with the United States, against loss or damage of the risks of war whenever it shall appear to the Secretary of the Treasury that such vessels, shippers, or importers are unable in any trade to secure adequate war-risk insurance on reasonable terms.

SEC. 3. That the Marine War Risk Insurance Bureau, created under authority of this Act, with the approval of the Secretary of the Treasury, is hereby authorized to adopt and publish a form of war-risk policy and to fix reasonable rates of premiums for the insurance of vessels, their freight and passage moneys, and cargoes against war risks, which shall be subject to such change, to each part for each class, as the Secretary shall find to be required by the circumstances. The proceeds of the aforesaid premiums, when received, shall be covered into the Treasury of the United States.

SEC. 4. That the Marine War Risk Insurance Bureau, with the approval of the Secretary of the Treasury, shall have power to make any and all rules and regulations necessary for the carrying out of the provisions of this title and to employ such legal agents or other agents in the nature of insurance experts as may be required in carrying into effect the purposes of this title, such agents to be paid for their services at a rate per annum to be determined by the Secretary of the Treasury. In the event of disagreement as to the claims for losses, or amounts thereof, between the said bureau and the parties to such con-

tracts of insurance, an action of the claim may be brought against the United States, in the District Court of the United States, sitting in admiralty, in the district in which the claimant or his agent may reside.

SEC. 5. The director of the Marine War Risk Insurance Bureau, upon the adjustment of any claims for losses, in respect of which no action shall be begun, shall, on approval of the Secretary of the Treasury, promptly pay such claims and losses to the parties in interest; and the Secretary of the Treasury is directed to make provision for the speedy adjustment of claims for losses and also for the prompt notification of parties in interest of the decisions of the Bureau on their claims.

[S. 1720, 74th Cong., 1st sess.]

A BILL To provide further for the national defense by controlling exports from the United States, imports into the United States, and trading with the enemy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall take effect whenever the President shall have approved an Act or joint resolution of Congress declaring war against any nation or recognizing a state of war to exist with any nation and declaring a national emergency to exist.

This Act shall be known as the "War Trade Act."

SEC. 2. (a) That the term "person" shall include individuals, corporations, partnerships, firms, associations, company, or organized manufacturing industry existing under or authorized by the laws of the United States or any State, Territory, District, or possession thereof, or of any foreign country.

(b) The word "enemy", as used herein, shall be deemed to mean for the purposes of such trading and of this Act—

(1) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside of the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(2) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(3) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

(c) The words "ally of enemy", as used herein, shall be deemed to mean—

(1) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(2) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(3) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

(d) The words "United States", as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

(e) The words "to trade", as used herein, shall be deemed to mean—

(1) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(2) Draw, accept, pay, present for acceptance or payment, or endorse any negotiable instrument or chose in action.

(3) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(4) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(5) To have any form of business or commercial communication or intercourse with.

SEC. 3. To assure the most effective utilization of our domestic resources in meeting the national and international demands for same and for this purpose to provide an executive administrative agency for the supervision and control of all our exports and imports, in the event of a national emergency declared by Congress, the President is authorized to establish a war trade administration.

SEC. 4. The Administration of War Trade herein authorized shall have power to—

(a) Exercise control of all exports and imports and for such purposes, to issue licenses under such terms and conditions as are not inconsistent with law, or refuse licenses for the exportation or importation of all articles except coin, bullion, or currency.

(b) Take the necessary measures to insure the equitable distribution of imported commodities and their consumption in the most essential products.

(c) Provide means for the conservation of ocean tonnage, for the transportation of necessities by import restrictions and priorities control of export shipments.

(d) Make effective a policy of reciprocity with other countries whose exports and imports may be influenced by the war.

(e) Provide for the conservation of domestic supplies through export restrictions and by obtaining the essential imports from foreign countries.

(f) Issue, under such terms and conditions as are not inconsistent with the law, or to withhold or refuse, licenses to trade, either directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or an ally of enemy, or is conducting or taking part in such trade directly or indirectly for, or on account of, on behalf of, or for the benefit of, an enemy or ally of enemy.

(g) Issue, under such terms and conditions as are not inconsistent with law, to every enemy or ally of enemy, other than enemy or ally of enemy insurance or reinsurance companies, doing business within the United States through an agency or branch office, or otherwise, applying therefor within thirty days of _____ (date) licenses temporary or otherwise to continue to do business, or said board may withhold or refuse the same.

(h) Grant licenses to enemies and enemy allies to assume or use other names than those by which they were known at the beginning of the war.

SEC. 5. The Administrator of War Trade is authorized to formulate the necessary rules and regulations subject to the approval of the President for carrying out the intent and purpose of this Act.

SEC. 6. That whoever shall willfully violate any of the provisions of this Act or of any license, or order, rule, or regulation, issued thereunder, or whoever shall willfully violate, neglect, or refuse to comply with any such license, order, rule, or regulation issued hereunder, shall upon conviction in any court of the United States of competent jurisdiction, be fined not more than \$5,000, or if a natural person, imprisoned for not more than four years, or both, and any officer, director, or agent of any corporation or association or member of any firm, who shall knowingly participate in any such violation, neglect, or refusal, shall be punished as provided herein for a natural person.

[S. 1721, 74th Cong., 1st sess.]

A BILL To provide further for the national security and defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That during any national emergency declared by Congress to exist, which, in the judgment of the President, demands the immediate increase of the armed forces of the United States, the President be, and he hereby is, authorized to register and select for induction and to induct into those forces, in accordance with this Act, such male citizens

of the United States and such male persons who have, or shall have, declared their intention to become citizens of the United States as he may deem necessary.

SEC. 2. That every male person, except as hereinafter provided in this section who shall have reached the eighteenth anniversary of the day of his birth, on or before the day, or days, fixed for registration, shall be subject to registration, in accordance with regulations to be prescribed by the President; and upon proclamation by the President, or other public notice given by him, or by his direction, stating the age groups of those to be registered, the time or times, and place or places, of such registration, it shall be the duty of all such persons, except commissioned officers, warrant officers, field clerks, pay clerks, and enlisted men of the Regular Army, the Navy, the Marine Corps, the Coast Guard, the federally recognized National Guard, and National Guard Reserve, the Organized Reserves, the Naval Reserve, and the Marine Corps Reserve; cadets, United States Military Academy; midshipmen, United States Naval Academy; and cadets, United States Coast Guard Academy; and diplomatic representatives, technical attachés of foreign embassies and legations, consuls general, consuls, vice consuls, and consular agents of foreign countries, residing in the United States who are not citizens of the United States, to present themselves for and submit to registration, under the provisions of this Act: *Provided*, That the President is hereby authorized, on such subsequent dates as he may proclaim, to require every male person who shall have reached the eighteenth anniversary of the day of his birth, after the date set for the first registration provided for in this Act, to present himself for and submit to registration: *Provided further*, That such registrants shall be placed at the bottom of the list of those previously registered for service in the public armed forces, in the several classes to which they may be assigned: *Provided further*, That, in the case of temporary absence from actual place of legal residence of any person subject to registration as provided herein, such registration may be made under regulations to be prescribed by the President: *Provided further*, That all persons registered shall be and remain subject to induction into the public armed forces of the United States, unless exempted or deferred as in this Act provided: *Provided further*, That every person shall be deemed to have notice of the requirements of this Act, upon the publication of a proclamation, or other public notice requiring registration, given by the President, or by his direction, and any person who shall fail or refuse to present himself for registration, or to submit thereto, as herein provided, shall upon conviction in a district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than _____ and shall, upon conviction, be duly registered: *And provided further*, That no exemption from registration shall continue, after the cause therefor ceases to exist.

SEC. 3. That all persons called, ordered, or inducted into the public armed forces of the United States pursuant to this Act shall, from the date they are required by the terms of such call, order, or induction to obey the same, be subject to the laws and regulations governing that branch of the public armed forces to which they may be assigned, so far as such laws and regulations are applicable to persons whose permanent retention in the service of the United States on the active or retired lists is not contemplated by existing law, and such persons shall be required to serve until six months after the emergency shall have been declared by the President to have terminated, unless sooner discharged.

SEC. 4. That the selective service herein provided shall be based on liability to service, in the public armed forces of the United States, of every male citizen and every male person, residing in the United States and its territories, including the Philippine Islands, Guam, and Samoa, not an alien enemy, who has declared his intention to become a citizen, who shall have reached the eighteenth anniversary of the day of his birth and who shall not have reached the forty-fifth anniversary of the day of his birth on or before the day or days, fixed for registration: *Provided*, That nothing herein contained shall be construed to prevent the voluntary induction of nondeclarant aliens.

A citizen or subject of a neutral country, who has declared his intention to become a citizen of the United States, may be relieved from liability to service in the public armed forces, only upon his making declaration, in accordance with regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which withdrawal shall operate and be held to cancel his declaration of intention to become a citizen of the United States, and he shall forever be debarred from becoming a citizen of the United States.

SEC. 5. That no bounty shall be paid to induce any person to enlist in or be inducted into the public armed forces of the United States: *Provided*, That the clothing and enlistment allowances now authorized by law shall not be regarded as bounties within the meaning of this section. No person liable to service in such forces shall be permitted or allowed to furnish a substitute for such service; nor shall any substitute be received, enlisted, enrolled, or inducted into the public armed forces of the United States; and no person liable to service in such forces shall be permitted to escape such service, or to be discharged therefrom, prior to the expiration of his term of service, by the payment of money or any other valuable thing whatsoever, as consideration for his release from service in the public armed forces, or liability thereto.

SEC. 6. That the Vice President of the United States, the officers, legislative, executive, and judicial, of the United States, and of the several States, Territories, and the District of Columbia, except as herein provided, while holding such official positions, shall be deferred from liability to service in the public armed forces. The President may, under such regulations as he may prescribe, defer service in the public armed forces of registrants whose continued employment in any of the following occupations he deems essential to the public interest: Inferior Federal and State officers; Federal and State employees; county and municipal officers and employees; marine pilots, persons engaged in industries, occupations, or employments, including agriculture, found to be necessary to the maintenance of the national interest and regularly or duly ordained ministers of religion. He is also authorized, under such regulations as he may prescribe, to defer service in the public armed forces of those registrants in a status with respect to persons dependent upon them for support which renders their deferment advisable; and those found to be physically or morally deficient. No deferment shall continue when the cause therefor ceases to exist.

Nothing contained in this Act shall be construed to require or compel any person to serve in a combatant capacity in any of the public armed forces of the United States, who is found to be a member of any well-recognized religious sect whose creed or principles forbid its members to participate in war in any form, if the conscientious holding of such belief by such person shall be established under such regulations as the President may prescribe; but no such person shall be relieved from service in such capacity as the President may declare to be noncombatant.

SEC. 7. That quotas for the several States, Territories, the District of Columbia, or subdivisions thereof, shall be determined in proportion to the actual number of registrants liable to service in any class or classes of registrants, designated by the President as the class or classes from which personnel for service in the public armed forces shall be drawn: *Provided*, That, when ascertained, credit shall be given to each State, Territory, and the District of Columbia, for the number of residents of such State, Territory, or District, who are in such public armed forces as of a date to be fixed by the President, and an adjustment made in subsequent quotas. Should the President determine that the emergency is sufficiently formidable to render delay prejudicial to the national interests, he may require the quotas for the first calls to be based on an estimate, formed under his direction, of the probable number of registrants that will be found in the class or classes from which personnel liable to service in the public armed forces shall be drawn: *Provided, however*, That when the actual number of registrants liable to service in such class or classes shall have been determined, an adjustment shall be effected in subsequent quotas.

SEC. 8. That nothing in this Act shall be construed as preventing the President, when in his discretion the national interest requires it, from calling immediately for duty in the public armed forces, any person subject to registration who is liable to service, however classified or wherever residing.

SEC. 9. That the President is authorized to create and establish the necessary agencies to carry the provisions of this Act into effect, including agencies of appeal from classification, and the decisions of such agencies of appeal shall be final, except that, in accordance with such rules and regulations as the President may prescribe, he may affirm, modify, or reverse any such decision. The President is authorized to appoint and fix the compensation of the necessary officials and to formulate such rules and regulations as may be necessary to carry out the provisions of this Act. He is authorized to utilize the service of any or all departments, and any or all officers or agents of the United States, and of the several States, Territories, and the District of Columbia, and subdivisions thereof, in the execution of this Act. All officers and agents of the

United States, and of the several States, Territories, and the District of Columbia, and subdivisions thereof, and all persons designated or appointed under regulations prescribed by the President, whether such appointments are made by the President himself, or under his authority, to perform any duty in the execution of this Act, are hereby required to perform such duty as the President shall order or direct. All officers and agents, and persons so designated or appointed, shall hereby have full authority for all acts performed by them, in the execution of this Act, by the direction of the President. In the administration of this Act, voluntary services may be accepted.

The President is hereby authorized, in his discretion, to have done such printing, binding, and blankbook work as may be necessary to carry out the provisions of this Act, in such public or private printing establishments or binderies as he may designate, with or without advertisement or formal contract.

Correspondence, necessary in the execution of this Act, may be carried in official penalty envelopes.

SEC. 10. That any person charged, as herein provided with the duty of carrying into effect any of the provisions of this Act, or the regulations made or directions given thereunder, who shall fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, regulations, or directions who shall make, or be a party to the making, of any false or incorrect registration, classification, physical examination, exemption, deferment, induction, enrollment, or muster; and any person who shall make, or be a party to the making, of any false statement or certificate, as to the fitness or liability of himself or any other person for service under the provisions of this Act or regulations, or directions made pursuant thereto, or otherwise evades service in the public armed forces or any of the requirements of this Act, or who counsels, aids, or abets another to evade service in the public armed forces or any of the requirements of this Act or of said regulations or directions, or who, in any manner, shall fail or neglect fully to perform any duty required of him under or in the execution of this Act or regulations made in pursuance of this Act shall, if not subject to military or naval law, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than _____ and a fine of not more than _____ or, if subject to military or naval law, shall be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. In the cases of registrants who fail to report for duty in the public armed forces as ordered, military and naval courts martial shall have concurrent jurisdiction to try such registrants for offenses arising out of such failure.

Precedence shall be given, in courts trying the same, to the trial of cases arising under this Act.

SEC. 11. That the provisions of this Act shall be construed liberally to effect the purpose thereof, the spirit always controlling the letter, and any technical deficiencies therein, or in orders or regulations thereunder, being supplied by the reasonable intent of the Act as a whole, in the light of national needs.

SEC. 12. That all laws and parts of laws providing for any exemptions or imposing any other restrictions on liability to service in the public armed forces or which are otherwise in conflict with the provisions of this Act, are hereby suspended for the period of this emergency.

[S. 1722, 74th Cong., 1st sess.]

A BILL To provide further for the national security and defense and, for the purpose of assisting in the prosecution of war, to provide credits for industries and enterprises in the United States necessary or contributory to the prosecution of war, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall take effect whenever the President shall have approved an Act or joint resolution of Congress declaring war against any nation or recognizing a state of war to exist with any nation and declaring a national emergency to exist.

There is hereby created a body corporate and politic in deed and in law to be known by the name, style, and title of the "War Finance Corporation" (herein called the "Corporation"). It shall have succession for a period of ten years, but in no event shall the Corporation exercise any of the powers conferred by this Act, except such as are incidental to the liquidation of its

assets and the winding up of its affairs, after six months after the termination of the war, the date of such termination to be fixed by proclamation of the President of the United States.

SEC. 2. The management of the Corporation shall be vested in a board of directors, consisting of the Secretary of the Treasury, who shall be chairman of the board, and four other persons, to be appointed by the President of the United States by and with the advice and consent of the Senate.

SEC. 3. That the four directors of the Corporation appointed as hereinbefore provided shall receive annual salaries, payable monthly, \$12,000. Any director receiving from the United States any salary or compensation for services shall not receive as salary from the Corporation any amount which, together with any salary or compensation received from the United States, would make the total amount paid to him by the United States and by the Corporation exceed \$12,000. No director, officer, attorney, agent, or employees of the Corporation shall in any manner, directly or indirectly, participate in the determination of any questions affecting his personal interests, or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

SEC. 4. The capital stock of the Corporation shall be \$500,000,000, all of which shall be subscribed by the United States of America, and such subscription shall be subject to call upon the vote of three-fifths of the board of directors of the Corporation, with the approval of the Secretary of the Treasury, at such time or times as may be deemed advisable; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$500,000,000, or so much thereof as may be necessary for the purpose of making payment upon such subscription when and as called. Receipts for payments by the United States of America for or on account of such stock shall be issued by the Corporation to the Secretary of the Treasury and shall be evidence of stock ownership.

SEC. 5. That the principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors.

SEC. 6. That the Corporation shall be empowered and authorized to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary for the prosecution of its business; to sue and be sued; to complain and defend in any court of competent jurisdiction, State or Federal; to appoint, by its board of directors, and fix the compensation of such officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation, to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, subject to the approval of the Secretary of the Treasury, bylaws regulating the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed, and prescribing the powers and duties of its officers and agents.

SEC. 7. That the Corporation shall be empowered and authorized to make advances, upon such terms, not inconsistent herewith, as it may prescribe, for periods not exceeding five years from the respective dates of such advances—

(a) To any bank, banker, or trust company in the United States which shall have made after , , and which shall have outstanding any loan or loans to any person, firm, corporation, or association, conducting an established and going business in the United States, whose operations shall be necessary or contributory to the prosecution of the war, and evidenced by a note or notes, but no such advance shall exceed 75 per centum of the face value of such loan or loans; and

(b) To any bank, banker, or trust company, in the United States, which shall have rendered financial assistance, directly or indirectly, to any such person, firm, corporation, or association by the purchase after , , of its bonds or other obligations, but no such advance shall exceed 75 per centum of the value of such bonds or other obligations at the time of such advance, as estimated and determined by the board of directors of the Corporation.

All advances shall be made upon the promissory note or notes of such bank, banker, or trust company, secured by the notes, bonds, or other obligations, which are the basis of any such advance by the Corporation, together with all the securities, if any, which such bank, banker, or trust company may hold as collateral for such notes, bonds, or other obligations.

The Corporation shall, however, have power to make advances (1) up to 100 per centum of the face value of any such loan made by any such bank, banker, or trust company to any such person, firm, corporation, or association, and (2) up to 100 per centum of the value at the time of any such advance (as estimated and determined by the board of directors of the Corporation) of such bonds or other obligations by the purchase of which financial assistance has been rendered to such person, firm, corporation, or association: *Provided*, That every such advance shall be secured in the manner described in the preceding part of this section, and in addition thereto by collateral security, to be furnished by the bank, banker, or trust company, of such character as shall be prescribed by the board of directors, of a value, at the time of such advance (as estimated and determined by the board of directors of the Corporation), equal to at least 33 per centum of the amount advanced by the Corporation. The Corporation shall retain power to require additional security at any time.

SEC. 8. That the Corporation shall be empowered and authorized to make advances from time to time, upon such terms, not inconsistent herewith, as it may prescribe, for periods not exceeding one year, to any savings bank, banking institution, or trust company, in the United States, which receives savings deposits, or to any building and loan association in the United States, on the promissory note or notes of the borrowing institution, whenever the Corporation shall deem such advances to be necessary or contributory to the prosecution of the war or important in the public interest: *Provided*, That such note or notes shall be secured by the pledge of securities of such character as shall be prescribed by the board of directors of the Corporation, the value of which, at the time of such advance (as estimated and determined by the board of directors of the Corporation) shall be equal in amount to at least 133 per centum of the amount of such advance. The rate of interest charged on any such advance shall not be less than 1 per centum per annum in excess of the rate of discount for ninety-day commercial paper prevailing at the time of such advance at the Federal Reserve bank of the district in which the borrowing institution is located, but such rate of interest shall in no case be greater than the average rate receivable by the borrowing institution on its loans and investments made during six months prior to the date of the advance, except that where the average rate so receivable by the borrowing institution is less than such rate of discount for ninety-day commercial paper the rate of interest on such advance shall be equal to such rate of discount. The Corporation shall retain power to require additional security at any time.

SEC. 9. That the Corporation shall be empowered and authorized, in exceptional cases, to make advances directly to any person, firm, corporation, or association conducting an established and going business in the United States, whose operations shall be necessary or contributory to the prosecution of the war (but only for the purpose of conducting such business in the United States and only when in the opinion of the board of directors of the Corporation such person, firm, corporation, or association is unable to obtain funds upon reasonable terms through banking channels or from the general public), for periods not exceeding five years from the respective dates of such advances, upon such terms and subject to such rules and regulations as may be prescribed by the board of directors of the Corporation. In no case shall the aggregate amount of the advances made under this section exceed at any one time an amount equal to 12½ per centum of the sum of (1) the authorized capital stock of the Corporation plus (2) the aggregate amount of bonds of the Corporation authorized to be outstanding at any one time when the capital stock is fully paid in. Every such advance shall be secured by adequate security of such character as shall be prescribed by the board of directors of a value at the time of such advance (as estimated and determined by the board of directors), equal to (except in case of an advance made to a railroad in the possession and control of the President, for the purpose of making additions, betterments, or road extensions to such railroad) at least 125 per centum of the amount advanced by the Corporation. The Corporation shall retain power to require additional security at any time. The rate of interest charged on any such advance shall not be less than 1 per centum in excess of the rate of discount for ninety-day commercial paper prevailing at the time of such advance at the Federal Reserve bank of the district in which the borrower is located.

SEC. 10. That in no case shall the aggregate amount of the advances made under this title to any one person, firm, corporation, or association exceed at any one time an amount equal to 10 per centum of the authorized capital stock

of the Corporation, but this section shall not apply in the case of an advance made to a railroad in the possession of the President, for the purpose of making additions, betterments, or road extensions to such railroads.

SEC. 11. That the Corporation shall be empowered and authorized to subscribe for, acquire, and own, buy, sell, and deal in bonds and obligations of the United States issued or converted after (date) , to such extent as the board of directors, with the approval of the Secretary of the Treasury, may from time to time determine.

SEC. 12. That the Corporation shall be empowered and authorized to issue and have outstanding at any one time its bonds in an amount aggregating not more than six times its paid-in capital, such bonds to mature not less than one year nor more than five years from the respective dates of issue, and to bear such rate or rates of interest; and may be redeemable before maturity at the option of the Corporation, as may be determined by the board of directors, but such rate or rates of interest shall be subject to the approval of the Secretary of the Treasury. Such bonds shall have a first and paramount floating charge on all the assets of the Corporation, and the Corporation shall not at any time mortgage or pledge any of its assets. Such bonds may be issued at not less than par in payment of any advances authorized by this title, or may be offered for sale publicly or to any individual, firm, corporation, or association, at such price or prices as the board of directors, with the approval of the Secretary of the Treasury, may determine.

SEC. 13. That the Federal Reserve banks shall be authorized, subject to the maturity limitation of the Federal Reserve Act and to regulations of the Federal Reserve Board, to discount the direct obligations of member banks secured by such bonds of the Corporation and to rediscount eligible paper secured by such bonds and indorsed by a member bank. No discount or rediscount under this section shall be granted at a less interest charge than 1 per centum above the prevailing rates for eligible commercial paper of corresponding maturity.

Any Federal Reserve bank may, with the approval of the Federal Reserve Board, use any obligation or paper so acquired for any purpose for which it is authorized to use obligations or paper secured by bonds or notes of the United States not bearing the circulation privilege: *Provided, however,* That whenever Federal Reserve notes are issued against the security of such obligations or paper the Federal Reserve Board may make a special interest charge on such notes, which, in the discretion of the Federal Reserve Board, need not be applicable to other Federal Reserve notes which may from time to time be issued and outstanding. All provisions of law, not inconsistent herewith, in respect to the acquisition by any Federal Reserve bank of obligations or paper secured by such bonds or notes of the United States, and in respect to Federal Reserve notes issued against the security of such obligations or paper, shall extend, insofar as applicable, to the acquisition of obligations or paper secured by the bonds of the Corporation and to the Federal Reserve notes issued against the security of such obligations or paper.

SEC. 14. That the Corporation shall not exercise any of the powers granted by this title or perform any business except such as is incidental and necessarily preliminary to its organization until it has been authorized by the President of the United States to commence business under the provisions of this title.

SEC. 15. That all net earnings of the Corporation not required for its operations shall be accumulated as a reserve fund until such time as the Corporation liquidates under the terms of this title. Such reserve fund shall, upon the direction of the board of directors, with the approval of the Secretary of the Treasury, be invested in bonds and obligations of the United States, issued or converted after , or upon like direction and approval may be deposited in member banks of the Federal Reserve System, or in any of the Federal Reserve banks, or be used from time to time, as well as any other funds of the Corporation in the purchase or redemption of any bonds issued by the Corporation. The Federal Reserve banks are hereby authorized to act as depositaries for and as fiscal agents of the Corporation in the general performance of the powers conferred by this title. Beginning six months after the termination of the war, the date of such termination to be fixed by a proclamation of the President of the United States, the directors of the Corporation shall proceed to liquidate its assets and to wind up its affairs, but the directors of the Corporation, in their discretion, may, from time to time, prior to such date, sell and dispose of any securities or other property acquired by the Corporation. Any balance remaining after the payment of all its debts

shall be paid into the Treasury of the United States as miscellaneous receipts, and thereupon the Corporation shall be dissolved.

Sec. 16. That any and all bonds issued by the Corporation shall be exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (1) estate or inheritance taxes, and (2) graduated additional income taxes, commonly known as "surtaxes", and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, corporations, or associations. The interest on an amount of such bonds, the principal of which does not exceed in the aggregate \$5,000, owned by any individual, partnership, corporation, or association, shall be exempt from the taxes referred to in clause (2). The Corporation, including its franchise and the capital and reserve or surplus thereof, and the income derived therefrom, shall be exempt from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except that any real property of the Corporation shall be subject to State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed.

Sec. 17. That the United States shall not be liable for the payment of any bond or other obligation or the interest thereon issued or incurred by the Corporation, nor shall it incur any liability in respect of any act or omission of the Corporation.

Sec. 18. That whoever makes any statement, knowing it to be false, for the purpose of obtaining for himself, or for any other person, firm, corporation, or association any advance under this title, shall be furnished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

Whoever willfully overvalues any security by which any such advance is secured, shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both.

Whoever (1) falsely makes, forges, or counterfeits any bond, coupon, or paper in imitation of or purporting to be in imitation of a bond or coupon issued by the Corporation; or (2) passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited bond, coupon, or paper purporting to be issued by the Corporation, knowing the same to be falsely made, forged, or counterfeited; or (3) falsely alters any such bond, coupon, or paper; or (4) passes, utters, or publishes as true any falsely altered or spurious bond, coupon, or paper issued or purporting to have been issued by the Corporation, knowing the same to be falsely altered or spurious, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

Whoever, being connected in any capacity with the Corporation, (1) embezzles, abstracts, or willfully misapplies any moneys, funds, or credits thereof, or (2) with intent to defraud the Corporation or any other company, body politic or corporate, or any individual, or to deceive any officer of the Corporation, (a) makes any false entry in any book, report, or statement of the Corporation, or (b) without authority from the directors draws any order or assigns any note, bond, draft, mortgage, judgment, or decree thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

The Secretary of the Treasury is hereby authorized to direct and use the Secret Service Division of the Treasury Department to detect, arrest, and deliver into custody of the United States marshal having jurisdiction any person committing any of the offenses punishable under this section.

Sec. 19. That the Corporation shall file quarterly reports with the Secretary of the Senate and with the Clerk of the House of Representatives, stating as of the first day of each month of the quarter just ended (1) the total amount of capital paid in, (2) the total amount of bonds issued, (3) the total amount of bonds outstanding, (4) the total amount of advances made under each of sections 7, 8, and 9, (5) a list of the classes and amounts of securities taken under each of such sections, (6) the total amount of advances outstanding under each of sections 7, 8, and 9, and (7) such other information as may be hereafter required by either House of Congress.

The Corporation shall make a report to Congress on the first day of each regular session, including a detailed statement of receipts and expenditures.