



INSTITUTE OF BRAZILIAN BUSINESS AND PUBLIC MANAGEMENT ISSUES - IBI

THE MINERVA PROGRAM – SPRING 2000

**PUBLIC SERVANTS RETIREMENT SYSTEMS  
AND SOCIAL SECURITY  
A COMPARATIVE APPROACH**

LUIZ ALBERTO DOS SANTOS

Chamber of Deputies

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## Acknowledgments

This paper is a result of several coincidences and opportunities. I would like to register in advance some acknowledgments to those that made it possible.

The first could not be other than Dr. James Ferrer, Jr., IBI Director that make possible to take the Minerva Program. Without him this essay would never have been written, and I would like to register that fact and the total independence IBI gave me to expose my ideas about this very sensitive issue.

To Deputy Jose Genoio, Leader of Workers Party in the Chamber of Deputies (1999), I have to register my admiration and gratitude. His wisdom made possible to me stay in Washington and leave my job in Brazil.

I want especially to thank my Minerva XI companions, that shared their enthusiasm and friendship in the four months period of the course. They were friends and made easier this task.

Finally, I would thank to Professor James Kee, that had the patient and good will to read the draft and suggest other “avenues” to be considered in future reforms in Brazil’s pension system.

But my family was the strongest support I could have. Always Aquina and Shand confidence and tolerance incentivate me to achieve my goals, and that was another one. Without his family, one man is nothing. I am very proud with my family’s love and support.

*Luiz Alberto dos Santos*

ablas97@yahoo.com

## 1. Introduction

One of the most important aspects of the debate in course in Brazil for the last five years, relative to fiscal adjustment, concerns the retirement systems of the Federal, State and Municipal public servants.

Since 1995, the Brazilian public retirement system, specially the specific regimes of the public servants, is being submitted to deep reformulation. The question will remain in the headlines and in the government's political agenda at all levels for many years, so great is the burden of the retirement systems impact on the public budget.

The promulgation of the Constitutional Amendment # 20, on December 16, 1998, introduced deep changes in the rules related to the retirement benefits, so much in the General Regime of Social Security (RGPS) as in the regime applicable to the Brazilian public servants, especially the civilians, at Federal, State and Municipal levels.

Such proposals are finding justification in the reforms of the social security system that are operated in several countries, a lot of times sustained in the difficulties of maintenance of the benefits, which are worsened in face of the growth of the expectation of the beneficiaries life and, consequently, of the period in which they will be enjoying benefits.

A preliminary to be taken up however, concerns the nature of the faced problem. Most of the studies has been starting of the conception that the actual retirement systems in Brazil are financially unviable, highly deficient and that they demand, on one side, a substantive elevation of the tax burden to guarantee its support or, on the other, the reduction of the volume of benefits in maintenance, or a reduction of the benefits values offered to the insured.

This subject deserves to be considered in a comparative approach: while the contribution rates for the costing of the social security in Brazil are among the highest in the world - what does not mean that the values of benefits assured to the citizens are equally high - few statements are made about the contributive systems of the countries considered as "paradigms" for the adoption of reforms in Brazil.

About this point, recent publications demonstrate, starting from data collected by the International Association of Social Security, that, in Chile, the contribution is about 20% of the total wages; in Argentina, the employer pays 16% on the total payroll, and the employee 11%; in USA, the contribution for the costing of the retirements and pensions is 6.2% to the company and 6.2% to the worker, plus 1,65% to the cost of health insurance; in France, contributions are about 9% for the employee and 8.2% on the total salaries, for the company; in Mexico, 2.1% are collected from the employers, and 5.8%

from the employer, also on the total payroll; in Canada, the sum of the contributions of employers and employees is of 5.4%<sup>1</sup>. In Brazil, though, besides the rate of the worker's contribution for Social Welfare (8 to 11%), there are several welfare contributions picked up by the employers that in total reach about 30%.

In the retirement systems of public servants, although the situation is quite different in relation to each State, Municipalities or to the Union, the rates reach, on average, 10%, and they are in adjustment process and elevation. Since 1993, the civil federal servants pay on average 11% of their total incomes, and such rates are not only larger due the Supreme Federal Court that, in September of 1999, considered confiscatory the progressive additional rates established by the Law # 9.783/99.

Although, those systems, that assure different and better rights to retired public servants, in comparison to the private workers affiliated to the National Institute of Social Insurance, were founded, historically, in non-contributory basis.

In those systems, retirement was considered as a premium given to the civil servants after the accomplishment of some requirements, specially the acquisition of tenure after a minimum period of service, and the total work time required to be eligible, with or without contribution. Since the 1940's, event though had happened changes in the legislation, only the pension benefit was funded in a special contribution of 6% of total compensation.

This fact is related to the conception that the retirement systems develop an important role to attract and retain qualified workers in the public service. In fact, it has been working in Brazil, and is partially true specially when the private market pays better salaries in comparison to the public service, and when there is a competition between both sectors to attract the most qualified and hardworking individuals on labor market. In Brazil, since its origin, several characteristics of the labor relationship of public servants and the State have been determined by this conception, as the tenure and retirement systems. For decades, those differences have been working as rewards to compensate the economic instability and loses in the public servants compensations purchasing power. In fact, is not negligible its importance to retain, in the long run, good public employees - but also those that had not enough reason to be retained. Even tough, in an environment ruled by the law and constitution, it was quite impossible to create reasonable differences related to retirement system, and in consequence there were some undesirable spill over effects, like the incentive to early retirement, especially in the civil service.

The 1988's Federal Constitution introduced important changes in the retirement systems applicable to the civil servants, as in the private sector's General Regime of Social Security. The first one was the linkage between the retirement system and the adoption of the statutory regime for the public servants, and the indiscriminate application of that rule produced serious unbalances in the system, deepened by the non-existence of age limits for retirement in Brazil, until then. The easiness with "free rider" behaviors were admitted increased distortions, creating an image of illegitimacy and generating impacts on the public budgets without the Brazilian State was prepared to do front to such expenses. The so-called "deficit" of the retirement systems of Union, States, Federal District and municipalities reaches about 4%

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<sup>1</sup> In *A Previdência ao Redor do Mundo*. Brasília : ANFIP, julho de 1997.

of the gross domestic product, and it is pressing the public finances strongly, in face of the lack of revenues to do front those expenses.

The singularity of the public servants retirement system in Brazil is requesting adjustment measures, part of them already implemented through the Constitutional Amendment # 20/1998. But the state and municipal governments, as well as the federal government still face serious problems about that. One of the proposed solutions is the reformulation of the system, and its substitution for another that observes financial balance and actuarial criterion, with a two-pillar regime, introducing complementary pension funds with defined contribution regimes.

The complexity of the problem, with its potentialities and limits, recommend the study and the analysis of international experiences in countries whose experience is important and comparable. In that sense, the experience of the public servants retirement systems of the federal and some state governments of the United States of America may offer subsidies for a comparative approach of the issue.

So, this paper, presented at the Minerva Program - Spring 2000, intend to look for, in a first part, describing the retirement system of the Brazilian public servants, especially at the federal level, the differences in comparison to the General Regime of Social Security, and some of its unbalances provoked by the improvidence and lack of provision of resources destined to do front to its commitments and the demographic transition in course in Brazil.

In a second section, we will try to analyze the current situation of the public servants retirement systems of the USA Federal Government and of the states of New York and California, their systems of benefits and costs, and the participation of the pension funds in the warranty of retirements and pensions.

We intend to do, at last, a brief description of the results of the Constitutional Amendment # 20/1998 and the trends after its regulation by the bills in process of appreciation by the National Congress (Supplementary Law Projects # 8, 9 and 10/1999), specially the possible results, in the medium and long run, of the implementation of pension funds in order to provide insurance benefits to the civil servants at the federal and state levels.

At the end, we intend to extract conclusions that allow us to evaluate the possibility of adapting the North American experience to Brazil in order to make effective the needed changes, and suggest necessary measures for the solution of the verified problems and for the structuring of a sustainable and capable system to accomplish its functions as an instrument of human resources policy and able to warrant social rights.

## 2. Brazilian Retirement Systems and their main characteristics

As occurred in other countries, Brazil had began to implement retirement systems, in the second half of the 19th century, restricted to some categories of public servants, as in the postal service and the imperial railways. In the 1920's, started the expansion process of retirement systems, including several working categories of the private sector, as in the ports, mining and bank sectors. In 1938, is created the Institute of Social Security and Assistance of the State Servants (IPASE), to manage separately the civil service retirement system in the federal level of government.

After that, Brazil has two well-separated and different systems to assure, both in private and public sector, retirement and Social Welfare both in private and public . Brazilian Constitutions since 1934 included different rules to regulate those different rights, and also the legislation has increased the differences between them. The recent Constitutional Amendment # 20/98 introduced great modifications in that situation, trying, in a certain sense, to approximate the regime of the public servants and the private sector workers regime, or even creating conditions for its virtual extinction and unification in only one regime with a lower level of benefits.

This chapter intends to describe the main characteristics of each system, and how the recent changes in the constitutional framework would affect their structures.

### 2.1 *The benefits of the General Regime of Social Security - RGPS*

The General Regime of Social Security, called in Brazil *Regime Geral de Previdência Social - RGPS*, administered by the Instituto Nacional do Seguro Social - INSS (National Institute of Social Insurance), has its origin in the system of retirement and pension funds instituted in Brazil starting from the end of the century XIX and destined to assure retirement covering for specific professional categories. Starting from the pioneering experiences destined to assist the railway man and employees of the mail, they became instituted retirement and pension funds to other categories, especially the identified ones with public services as telephony, electricity, public transport, telegraphy and port.

The model was substituted, starting from the 1930's, by the system of retirement and pension institutes (commercial employees, banking personnel, industry workers), unified under the legal aspect in 1960, with the edition of the Social Welfare Organic Law, that uniformed its costing and benefits rules. In 1966, the system is also unified of the institutional point of view, through the fusion of the institutes and the creation of the Instituto Nacional de Previdência Social - INPS (National Institute of Social Security), that came to give origin to current INSS, which became obligatorily to be adopted by all the

workers, except public servants. It is basically this system that is in force until today, responsible to collect and enforce contribution's law and regulation, and for the concession and maintenance of the benefits and for the administration of a large bulk of resources originated from welfare contributions calculated on the payroll, revenues and profits of workers and enterprises, whose amount overcomes the annual R\$<sup>2</sup> 52 billion<sup>3</sup>.

The RGPS assures several species of benefits, including strictly insurance benefits (retirement and pension), the aids (aid-accident, sick pay, wage-family, wage-maternity, aid-reclusion) and the assistance (benefits of continuous installment, surrender monthly lifelong).

Inside the RGPS can be identified, essentially, two subsystems, whose benefits are equivalent but sustained on different contributive bases, and whose addressees have deep differences in socio-economic terms.

An example is the fact that, in the urban subsystem, the medium values of benefit are quite superior. About 5,8 million benefits paid (46,61% of the total) are equal to the Brazilian minimum wage, that was R\$ 136,00 until April, 2000. About 5,8 million benefits paid (46,61% of the total) are same to R\$ 136,00, in other words, equal to the Brazilian minimum wage. Already in the rural subsystem, about 6 million benefits, corresponding to 98.3% of the total, are in the value of one minimum wage.

It is important to differentiate those two subsystems, because they are coexisting to allow the integration in the Social Security to the rural workers ordered by the 1988's Constitution. Due the transition phase between the old system and the current, it is verified that the current ones 6 million retirees or rural pensioners started to receive benefits, after 1991, in the value of a minimum-wage, independently of the proof of a minimum number of picked up contributions. The recognition of the time of rural service previous to 1988 is what it guarantees that right, and although starting from 1991 the legislation has deliberate to demand the proof of a minimum time of exercise of the equivalent rural activity to the period of grace to acquire the right to the benefit, does not still exist an effective linkage between benefit and contribution. On September 22, 1999, through the Message # 1.321, the President Fernando Henrique Cardoso sent to the National Congress Bill of Law # 1.733/99, that disposes about the contribution of the rural workers and changes the Laws # 8.212 and 8.213, both of July 24, 1991. Once approved, that project will make unfeasible, starting from 2006, the rural retirement without the proof of the contributions withdrawal on the value of the production sold by the rural producer, even in regime of family economy. This solution, justified for the financial unbalance of the rural subsystem, can produce very serious impacts, impeding that, in a close future, those workers can get the right to the retirement, given the precarious conditions of income in the rural area<sup>4</sup>.

An aspect that deserves to be considered in this issue is that most of the benefits granted to rural workers have semi-assistance characteristics and is in the value of a minimum wage. This fact has

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<sup>2</sup> For a comparison, in April 2000 the exchange rate was 1 R\$ = US\$ 0,57

<sup>3</sup> According the Ministry of Social Security and Assistance in the *Boletim Estatístico da Previdência Social*, the payroll contributions income of Social Security from February 1999 to January 2000 reached R\$ 50,717 billion, while the incomes of the SIMPLES reached R\$ 1,6 billion.

<sup>4</sup> In the beginning of March of 2000, the Ministry of Social Security and Assistance announced, assisting the rural workers revindication, the retreat of that project.



created, in fact, financial difficulties to Social Welfare. Until the regulation of the Constitution of 1988 for the Law # 8.213/91, rural workers deserved benefits of just half minimum wage, and the elevation of the expense with benefits was not accompanied for correspondent revenues; either there was a provision of resources for that purpose, given the historical inexistence of contributions withdrawal of the rural sector for the costing of the benefits.

Though, those benefits should be considered as part of the ransom of a social debt of enormous importance for the citizenship and the rural worker's valorization in Brazil, and whose last responsibility is of the whole Brazilian society, through National Treasury.

Considered the urban and rural subsystems, INSS pays more than 18,8 million monthly benefits, being about 6,2 million in the rural area and 12,5 million in the urban area. Those benefits can be classified like this, according to data of January of 2000<sup>5</sup>:

Of the total of benefits paid for RGPS, about 12 million are in the value of 1 minimum wage, or more than 63,84% of the total.

At the same time, the Social Security pays monthly about 29,4 thousand benefits in the value from 10 to 50 minimum wages, and 415 people receive between 50 and 100 minimum wages. The average value of the benefits, besides aids and assistance benefits, is of R\$ 252.

The average of the value of the insurance benefits (retirements and pensions, destined to substitute the monthly income of the held, resulting from work relationship, family entail or economical dependence, and that cannot be smaller than a minimum wage), however, it is about just R\$ 267. In the urban system, the medium value of the insurance benefits is of R\$ 342.

The Insurance System maintains about 3,3 million of retirement benefits for time of service and 5,4 million retirement benefits for age. There are also 2,2 million of retirement benefits for disability. But If we consider just the benefits for time of service (about 17.4% of the total of benefits paid by INSS), the average arises for about of R\$ 569,00. Those benefits reach about 39% of the monthly total of INSS's benefits expenses.

In case of age retirements (29% of the total) the average value is about R\$ 163 and they respond for 18.4% of the total expenses. The retirements for disability, with medium value of R\$ 189, reaches 9% of the total expenses. Besides, INSS still maintains about 1,9 million assistance benefits and 4,9 million pensions.

The expenses with insurance and assistance benefits paid for the General Regime of Social Security reached, in 1998, an equivalent amount 6% of the Brazilian Gross Domestic Product - GDP. That regime has universal character; in other words, it is applied automatically to all the workers, except those linked by law to a specific retirement system. However, it is verified that there is a great amount of workers that are not aided by Brazilian Social Security: the rate of RGPS coverage, in relation to the economically active population composed by workers that are not linked to other regimes, is about only

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<sup>5</sup> Source: Boletim Estatístico da Previdência Social, vol. 5, # 1, January 2000.

32% <sup>6</sup>, having had a great reduction from the end of the 1980's, when a percentile of coverage of 50.3% was verified<sup>7</sup>.

The expansion of RGPS, although insufficient to assure the appropriate coverage degree, happened at the same time in that the Brazilian population became predominantly urban: the cities pondered, in 1996, 78% of the national population, against 44% in 1960. In the same period it happened the reduction of the fertility rate, with the consequent reduction of the number of children for family unit, but without the level of the workers income allowed the accumulation of private saving or the acquisition of private retirement plans. Data relative to the year of 1998 demonstrate the existent situation in Brazil:

**Table 1 - Brazil - Population with 10 years old and more by Income Level - 1998**

Income in minimum wages	Quant.	%
Until ½	4.040.405	5,78%
More than 1/2 to 1	10.895.710	15,58%
More than 1 to 2	14.581.272	20,84%
More than 2 to 5	18.456.840	26,38%
More than 5 to 10	6.918.017	9,89%
More than 10	4.432.202	6,34%
Without revenues	9.716.124	13,89%
Without declaration	913.543	1,31%
<b>Total</b>	<b>69.954.113</b>	<b>100,00%</b>

Source: PNAD/IBGE, 1998. Minimum wage in April, 2000: R\$ 136,00

As it is verified, only 6,34% of the labor force has a level of personal income that justifies or permits the application of part of its income in a complementary retirement plan<sup>8</sup>, once RGPS assures benefits until the limit of approximately 10 minimum wages.

<sup>6</sup> Data for 1998. Source: Boletim Estatístico da Previdência Social, vol. 5, # 1, January 2000.

<sup>7</sup> Envejecimiento sin crisis - Informe del Banco Mundial sobre Investigaciones Relativas a Políticas de Desarrollo. World Bank, 1994, p. 408.

<sup>8</sup> Beyond that indicator, it is important to register that Brazil was classified by the United Nations Organization's World Development Report 1999 as the 79<sup>o</sup> country, among the 174 countries analyzed, in terms of life quality, according the IDH (Index of Human Development). This index measures the quality of life in countries, starting from education indicators (literacy and school registration rate), health (life hope when being born) and income (per capita GDP). In terms of Human Poverty Index, 15,8% 15.8% of the Brazilian population (26 million) does not have access to minimum conditions of health, education and basic services. About 34% of Brazilians live below the poverty line, with monthly medium income of US\$ 65; in other words, 54 million people live below the line of the poverty. Although 75% of world population live at countries with inferior per capita income to the one of Brazil, and the country belongs to the richest third of countries, not being able to, therefore, to be considered as a poor country, the concentration of income produces very perverse effects. The per capita GDP of the richer 20% (US\$ 18.563) is 32 times the one of the poorer 20% (US\$ 578). And the Brazilian's Gini Coefficient, that measures the inequality of income, places the country as one of the worst of Latin America, only equaled by Paraguay, because the 20% more poor has with only 2.5% of the income, while the richer 20% has 63.4% of the income. Among the 92 countries with available data, Brazil is only ahead of South Africa and Malawi, in terms of inequality in the distribution of income.

In consequence, being considered the income profile of the Brazilian economically active population, the General Regime of Social Security (that operates in simple partition regime), constitutes itself, for the workers great majority, in the only source of warranty of income in the retirement.

Furthermore, differently of other countries, does not exist in Brazil a culture of private saving to the warrant the present consumption level in the old age. This need until recently was supported by members of the family group but that became inviable with the reduction of the fecundity rate verified in the last twenty years. Like this, the number of workers linked to pension funds is still very small, of the order of 1,9 million of active participants, but they have been growing fast in the last 5 years, as we will see in the chapter 5 of this study.

The pressures over the RGPS are, therefore, considerable, taking in consideration the role that regime accomplishes in assuring minimum income in the old age for millions of workers. Most of those workers did not have contributed during the vesting period, but they have the right to the benefit in function of the solidarity and distributivity character inherent to the concept of Social Welfare assumed by the Constitution of 1988. As a partition regime, however, RGPS is going closer of its maturity period, especially if we consider the perspectives of aging of the Brazilian population in the next 25 to 30 years and the increase of the dependence rate, due to the reduction of the number of active workers among 15 and 64 years of age, aspect that it will be approached in the item 2.5.

## **2.2 Public Servants Retirement Benefits**

Outside the INSS regime, there is in Brazil a group of specific retirement systems exclusive to civilian and military public servants, maintained by the Union, States, Federal District and Municipalities for their own servants. Those regimes are also differentiated to each other, although they observe, in the case of the civil servants, some basic parameters, established in the Federal Constitution, and, more recently, in federal legislation (Law # 9.717/98) that fixes their general regulation.

In Brazil, the public's civil servant retirement is, now, ruled by the art. 40 of the Federal Constitution, and in the art. 3° and 8° of the Constitutional Amendment # 20/98. The retirement can be voluntary or compulsory. In some cases, it will be with integral benefit, in other reduced and proportional at the time of service.

The evolution of this right, in constitutional level, reflects the own development of the workers social rights, especially after the Second World War. As well as the retirement in the private sector, the retirement in the public service appears as a warranty, and even a premium. But, more than in the private sector, retirement rights were attributed to public servants because of the nature of professional relationship with the State activity and of their peculiar juridical regime. Indeed, they differ as the retirement systems of public servants, civilian and military, maintained, for long time, their initial characteristics, while those started to incorporate the insurance rights due to the workers pressures or as

incentive mechanisms to the productivity, especially by the creation of private complementary retirement plans<sup>9</sup>.

The public servants retirement system had its origin, in Brazil, in the first laws of the Empire that assured retirement and pension to the members of the magistracy, to the military, employees of Treasury, railways and postal service. In 1926, it was created the Institute of Social Security of Union's Employees, that gives place to the Institute of Social Security and Assistance of the State Servants - IPASE in 1938.

But the constitutional treatment of the public servants retirement rights comes from 1934: in its article 170, the 1934's Constitution foresaw the right to retirement with integral salary to the servant in case of disability for the exercise of the public job, since it counted at least 30 years of service. That right was equal, like this, to the current retirement for time of contribution, although associated to the disability condition. Not verified the disability, the retirement would feel obligatory at age 68. To those turned disable for contagious disease or injury in service, it also checked the integral retirement, at any time of service. In any hypothesis, the profit could not exceed the salary of the activity.

The Constitution of 1937 reproduced this approach, anything innovating in the treatment of the matter. In its validity, however, was established the Statute of the Public Employees of 1939 (Decree-Law # 1.713, of October 28, 1939) that expressly foresaw, for the first time, the retirement hypothesis for time of service, to be granted to the employees *ex-officio* or to their solicitation, if they counted with more than 35 years of service and they were judged "*worthy of the prize, for the good and loyal services rendered to the public administration*". In any case, the benefit would be proportional at the time of service, not could be inferior to the 1/3 of the salary; also it would not be able to be superior to the salary of the activity. The same Statute, in its art. 197 gave to the retirement punitive character, foreseeing the employee's removal through compulsory retirement - independently of the age - in the interest of the service or "*for convenience of the regime*".

In the Constitution of 1946, the compulsory retirement for age was elevated for 70 years, appearing the voluntary retirement for the first time, after 35 years of service, already without its "prize" character, but also without demanding contribution withdrawal for the joy of the benefit. It foresaw, still, the integral retirement benefit, conditioning that benefit to the satisfaction of the 30 years of service minimum requirement, being the benefit proportional in the other cases, except when for disability due to accident in the service, professional disease or serious, incurable or contagious disease<sup>10</sup>. It was also for the first time foreseen in the Constitution the parity as criterion of benefits readjustment, being guaranteed to the retiree the revision of the benefit whenever changed the salary of active employees "because of alteration of the purchasing power of the currency". The Law # 1.711/52, although the Constitution of 1946 did not foresee it, established, for the first time, differentiation among the sexes, attributing to the woman the right to the integral retirement, voluntary, after 30 years of service.

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<sup>9</sup> In Allen, Everett et alii. Planos de Retirement. ICSS/Consultor, 1ª ed., 1994, p. 17.

<sup>10</sup> So, who had, at age 70 - age for compulsory retirement - only 30 years of service would deserve the integral retirement, even does not having the 35 years of service. In the Constitution of 1967, the integral retirement becomes only owed in the case of having accomplished the 35 years of service.

The 1967's Constitution, in its article 100, foresaw the compulsory retirement to age 70, and voluntary retirement after 35 (man) or 30 years (woman) of service, in this case with integral salary. Counting with less time of service, the benefit would be proportional, except in the case of retirement for disability. It was prohibited, again, that the benefits could be superior to the salary of the activity.

The Constitutional Amendment # 1/69, that change almost in its entirety the Constitution, did not brought significant alterations in the public employees retirement system, but it did not foresee, still, the proportional voluntary retirement. It guaranteed, however, the integral retirement to the 35 (man) or 30 (woman) years of service, the compulsory retirement to the 70 years of age and for disability. With the Constitutional Amendment # 18/81 was included the teachers special retirement after 30 or 25 years of service in the public teaching, for the man or woman, respectively.

In the 1988's Federal Constitution, the matter had received extensive coverage, being guaranteed to the civil public servant the right of retiring voluntarily, with integral wages, after 35 years of service, if man, or 30 if woman (art. 40, III, "a"). However, this time could be smaller, as established in supplementary law, in the case of activities considered painful, unhealthy or dangerous (art. 40, § 1º). Specific rule assured to the teachers retirement to the 30 years of teaching, if man, or 25 years, if woman (art. 40, III, "b").

The public civil servant could still voluntarily retire with proportional wages, to the 30 years of service, if man, or 25, if woman, or then to the 65 years of age, if man, and 60, if woman.

To age seventy the retirement would be compulsory, with proportional wages at the time of service.

In case of permanent disability, it was assured retirement with integral salary, when due to accident in service, professional disease or serious, contagious or incurable disease, specified in law, or with proportional wages at the time of service in the other cases. In relation to the members of the Judicial Branch, and of the public prosecution service, specific device would be applied (art. 93, VI) assuring compulsory retirement with integral wages, to the 70 years, or for disability, and voluntary to the 30 years of magistracy, since after 5 years of judicial service.

It was assured to the public servant the right of counting for retirement proposals as the time of service federal, state or municipal, as the time of service rendered in the deprived activity, given the forecast of reciprocal count of time of contribution. Specific law would regulate the retirement in short term or transitory employment; in federal level, the matter was ruled by the Law # 8.647/93, determining the inclusion of this situations in the General Regime of Social Security<sup>11</sup>.

The benefits are adjusted in the same proportion and in the same date of the active personnel's remuneration, extending to the inactive ones any benefits or subsequent advantages given to theses, besides when there are transformation or reclassification of the working positions. In the case of servant's death, his beneficiary or beneficiaries are entitled to a pension, subjected to adjustment according to the same established criteria for the retirement and whose value will correspond to the

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<sup>11</sup> According decisions of the Federal Court of Accounts (Tribunal de Contas da União), administrative court that judges the concession of retirement benefits to public employees and appreciate the accounts of the Government, after December 1990 and until the Congress passed the law, all the political appointments and free nomination jobs occupants had had the right to integral retirement benefit, no matter if those employees had no more than one or two years of service at date of retirement.

totality of the compensation of the died servant, until the limit established in law, corresponding to the ceiling of compensations and retirement benefits in the public service.

As well as the previous constitutions, the 1988's Federal Constitution reserved the treatment of the retirements of the military personnel to the ordinary legislation, without entering into larger details. The military retirement system observes specific rules, but must follow, although the same basic principles that define the civil servants rights: retirement for time of service, for disability or compulsory. There is, however, own rules about the calculation of the retirements and pensions, defined in the Statute of the military, insured the integrality of the wages or pension and its readjustment in the same way assured to the civilians. In the same way, the military can be retired compulsorily with lower ages, in function of the peculiarities of the military career. In consequence of that different treatment, persist anachronisms in the military retirement legislation, that it is classic example the pension warranty to the single daughters, independently of limit of age for their joy, as well as the promotion concession for the simultaneous superior patent when passing to the inactivity, what generates the consequent increase in the value of the retirement wages and of the consequent pension.

About the civil servants, the rule originally contained in the Federal Constitutional (art. 40), although it does not refer to the effective public servant expressly, it is linked in inseparable way and is exclusive to the servant occupant of an effective job. In this manner, it is inherent to the job regime, and the rules applied in this case are not applied, automatically, to the occupant of public employment ruled by the Consolidation of the Laws of the Work (CLT), although linked to the Administration direct, autarchies or foundations, remainders of the previous constitutional order that did not demand the unique regime, as registers Carlos Ari Sundfeld (1992:356-358).

In spite of that linkage to be implicit in the 1988's Constitution since it came into force, the principle was not observed in all the cases. Actually, the most several solutions were adopted in the ambit, especially, of the Brazilian Municipalities. In some cases, the CLT regime was adopted instead of the job regime, but even so the public servants started have the right to a differentiated retirement system, separate from the General Regime of Social Security (RGPS). In other cases, the Municipalities maintained their servants in the CLT regime, linked to RGPS, but with right to retirement complementation until the value of the integral wages.

In the cases in that the Municipalities adopted the unique statutory juridical regime and a specific retirement system, differentiated and autonomous in relation to the RGSP regime, in rule that solution was adopted without larger cares. Frequently the change of retirement systems happened without a system of appropriate costing was constituted or without the own retirement benefits were funded in the principles of the morality and reasonability, being produced distortions and inequities of all kinds that ended for turning many of those retirement systems unmanageable.

Thus, the retirement systems of public servants ended up turning into distortion focuses and privileges, denaturing their condition of retention mechanism and attraction of qualified employees. More than that, they turned in an escape valve for the reduction of expenses in the short term, as the States and Municipalities would be excused of paying contributions for the General Regime of Social Security, but without they showed themselves skilled to substitute that regime in a suitable and efficient way, as we will see in the item following.

### **2.3 Specific Systems of Social Security**

The specific systems of Social Security are, therefore, those that have specific clientele, outside the RGPS. Besides the retirement systems of the federal, civil and military public servants, extracted directly of the Federal Constitution and of responsibility of the Federal Government, there are the retirement systems also maintained by the subnational political levels.

The Constitution did not delimit, expressly, the reach of those systems, or their linkage to the juridical regime of personnel. But, having reserved to each federate entity to legislate on its own juridical regime of your servants, it forced that regime to contemplate the insurance rights foreseen in the art. 40 of CF, without excluding of the reach of those rights, however, expressly, the servants under CLT regime. Giving up the adoption of the statutory regime, therefore, the servants of States, of Federal District and of the Municipalities they would be direct and automatically linked to the General Regime of Social Security (RGPS), guaranteeing to the same ones the benefits of that regime, since not covered by the concept of public servant "stricto sensu" from the art. 40 and 41 of CF.

As well as each political entity can decide about the implementation or not of its own retirement system, the Constitution of 1988, in its art. 149, paragraph unique, assured the Municipalities, Federal District and States, as consequence of the principle of the autonomy of the federate entities, the possibility of institute contribution payable by their employees to fund social security and assistance systems in their benefit.

Coherent with that constitutional approach, the Laws # 8.212 and 8.213, of July 24, 1991, that instituted the Plans of Costing and Benefit of Social Welfare established rules to allow to the federate entities to exercise their rights.

Although they established, in consequence of the RGPS universality principle, that the whole public service would be held obligatory of Social welfare, compared, in any cases, to the CLT employee, the Law # 8.212, in its art. 13, and the Law # 8.213, in its article 12, foresaw the following:

*" Art. 12. The civil or military public servant of the Union, of States, of Federal District or of the Municipalities, as well as the one of the respective autarchies and foundations, it is excluded of the General Regime of Social Security ruled by this Law, since it is subject to their own systems of Social welfare.*

*Unique paragraph. In case this servant comes to exercise, at the same time, one or more activities embraced by the General Regime of Social Security, it will be held obligatory in relation to the those activities.*"

Already the Public Administration, of any government level, was included in the company concept, for contributive proposes, as explicit the art. 14 of the Law # 8.213/91:

*" Art. 14. They are considered:*

*I - company - the individual firm or society that it assumes the risk of urban or rural economical activity,*

*with lucrative ends or not, as well as the organs and entities of the direct, indirect of foundational public administration;*

..."

In the terms of the Regulation of Costing of Social Welfare, however, the system implemented to give covering to the state or municipal public servants must assure, in the minimum, the benefits of retirement and pension for death, as now foresees the art. 10, § 2° of the Regulation of Social Security, approved for the Decree # 3.048, of May 6, 1999.

The new constitutional framework, truly, maintained, essentially, the systematic previous to the 1988's Constitution. The past legislation already allowed the affiliation of the public servant to a specific system of insurance as enough to move away the condition of having held obligatory of General Regime of Social Security (RGPS), with the consequent exclusion of the contributions they be picked up by the public entity employer.

The autonomy of the federate entities, although subordinate to the general rules established by the article 40 of the Federal Constitution, allowed expressive differentiation to be introduced by the state and local legislation.

The specific regime, to be admitted as such, should assure benefits of retirement and pension; but it can assure other benefits, such as sick pay, aid-reclusion, wage family, wage-maternity. In some cases those regimes extrapolate the nature of typical insurance regimes, also assuring benefits of attendance to the health, personal loans of several species, etc. In such manner, they are common situations in that the dependents qualification is made without more rigorous criteria, as well as benefit calculation formulas and extension of rights to the retirees and pensioners that don't find parallel in the federal legislation. They are also common differentiation in the system of costing of the benefits, as we will see in the item 2.5 of this Chapter.

In order to restraint those differentiations, the Law # 9.717/98 prohibits that the specific regimes grant different benefits of the insured ones for RGPS or foreseen in the Constitution. It fastened, also, proportion rule that limits the contribution of the State entities to the costing of the specific regimes to the double of the contribution of those held. And it established that the federative entities will only be able to institute their own regimes if they assist to the requirement of "minimum number of insured employees"<sup>12</sup> fastened by the Ministry of Social Security and Assistance, request that attempts the creation of regimes without there is enough number for the warranty of the covered risks in the benefits plan. Besides, it fastened as limit for the expense with retirees and pensioners the percentile of 12% of net current revenues of each federative entity, in order to restrict the growth of those expenses, which should be accomplished starting from the beginning of 2002.

In spite of countless complaints against the unconstitutionality of such norms, there was not until this moment deliberation of the Supreme Federal Court about the matter, being the same able to produce its effects. Due to that, regimes that assure extravagant benefits should be reviewed, concentrating on the

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<sup>12</sup> According Rule of Ministry of Social Security and Assistance # 4.992/99, "For warranty of the actuarial balance without need of reinsurance operation, the specific regime of Social Security should embrace a minimum of thousand insured employees, considered the military and civil servants, active and inactive.



essential benefits of retirement, pension and aid destined to supply the needs of the servants due to the accident events, disease, disability, age, death, reclusion, protection to the maternity and the pregnant woman, as well as their taxing rules.

But there is another question related to this point. When assuming the obligation of maintaining the insurance benefits to its public employees, through specific system of insurance an social assistance, the State or Municipal district is discharged of the contributions for the General Regime of Social Security (RGPS). Nevertheless, when implementing specific regimes, many federative entities did not take into account the need of maintenance or institution of enough contributions to assure the costing of the current or future benefits. They have had, however, the right to the financial compensation in relation to those public employees, relatively at the time in that they have worked under the General Regime of Social Security and that has been computed in the concession of retirement or disability benefits.

Although legitimate, that option faced a severe complication in the absence of the financial compensation among the insurance regimes, as the regimes did not have funds capable to support the current obligation of the granted benefits. In spite of being foreseen in the Federal Constitution since 1988, only 11 years after its validity the financial compensation was regulated, through the Law # 9.796, of May 5, 1999. The federal government's resistance was only overcome after state governors and mayors of capitals pressures, that became creditors of largers amounts tends in view they have assumed integrally the expenses with benefits payment for retirees and pensioners that, in many cases, contributed during great part of their professional careers to the accounts of the General Regime of Social Security. Only in the case of the State of Minas Gerais the State Governor points a credit of R\$ 17 billion, accumulated until the validity of the Law # 9.796/99.

This Law, regulated by the Decree # 3.112/99, of July 6, 1999, guarantees though to the federal government the right of parceling out the state and municipal governments credits in up to 240 months; apart from that, establishes the calculation formula of the compensation in order to reduce the amount to be compensated, and also establishes multiple requirements to the state entities exercise their right to the compensation, among the ones is the observance of the law of general norms of the specific regimes (Law # 9.717/98), whose constitutionality is doubtful.

In consequence, the specific regimes of States and of the Municipalities present complex financial situation and they are marked by the unbalance between revenues and expenses, demonstrated by the high degree of compromising of the available revenues with the retirees costing and pensioners. The Table below shows that situation, evidencing that about 2/3 of the states surpass the expense limit with personnel allowed by the Supplementary law # 96/99 - 60% of the net current revenues - and also the expense limit with inactive determined by the Law # 9.717/98:

**Table 2 - Specific Retirement Systems - Brazilian Federal and State Levels - 1997**  
**Total Expenses as % of Net Revenues**

*In R\$ millions*

	EXPENSES	NET CURRENT REVENUE (NCR)
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	RETIRES AND PENSIONERS	ACTIVE	TOTAL	REVENUE FROM CONTRIBUTIONS	TOTAL NCR	% COMPROMISED		
						RETIRED	ACTIVE	TOTAL
<b>FEDERAL GOV.</b>	<b>19.514,40</b>	<b>23.694,00</b>	<b>43.208,40</b>	<b>2.004,23</b>	<b>97.041,00</b>	<b>20,11%</b>	<b>24,42%</b>	<b>44,53%</b>
<b>STATES</b>	<b>15.788,20</b>	<b>34.702,70</b>	<b>50.490,90</b>	<b>3.799,18</b>	<b>74.819,60</b>	<b>21,10%</b>	<b>46,38%</b>	<b>67,48%</b>
AC	28,2	267,7	295,9	28,18	447,70	6.3%	59.8%	66.1%
AL	178,6	432,1	610,7	47,531	821,80	21.7%	52.6%	74.3%
AM	190,5	459,1	649,6	90,94	1.530,20	12.4%	30.0%	42.5%
AP	1,8	234,3	236,1	18,888	313,40	0.6%	74.8%	75.3%
BA	380,1	1.621,40	2.001,50	100,08	3.812,90	10.0%	42.5%	52.5%
CE	203,8	930,80	1.134,60	79,10	1.855,20	11.0%	50.2%	61.2%
DF	829,7	2.134,90	2.964,60	234,84	3.835,70	21.6%	55.7%	77.3%
ES	238,5	876,40	1.114,90	94,80	1.704,70	14.0%	51.4%	65.4%
GO	407,3	661,00	1.068,30	39,66	1.732,60	23.5%	38.2%	61.7%
MA	191,5	559,5	751	58,10	1.129,90	16.9%	49.5%	66.5%
MG	1.817,10	3.428,80	5.245,90	419,70	6.554,30	27.7%	52.3%	80.0%
MS	54,1	462,6	516,7	18,504	792,90	6.8%	58.3%	65.2%
MT	175,5	585,6	761,1	76,11	1.253,30	14.0%	46.7%	60.7%
PA	224,5	915,80	1.140,30	73,26	1.640,20	13.7%	55.8%	69.5%
PB	98,1	309,8	407,9	24,784	892,60	11.0%	34.7%	45.7%
PE	489,2	1.115,70	1.604,90	192,59	2.264,30	21.6%	49.3%	70.9%
PI	121,3	413,5	534,8	33,08	767,40	15.8%	53.9%	69.7%
PR	1.053,80	1.841,30	2.895,10	347,41	4.206,50	25.1%	43.8%	68.8%
RJ	1.781,80	2.978,10	4.759,90	428,40	5.976,00	29.8%	49.8%	79.7%
RN	151,8	464,2	616	37,136	925,40	16.4%	50.2%	66.6%
RO	32	434,4	466,4	37,312	562,20	5.7%	77.3%	83.0%
RR	0,1	82,1	82,2	0	353,60	0.0%	23.2%	23.2%
RS	1.517,00	2.388,00	3.905,00	273,40	4.601,00	33.0%	51.9%	84.9%
SC	481,5	1.022,50	1.504,00	150,40	2.246,60	21.4%	45.5%	66.9%
SE	100,5	397,2	497,7	3,015	762,20	13.2%	52.1%	65.3%
SP	5.024,30	9.420,90	14.445,20	866,70	23.196,60	21.7%	40.6%	62.3%
TO	15,4	265,2	280,6	25,254	640,40	2.4%	41.4%	43.8%

Source: STN/MF - Elaboration: DEPSP/SPS/MPAS and Author

As a rule, it has been increasing the importance of the expense with inactive, that it reaches, on average, 21.1% of the liquid average income in States (1997), and 17.76% in the Union (1999), representing 44.7% of the payroll of the Union (1999) and 31.3% of the total payroll of States (1997). According to the Secretary of National Treasury of the Ministry of Finance, in terms of percentile of the GDP, that expense reaches, today, respectively 1.8% and 2.3% (1997). In other words, just the States and the Union spend about 4% of GDP for the costing of inactive and pensioners of the public service.

Because that, and of situations produced along more than 35 years, when they were constituted the retirement systems of the servants that today are retirees and left pension for their spouses and children, especially the rules of costing of those systems, are today verified serious unbalances, more serious than those found in the federal retirement systems, although part of them has common origins. Besides, the aging of the labor force, the non replacement of the retirees and dead public employees and the growth of the outsourcing, produce the tendency the one what, in the short term, does the number of inactive servants overcome the number of actives, placing government and society before a dilemma: how to maintain the current ones quantitative of active public employees and, at the same time, to finance the

payroll of retirees and pensioners, without the incomes from contribution present the same increment? That problem tends to reach your summit next 10 years, tends in view the medium age of the current servants, around 40 years.

In terms of profile of benefits, the available data are of difficult systematizing. There are not, in fact, reliable data that allow to trace a detailed profile of the insurance benefits paid to the federal, state and municipal public employees. However, there are some indicative that can be considered.

In absolute terms, in the federal level the following situation is verified:

**Table 3 - Average Compensation and Pensions of Federal Civil Servants and Public Agents - 1999**

November, 1999 - in R\$

Branch	Active	Retiree	Pensioner	Total
Executive Branch (1)	2,065	1,827	1,482	1,877
Military(2)	1,013	2,582	1,560	1,490
Legislative Branch (3)	5,341	6,842	3,016	5,377
Judiciary Branch (4)	4,519	5,687	3,212	4,350

Total expenses divided by number of servants

Source: Boletim Estatístico de Pessoal, dez 1999 - SRH/MP - SNT/MF -

Last 12 months average

(1) included autarchies, foundations and Central Bank; (2) all military personnel, included conscripts; (3) included expenses with Members of Congress; (3) included expenses with federal judges and High Courts ministries.

In the States, Federal District and Municipalities, the available values are out of step in 5 years, but they still allow to have an approximate idea of the real situation. Although the differentiation are very big among the States, and between these and the Municipalities, as well as in the Municipalities to each other, a tendency is verified to inferior averages of retirements and compensation values as the evaluation is decentralized (so that the smallest municipal districts also have inferior averages of remunerations and pensions to those verified in the capitals of States). The Tables below illustrate that fact:

**Table 4 - Expenses with Payroll in States and Federal District - 1995**

State	# of Actives	Expenses by Active (R\$)	# Active Employess/1000 inhabitants	# of Retirees	Expenses by Retiree (R\$)	# Retirees/1000 inhabitants	# of Retirees and Active Employees
Acre	28,863	466.34	66.05	340	705.88	0.78	29,203
Alagoas	41,151	552.11	15.80	8,745	1,026.87	3.36	49,896
Amazonas	53,000	-	23.91	6,560	-	2.96	59,560
Amapá	20,000	577.50	64.94	2,400	1,783.33	7.79	22,400
Bahia	206,069	-	16.79	31,119	-	2.53	237,188
Ceará	107,000	627.10	16.34	8,000	1,058.75	1.22	115,000
Federal District	18,112	1,569.13	10.83	10,032	-	6.00	130,000
Espírito Santo	41,906	777.22	15.53	12,954	1,255.21	4.80	54,860
Goiás	123,000	512.20	29.49	24,000	1,193.75	5.75	147,000
Maranhão	65,391	609.72	12.85	10,207	697.56	2.01	75,598

State	# of Actives	Expenses by Active (R\$)	# Active Employers/1000 inhabitants	# of Retirees	Expenses by Retiree (R\$)	# Retirees/1000 inhabitants	# of Retirees and Active Employees
Mato Grosso	42,925	682.35	19.71	3,915	796.93	1.80	46,840
Mato Grosso do Sul	38,052	465.94	20.57	5,978	602.21	3.23	44,030
Minas Gerais	386,066	576.59	23.92	111,181	982.18	6.89	497,247
Pará	102,156	399.98	19.71	12,097	800.20	2.33	114,253
Paraíba	61,858	-	18.89	20,649	-	6.31	82,507
Paraná	126,000	932.54	14.67	46,000	830.43	5.36	172,000
Pernambuco	67,246	723.76	9.22	33,889	767.21	4.65	101,135
Piauí	68,000	389.85	25.65	12,610	494.85	4.76	80,610
Rio de Janeiro	177,000	561.58	13.55	80,000	905.50	6.12	257,000
Rio Grande do Norte	62,228	423.28	24.86	8,504	781.98	3.40	70,732
Rio Grande do Sul	181,600	767.62	19.38	91,671	1,088.78	9.78	273,271
Rondônia	27,000	372.96	21.76	65	769.23	0.05	27,065
Roraima	NF	-	-	NF	-	-	-
Santa Catarina	71,209	992.15	14.34	23,243	1,077.31	4.68	94,452
São Paulo	645,000	748.53	19.73	170,000	1,242.35	5.20	815,000
Sergipe	36,676	699.37	23.65	5,692	818.69	3.67	42,368
Tocantins	34,503	434.74	35.57	1,705	-	1.76	36,208
TOTAL *	2,832,011	657.55	18.69	741,556	1,027.40	4.89	3,573,567

Source: "Folha de São Paulo ", 27/12/95, p. 1-6. IBGE (population estimate for 1993)

**Table 5 - Expense with Payroll in the State Capitals - 1995**

Municipality (State Capitals)	# of Actives	Expenses by Active (R\$)	# Active Employers/1000 inhabitants	# of Retirees	Expenses by Retiree (R\$)	# Retirees/1000 inhabitants	# of Retirees and Active Employees
Aracaju	6,670	530.73	15.84	1,040	442.31	2.47	7,710
Belém	9,121	416.62	7.03	3,262	297.36	2.51	12,383
Belo Horizonte	20,398	843.22	9.90	4,527	830.57	2.20	24,925
Boa Vista	NF	-	-	50	-	0.31	-
Campo Grande	9,000	457.78	15.90	300	2,733.33	0.53	9,300
Cuiabá	6,069	731.59	13.92	188	4,148.94	0.43	6,257
Curitiba	23,000	617.39	16.86	2,200	1,009.09	1.61	25,200
Florianópolis	4,312	674.86	16.15	442	769.23	1.66	4,754
Fortaleza	25,000	488.80	13.54	5,000	624.00	2.71	30,000
Goiânia	16,960	621.46	17.70	2,846	709.77	2.97	19,806
João Pessoa	11,000	362.73	20.91	600	983.33	1.14	11,600
Macapá	2,100	514.29	11.73	744	631.72	4.16	2,844
Maceió	6,541	466.29	9.79	1,437	535.84	2.15	7,978
Manaus	18,812	397.09	17.45	943	-	0.87	19,755
Natal	7,786	-	12.18	1,573	-	2.46	9,359
Palmas	2,082	379.44	43.38	-	-	-	2,082
Porto Alegre	15,758	1,218.43	12.31	4,419	1,081.69	3.45	20,177
Porto Velho	NF	-	-	NF	-	-	-
Recife	11,414	726.30	8.68	3,701	616.05	2.81	15,115
Rio Branco	2,270	-	11.58	30	-	0.15	2,300
Rio de Janeiro	80,000	524.88	14.42	36,000	499.72	6.49	116,000
Salvador	12,232	554.28	5.63	4,662	1,072.50	2.14	16,894

Municipality (State Capitals)	# of Actives	Expenses by Active (R\$)	# Active Employers/100 0 inhabitants	# of Retirees	Expenses by Retiree (R\$)	# Retirees/1000 inhabitants	# of Retirees and Active Employees
São Luís	13,206	435.41	17.89	2,456	451.95	3.33	15,662
São Paulo	123,762	848.89	12.57	26,702	1,214.14	2.71	150,464
Teresina	7,149	713.39	11.22	762	459.32	1.20	7,911
Vitória	8,176	677.59	30.62	739	960.76	2.77	8,915
TOTAL *	442,818	663.32	12.89	104,623	793.52	3.03	547,441

Source: "Folha de São Paulo ", 27/12/95, p. 1-6. IBGE (population estimate for 1993)

The medium values of the insurance benefits maintained by the specific regimes of States, Federal District and the Municipalities, therefore, they are practically covered by the maximum values of benefit insured by RGPS. It is not, however, the case of the Union, whose medium values of retirements are quite superior, reflecting a higher degree of qualification of the labor force in a quite higher income distribution:

**Table 6 - Income Level Distribution - Executive Branch - Active and Retired Civil Servants -  
Nov 1999 - As % of Total**

Income Level	Active	Retiree	Total
Until R\$ 500	2,6	7,6	4,7
R\$ 501 to 750	9,3	8,5	8,9
R\$ 751 to 1000	13,4	17,5	15,2
R\$ 1001 to 1250	22,7	21,0	21,9
R\$ 1251 to 1500	15,2	14,3	14,8
R\$ 1501 to 2500	19,4	14,5	17,3
R\$ 2501 to 3500	7,7	7,1	7,4
R\$ 3501 to 4500	4,2	2,8	3,6
R\$ 4501 to 5500	2,4	2,0	2,3
R\$ 5501 to 6500	1,2	1,5	1,3
R\$ 6501 to 7500	1,1	1,4	1,2
R\$ 7501 to 8500	0,5	1,3	0,8
Above R\$ 8500	0,3	0,7	0,4

Source: Ministry of Planning, Budget and Management, Bol. Estatístico de Pessoal # 44, jan 2000.

Being just considered the data of the Executive Branch, it is verified that about 45% of the total of the retirees and pensioners receive benefits higher than the ceiling of RGPS, that is R\$ 1,255; in the Legislative and Judicial Branches, where the compensation averages are about 100% higher, that percentile one is superior to 80%.

That profile of income, and maintained the situation in the current levels, demonstrates the need of a retirement system for the servants that assures revenues superior to the paid for RGPS, or of providing, in the inexistence of a regime with such capacity, other instruments that make possible to complement the income in the retirement, under penalty of abrupt reduction of the level of income when retiring.

The option chosen by the Brazilian representatives and for the government it was always assuring that warranty, for the civil and military public servants of the administration direct, autarchic and foundational, through regimes of defined benefit, with integral wage benefits and assuring adjustment parity among retiree and active workers. Though, the greatness and generosity of those benefits has been pointed as cause of the elevation of the public deficit, reason for the which constitutional changes were promoted with direct impact on the retirement system of the public servants, and strong consequences over the maintenance of the system still today in vigor, that we will approach in the item 2.4 to proceed.

## **2.4 The changes in the Social Security Systems**

The insurance systems of the public servants became, in the last 5 years, in the excuse to legitimize the reform of Brazilian Social Security, starting from the unquestionable need to combat privileges and distortions. Among those privileges, it would be the disparity among the medium values of benefit granted by the different regimes, as try to demonstrate the Table beneath:

**Table 7 - Comparison between Retirement Benefits in Number of Minimum Wages - mean**

Nov. 1999

<b>System</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999*</b>
RGPS	1,8	1,8	1,8	1,8	1,8
Union					
Executive Branch (civil servants)	14,6	14,1	13,6	13,3	13,7
Military	19,5	16,2	15,9	17,4	19,3
Legislative Branch	54,2	51,7	51,9	54,3	51,6
Judiciary Branch	47,5	36,5	39,4	41,3	42,6

Source: SRH/MP, INSS/MPAS and STN/MF. Bol. Estatístico de Pessoal # 44, jan 2000. - Elaboration: SRH/MP.

In spite of the eloquence of the numbers, which demonstrate that the average benefit in the RGPS significantly lower than the ones found the federal public employees regimes, it is a fallacious comparison, that once and for all the average benefit in the RGPS cannot be compared with the one of specific regimes that reflects characteristics of part of the manpower, as the regimes of public servants. In fact, such regimes are constituted by workers whose medium profile of income, during the vesting period of benefit, it is quite superior.

Even so, the Brazilian public insurance system faces today questions that take, sometimes, to the denial of the need of existence of a specific insurance regime for the public servants, existing proposals - proceeding, in many cases, of left parties - where one of the fundamental premises is the adoption of unified regimes of insurance, embracing the workers totality, so much of the public sector as of the private sector, subjects to uniform rules in relation to rights and duties.

In that context, the approval of the Constitutional Amendment # 20/98 was due, largely, to the importance of promoting changes in the insurance regimes of the public servants, especially with the objective of turning them more assimilated to the General Regime of Social Security. In that way, the Constitutional Amendment # 20/98 contemplates an approach among the retirement systems, toward to the reduction of the values of insured benefits by the public servants retirement systems.

In the same way, the criterion of the retirement for time of service was substituted by the concept of retirement for time of contribution, that should observe criteria of financial and actuarial balance, observing the conception second the one which the retirement system while Social Security brings built-in the contributive nature of the benefit. Therefore, the concept of insurance benefit granted as prize becomes incompatible with the Constitution, forcing the federate entities to institute contributive systems that observe the criteria of financial and actuarial balance referred in the “caput” of the art. 40 of the Constitution. Moreover, with relationship to the other rules, the art. 40, § 12 of the Federal Constitution determines the observance, for the retirement systems of public servants, of the requirements and criteria established for RGPS.

Also with purpose of unification, it was determined the application of the same applicable rules to the public servants in general, occupants of effective jobs, to the magistrates and members of the public prosecution service, standing back the possibility of earlier retirement that have had those public agents according the 1988's Constitution.

In the Brazilian case, the inexistence of minimum retirement ages, associated to the mechanism of the reciprocal count, has still been pointed as a source of distortions, generating situations of precocious retirements that are not maintainable under the financial and contributive point of view.

To reduce or to eliminate those distortions, the Constitutional Amendment # 20/98, effective since December 16, 1998, established two different rules, applicable to the public servants according their functional situation.

To the public servants joined until the date of the entrance in effect of the Amendment, they are applied as minimum ages 53 years, for the man, and 48 years, for the woman, since the time of service or total contribution reaches, at least, the total time demanded for the benefit (35 years for the men or 30 years for the women), plus an extra time corresponding to twenty percent of the difference between the total time of demanded service and the already accomplished by the servant until that date. Therefore, a public employee that on December 16, 1998 had computed 20 years of service, can retire for time of contribution after working for more 18 years, since when completing that time he has already reached the 53 years of age. For the women, the same rule is applied, but as it is them insured retirement to the 30 years of contribution, it will be possible, for a public servant with 20 years of service, to retire after 32 years of contribution, since with 48 years of age. Evidently, as larger the time of contribution already accomplished on December 16, 1998, minor will be the demanded additional time, and vice-versa. But, for the servant that would complete the demanded period of contribution with inferior age that the required, it will be necessary to continue in activity until reaching the requested age.

For the public servants entered in the public service after December 16, 1998, the general rule to be applied allows them to retire only after 60 years of age, for the man, and 55 years of age, for the woman, with 35 years of contribution for the man and 30 for the woman, with a 5 year reduction in the

age and in the time of contribution demanded of the teachers of the infantile, fundamental and medium school.

Other sensitive modifications are the requirement of a minimum affiliation time of 10 years to the specific regime and 5 years in the same job for the servant get the right to retire, impeding the access to the integral benefit for those individuals that have contributed during more than 20 years for the General Regime of Social Security, where the benefits and contributions are significantly smaller. By this way, the Constitutional Amendment intends to restraint free-rider behavior by individuals that, on the eve of conclude time of contribution for the retirement, enter in the public service just with the purpose of enjoy a more advantageous retirement.

Besides, it is consolidated in the government agenda the interest of suppressing the warranty of equal adjustments between active public servants and retirees, with the goal to allow differentiated adjustment policies. Nevertheless, the National Congress rejected that proposal, and in its place was introduced the possibility of limiting the right to the integral retirement of the public servant, by the creation of a second voluntary pillar in the retirement system, valid for the nominated servants starting from the regulation of the Constitutional Amendment, or by expresses options of the current servants.

Therefore, since complementary retirement plans are instituted for the public servants in effective jobs, the Union, Federal District, States and Municipalities can establish, as maximum limit of benefits maintained by their specific regimes, the benefit ceiling of RGPS (art. 40, § 14 of CF). That second pillar would be configured as a capitalization regime, presumably of defined contribution, falling to the first pillar, in a pay-as-you-go partition regime and defined benefit, to assure the integral benefit until the actual limit of R\$ 1.255,00.

Those complementary retirement plans, for their time, will be upon the contribution limitation of the entity sponsor to the proportion 1x1, as form of inhibiting the creation of plans of benefits that assure high benefits whit low contributions of the public employees.

Through these mechanisms, are given the necessary measures to the extinction of the current regimes destined to the Brazilian civil servants, what is attracting the administrators of pension funds interests at once, to the point of the Constitutional Amendment, at the time of its appreciation phase in the National Congress, to have deserved the support of the Brazilian Association of Closed Entities of Private Insurance (ABRAPP), at he same time that is faced by the government as a mechanism for the reduction of the public expenses<sup>13</sup>.

Another important change results from the alteration made in the art. 39 of the Federal Constitution for other constitutional amendment (Constitutional Amendment # 19/98), but whose content combines with the Constitutional Amendment # 20/98, and that moved away the compulsory nature of the unique, statutory juridical regime for the public servants. Starting from the regulation of the constitutional amendment, the public entities can hire servants through the CLT<sup>14</sup> regime, and with the change

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<sup>13</sup> In Servidores Públicos são alvos da Abrapp. Gazeta Mercantil, 19.08.97.

<sup>14</sup> According to Gilberto Guerzoni Filho (1999) and others respected specialists, although the current art. 39 of CF don't foresee more the compulsory nature of the unique statutory juridical regime, the adoption of the contractual regime, called in Brazil "celetista", would be unconstitutional, once the principle of the legality, inserted in the "caput" of the art. 37 of CF, as well as the item X of this article,



promoted through the new § 13 of the art. 40, it is prohibited to the Union, States, Federal District and Municipalities maintain specific retirement regimes for public servants occupants hired under CLT regime.

Like this, the current ones or futures hired servants upon the Consolidation of the Laws of the Work, under employment regime, as well as the occupants of free appointment commissioned positions not more can be affiliated to specific regime of insurance, being held obligatory of RGPS. Therefore, those servants will contribute to INSS until the ceiling of contribution of that regime again, and they will acquire rights only to benefits due for INSS. In consequence, a transition situation should be operated that will be extremely complex, especially in view of the differences eventually existent among benefit and costing rules, in each regime, versus RGPS. Only servants hired to effective jobs can be maintained under the sphere of the specific regime of insurance. Futures public employees, under regime “celetistas” also will be held obligatory of INSS, what can cause in the medium run the virtual extinction of the specific regimes, that only depends on the political decision of each federate entity when adopting one or other regime.

At the same time, the new “caput” of the art. 40 of the Federal Constitution foresee that the insurance regime of the public servants is applied exclusively “to the public servants invested on effective jobs of the Union, of the States, of the Federal District and of the Municipalities, included its autarchies and foundations.” That change, although answering some critics done by specialists to the imprecision of the original text of the art. 40 of CF, it implicates, actually, a reduction of political-administrative capacity for the public entities to maintain their own specific regimes of insurance. On the other hand, it would discharge the Union of promoting financial compensation for the specific retirement systems, inverting the obligation of that compensation for the federate entities, once the compensation will be made, according Law # 9.796/99, with base in the benefits granted for each regime. In consequence of its evident unconstitutionality, that change is already being object of judicial decisions that recognize, to the federate entities, the prerogative of maintaining the public employees, hired in non effective jobs and temporary employments in the specific regimes, being free, therefore, of the obligation of contributing to RGPS again.

In the ambit of the military insurance system, the constitutional changes are of small extension, except for the forecast that they are applied to the military the dispositions that assure the integral retirement, the pension for death and the adjustment parity among actives, retiree and pensioners. The other rules continue in the specific legislation, out of the constitutional law, not having, at least, the constitutional forecast about the contributive nature of the retirement system of the military personnel.

Despite the fact that such modifications have been discussed for a long time by the National Congress, and approved after a period of 46 months of legislative appreciation, there was not a wide debate on the adopted alternatives, nor either on its immediate juridical consequences. The rupture with the situation established in the 1988’s Constitution, and of the right expectations built with base in her, was not considered an essential aspect of the problem. The National Congress decided only respect the strictly acquired rights, in other words, assuring the right to request, at any time, the retirement with base in the

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does not admit the negotiation of work conditions and of compensation, nor it is compatible with the bilaterality and the principle of the hiposufficient’s defense, inherent to the employment regime.

rules until then effective to the public servant that, until December 16, 1998, had already concluded the necessary time to retire.

That warranty, however, was not able to impede that thousands of public servants, in the whole country, requested retirement even before of the Constitutional Amendment become into force. It shows, on one side, distrust to that warranty and, for other, its irrelevancy in face of the dimension of the approved changes, that moved away the hypothesis of functional improvements affect the value of the benefit to be granted to the servant that came to exercise the right in subsequent date. As well as the implementation of the unique juridical regime brought a great number of retirements, increasing the expenses without previous funding, the attempts promoted by the Presidents Fernando Collor, Itamar Franco and Fernando Henrique Cardoso since 1991 to introduce alterations in the retirement system produced expressive growth in the number of retirees in the federal public service. The evolution of the number of granted retirements reveals an enormous volume of benefits in 1991, 1995, 1996 and 1997, years that coincide with the appreciation of constitutional amendments destined to reduce the retirement rights of the public servants:

**Table 8 - Federal Public Servants - Granted Retirements - 1991-1998**

<b>Year</b>	<b>Total</b>
1991	46.196
1992	21.190
1993	14.199
1994	17.601
1995	34.253
1996	27.546
1997	24.659
1998	19.755
Total	205.399

Source: Ministry of Planning, Budget and Management. Bol. Estatístico de Pessoal # 44, jan 2000.

This growth of the number of retirees in the public service tends to produce immediate effects on the financial situation of the state entities, still carrying other perverse effects, like the reduction of the number of public servants in activity to assist to the demands of the society in several areas, especially in the ones of health and of education. But the pressure on the public finance persists being to main subject in discussion, the high “deficits” of those regimes demand the compromising, as before we demonstrated, of significant portions of the net current revenues.

So, in any situation the financial and actuarial balance of the public servants insurance regime assumes preponderant importance, and the reevaluation of the costing of such systems, as of the values and situations in that such benefits are granted, becomes imperative for the federate entities that are willing to maintain those systems as instruments to attract and retain qualified and competent public servants.

## 2.5 Funding of Retirement Systems

The funding of the retirement systems has been constituting in one on the principal debate themes in Brazil, among the subjects related with the fiscal adjustment and for the reduction of the public deficit. The high expenses of the insurance regimes and the impact of their financing needs in the public budgets have been in the front line of the arguments that sustain the reform proposals, in what refers to the regimes of the public servants or the General Regime of Social Security.

The data presented by MPAS relative to the financial results of the Social Security demonstrate, in the year of 1999, a high one “deficit” in both systems that reaches 5,22% of GDP, as it is verified from the data of Table 9:

**Table 9 - Retirement Systems - Results in 1999 (estimate)**

In current R\$ billion

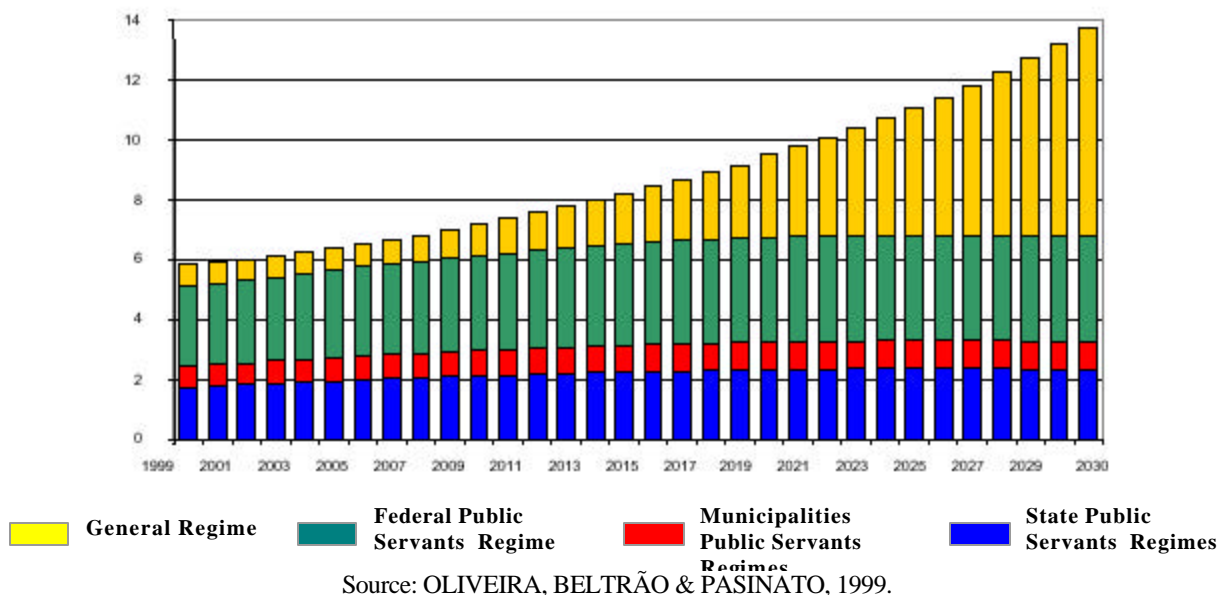
	<b>R\$ BILLION</b>	<b>% GDP</b>
<b>I - GENERAL REGIME OF SOCIAL SECURITY (RGPS)</b>	<b>-9,3</b>	<b>-1,01%</b>
Contributions (Net Revenue)	48,7	5,28%
Insurance Benefits	58,0	6,29%
<b>II - PULIC SERVANTS RETIREMENT SYSTEMS</b>	<b>-38,8</b>	<b>-4,21%</b>
Contributions (Net Revenue)	7,4	0,80%
Insurance Benefits	46,2	5,01%
<b>Federal Government</b>	<b>-19,4</b>	<b>-2,10%</b>
Contributions (Net Revenue)	3,8	0,41%
Insurance Benefits	23,2	2,52%
<b>States</b>	<b>-16,6</b>	<b>-1,80%</b>
Contributions (Net Revenue)	3,1	0,34%
Insurance Benefits	19,7	2,14%
<b>Municipalities</b>	<b>-2,8</b>	<b>-0,30%</b>
Contributions (Net Revenue)	0,5	0,05%
Insurance Benefits	3,3	0,36%
<b>TOTAL</b>	<b>-48,1</b>	<b>-5,22%</b>
Contributions (Net Revenue)	56,1	6,08%
Insurance Benefits	104,2	11,30%

Source: MPAS/SPS/DEPSP, MF and INSS. Elaboration: DEPSP.

GDP (estimate): R\$ 922 Billion (Presidência da República)

Pursuing the identified tendencies, the Governmental departments responsible for the formulation of sectorial policies evaluate the financing needs for next 30 years, in each one of those regimes, foreseeing an expressive elevation of the deficit in the ambit of RGPS, while to the public servants specific systems is foreseen the growth of the current deficits in the federal, state and municipal levels in the next 15 years, followed by their stabilization:

**Chart 1- Financing Needs of Retirement Systems - 1999/2030 as % of GDP**



In 1999, according to the Ministry of the Social Security and Assistance, the contributions over the payroll reached R\$ 38,9 billion, revealing a reduction in real terms of about 7.4% in relation to the tax income verified in 1996. Besides, the Social Security collected other R\$ 2,7 billion from self-employed covered workers, plus R\$ 1,6 billion from the SIMPLES<sup>15</sup>, R\$ 684 million of rural contributions, and R\$ 2,8 billion from other welfare contributions, reaching the total amount of R\$ 46,6 billion. Other R\$ 4,2 billion in debts of previous fiscal years were collected by judicial and administrative measures. The total net incomes of taxation reached R\$ 50,8 billion, what implicates in a real growth of the order of 8.5% after 1996.

In the urban subsystem, the Social Security has been developed as contributive system where the worker and the employer contribute to its funding. To sustain the system, the Social Security has as potential tax payers the whole labor force, or more than 69,9 million people in Brazil.

Although the contribution values are not high, the percentile of contribution is significant, especially for the workers of smaller income: they contribute with 8 to 11% over their wages, until the ceiling of R\$ 1.255,32.

In the rural system, the rural producer and the worker in family-economy regime contribute under a marginal rate of 2.6% about the marketed production. That system collects now about of R\$ 4 billion annual, while the Social Security spends R\$ 7,5 billion annual with benefits. That deficient situation in the rural system is worsened by the high escape degree in the contributions, but it is being overcome, and

<sup>15</sup> System of simplified taxation, applicable to small enterprises, that substitutes the normal contribution over the payroll due to the Social Security.

the system tends to equilibrium in the next years, as some specialists in Social Security incomes have been shown<sup>16</sup>.

The enterprises, in the same way that the workers should contribute to the Social Welfare and, consequently, for the funding of the Social Security. The contributions established by law over the payroll reach 20%, or 22%, but there are other welfare contributions, as the contribution over total monthly revenue from sales of goods, of goods and services, and of services of any nature (contribution on the revenues and profits - COFINS), the contribution of net profits (8% over the profits in the fiscal year), on the revenues of lotteries and the other.

Taking in consideration the total of the economically active population, with the exclusion of the civil and military servants under specific retirement systems, there are 65 million potential covered workers for the General Regime of Social Security, while there is a total of 12.9 million citizens that receive benefits of retirement, and about 5 million that receive pensions. If we consider only the labor force, there are about 5 active workers for retiree. Also being included the 5 million pensioners in the equation, still there would be 3.65 active workers for each beneficiary of Social Security.

The undeniable conclusion, therefore, is that the Social Security does not accomplish its potential incomes.

A lot of employers simply defraud the contribution, generating a billionaire debt with Social Security. At the same time, that behavior is encouraged by the periodical amnesties given by the governmental policy (which is justified by the Ministry of Social Security and Assistance as a way to facilitate future payments). The high informality degree in the economy completes the picture, since more of one half of the urban labor force and about 90% of the rural workers stay at the informal market, in other words, there is not withdrawal of the enterprises nor of the workers for the Social Security.

In fact, there are only 22 million covered workers, or only 1.73 active worker that contributes regularly to the Social Security for each retiree.

If we compare such data with the verified in the United States we will find a similar proportion: there are 27.5 million retirees that receive benefits of Social Security Administration - SSA, in a total about 44 million beneficiaries, for a total of 148 million workers covered by Old Age, Survivors and Disability Insurance (OASDI). Then, there are about 3,36 active workers for each insurance benefit, or about 5,38 for retiree<sup>17</sup>.

There is, therefore, a fundamental difference between Brazil and the USA, that it is the informality degree and fiscal evasion in the revenues of the Social Security, question still not answered by the governmental policies implemented in Brazil. On the contrary, the flexibilization of the labor legislation, the weakness of the labor relationships and the growth of the unemployment rates and increase of the informality, besides the little investment in the improvement of the public agencies to enforce the labor relationships and tax regulations tend to turn more critical that problem<sup>18</sup>.

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<sup>16</sup> See DELGADO, *Guilherme Costa*. Previdência rural: relatório de avaliação socioeconômica. Projeto IPEA/MPAS (Avaliação Socioeconômica da Previdência Rural - 1991/1995) *Brasília: IPEA, maio 1997. 66p.*

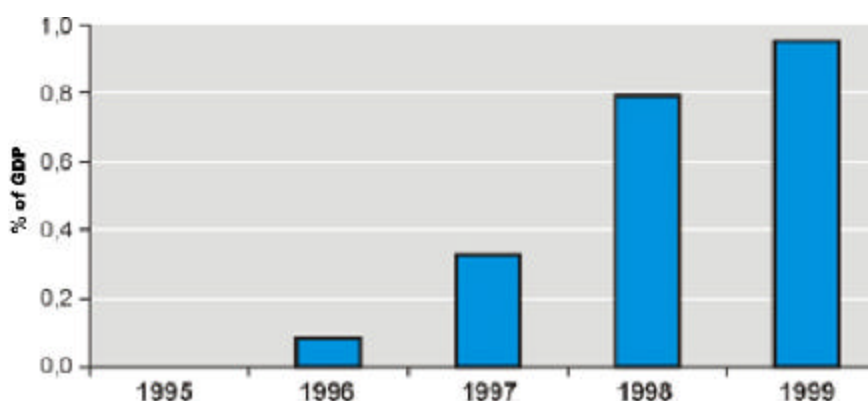
<sup>17</sup> 1999 Annual Report of the Board of Trustees of The Federal Old-age and Survivors Insurance and Disability Insurance Trust, p. 2-3.

<sup>18</sup> A evasão de contribuições no setor rural é muito elevada. *Revista de Seguridade Social, ANFIP, # 51, p. 6-9.*

That point is crucial to assure the sustainability of the Insurance System, especially because it operates in “pay-as-you-go” regime, where a substantial part of the expenses with benefits is financed by the current contributions of the current workers. In the same way, the dependence coefficient determines the capacity of the system to guarantee, in the medium and long run, its sustainability, as the population ages or stabilizes the proportion among active taxpayers and retirees.

Those factors are affecting the cash flow of RGPS. In 1999, they were spent R\$ 60.5 billion to pay retirements, pensions and other benefits. That difference, of about R\$ 10 billion, follows a tendency verified in the last years, as demonstrates the Chart below:

**Chart 2 - INSS Deficit 1995-1999 as % of GDP**



Source: MF/STN, MPAS, 1999 Elaboration: MF/SPE

According Ministry of Social Security and Assistance estimates, the growth tendency of the RGPS’s “deficit” can reaches 7% of GDP in 2030. Another aspect of the problem to be faced is the existence of a hidden debt that corresponds to the value of the future benefits without the appropriate actuarial coverage. According to OLIVEIRA et all (1998), just for RGPS there would be a hidden debt of 203.3% of GDP, while for the retirement system of the federal public servants the hidden debt would be of 75.3% of GDP.

Even so, the problem requires to be seen under a wider prism, once it is the case of considering just the revenues of Social Security, *vis a vis* its expenses, but the group of the revenues and expenses of the whole Social Welfare, even if we don't consider the potential incomes of RGPS. As it demonstrates the Table below, the expenses with all the insurance and assistance benefits, included the rural and urban areas, they are not financed only by the revenues aforementioned, but they can be sustained by the totality of the Social Welfare revenues, as well as for taxes and other budget resources:

**Table 10 - Incomes and Expenses of Social Welfare Budget in Brazil - RGPS, Health and Social Assistance 1998/99**

In billion of Real

<b>I – Incomes</b>	<b>1998</b>	<b>1999</b>
Income Payroll urban /rural contribution	47,166	20,947
COFINS (contribution on revenues and profits)	17,742	11,922
CSLL (contribution on net profits)	6,525	3,967
Revenue of Lottery contribution	0,529	0
CPMF	8,113	1,309
<b>Total Incomes</b>	<b>80,075</b>	<b>38,145</b>
<b>II - Expenses</b>		
Urban Retired/pensioners Benefits	43,583	21,219
Rural Retired/pensioners Benefits	10,336	5,032
Social Assistance (poor/old age/disabled)	2,102	1,024
Health assistance	17,47	8,735
Administration/personnel	3,667	1,494
<b>Total expenses</b>	<b>77,158</b>	<b>37,504</b>
<b>NET Result</b>	<b>2,917</b>	<b>0,641</b>

Source: ANFIP, 1999 - STN/INSS 1999 = first 6 months

As a whole, in the fiscal year 1999 the Social Welfare had, in reality, a considerable surplus, in spite of the growth of the expenses with insurance benefits and the reduction of essential incomes to the funding of the Social Security. Even in the exclusive ambit of Social Security, if we just consider the insurance benefits in the urban area, the fiscal year of 1998 presented a surplus, that is only eliminated if we consider the fact that the Social Security revenues cover an enormous amount of current benefits, which has insurance legal nature but that, in practice, has semi-assistance character, once there is not, to sustain them, an amount of past contributions to fund them.

In that way, it is verified that, in great numbers, the Insurance System does not face serious problems or distortions resulting from its contributory or benefits framework. Even with a lot of defraudment, so many deviations and swindles, the Social Welfare, miraculously, still collects more than spends, in other words, it has surpluses, not using resources from the fiscal budget for covering its expenses, besides the insurance benefits.

That fact puts reduces the credibility of the argument that the successive insurance deficits can only be solved through the immediate restraintment of benefits to be granted, which has been sustaining legal measures recently adopted, such as the creation of a mechanism of calculation of the benefits - the Insurance Factor - that reduces the value of the retirement benefits when required the retirement with inferior age to 56 years, even if the insured counts with more than 35 proven years of contribution.

It is important to clear that, even before the adoption of that mechanism already had happened an expressive reduction in the concession of retirement benefits for time of contribution. It resulted, in part, of the imposition of minimum ages of 53 and 48 years for the proportional retirement. According to Ministry of Social Security and Assistance (MPAS, 2000), there was a 59% reduction in the concession of retirements for time of contribution in 1999, in comparison with 1998. And also the total concession of benefits was reduced 4,1% in 1999, revealing or the effectiveness of the measures adopted to contain the flow of retirements, or the reduction of the eligible to retire workers stock, that were started to exercise their rights with fear of loosing them after the “Social Security Reform” and its implementation.

The Insurance Factor, created by the Law # 9.868, of November 10, 1999, but that will only produce complete effects starting from 2005, has a larger potential of reduction of the flow of benefits to be granted, once, in comparison with the previous legislation, will produce significant reductions in the retirement values. The consideration of time of contribution, age and survival expectation results in reductions in the values of the benefits that will act as a negative incentive, forcing the insured workers to accomplish a time of additional contribution until the loss due to the implicit minimum age is annulled. The Table following demonstrates the evolution of the loss for the different types of retirement benefit for time of contribution:

**Table 11 - Effects of Insurance Factor in RGPS Benefits**

Age	Man (M)- 35 years of contribution	Woman (W)- 30 years of contribution/Teacher (M) 30 years of contribution	Teacher (W) 25 years of contribution
45	0,5771	0,5771	0,5771
46	0,5971	0,5971	0,5971
47	0,6183	0,6183	0,6183
48	0,6431	0,6431	0,6431
49	0,6671	0,6671	0,6671
50	0,6925	0,6925	0,6925
51	0,7197	0,7197	0,7197
52	0,7487	0,7487	0,7487
53	0,7797	0,7797	0,7797
54	0,8093	0,8093	0,8093
55	0,8448	0,8448	0,8448
56	0,8831	0,8831	0,8831
57	0,9198	0,9198	0,9198
58	0,9642	0,9642	0,9642
59	1,0070	1,0070	1,0070

Source: MPAS and IBGE. Elaboration: Author

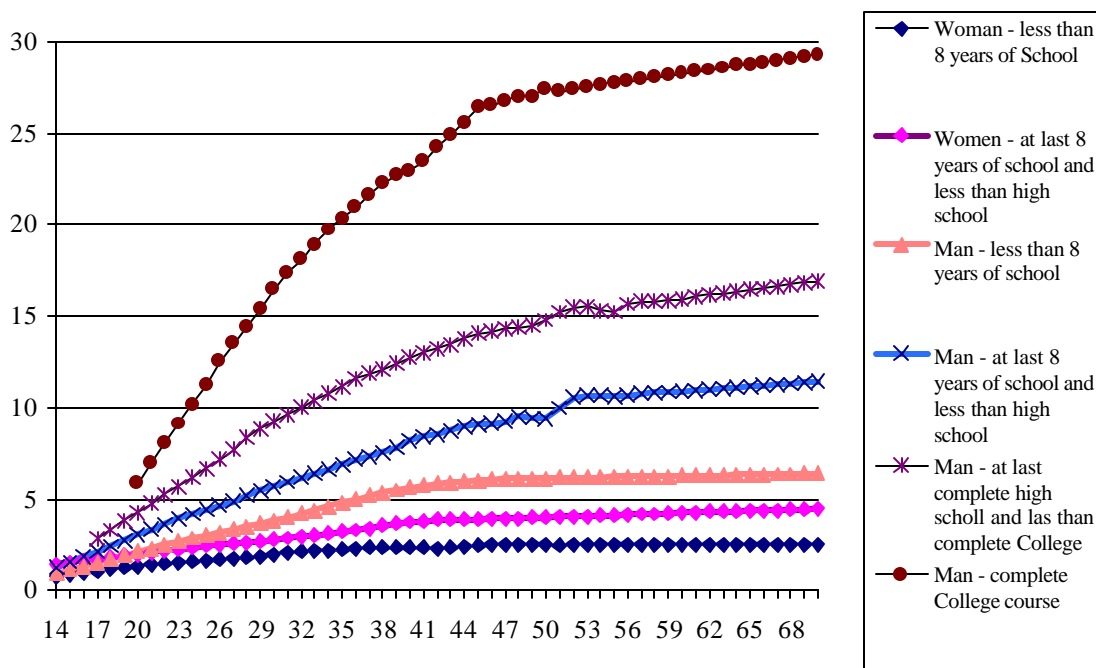
Therefore, independently of already to have contributed for 35 years, the insured men will suffer, in case he decides to exercise his right to retire, a loss higher than 30% in the initial value of the benefit, just in consequence of Insurance Fator's application. Being presumed an insured that has begun his contributive period to the 16 years of age, and that has contributed without interruption until the date of the retirement, in case he decides to retire to the 51 years he will suffer a reduction of the order of 28% in the benefit; with any time of contribution, he will suffer losses in his benefit unless continuing to contribute until complete 56 years of age, when he can retire with 100% of the benefit wage.

But, besides, there will be another reduction in the value of the benefits, also imposed by the need of reduction of the "deficits" of the system, and that will affect all and any insured, independently of the time of contribution, except the ones that come to receive the benefit in the value of a minimum-wage. That loss results of the adoption of a new calculation formula of the benefit that starts to consider, starting from November 1999, the arithmetic average of the highest contribution wages happened starting from July 1994, corresponding to 80% of the number of months elapsed between that date and the month of



the requirement of the benefit. Considering the available statistical data, it is not difficult to verify that there will be significant losses for the insured that earns more than 5 minimum wages, once the prolongation of the calculation period of the benefit tends to include in that average initial wages with values around 2 minimum-wages. According to an IPEA's study based on the National Research for Sample of Homes - PNAD 1990, Brazilian workers reach their maximum wages, on average, after the first 20 years of activity, being stabilized since then. For the effects of the benefits paid by the RGPS, however, that stabilization happens very early for the insured with larger instruction degree, and around the 50 years of age for the workers with instruction less than the complete high school degree. Chart 3 demonstrates that evolution:

**Chart 3 - Evolution of Average Income for Different Levels of Instruction - 1990**



Source: OLIVEIRA, BELTRÃO & MANIERO, 1998.

Due to that, the elevation of the basic period of calculation will cause reductions in the value of the benefits of the order of up to 30%, especially for the workers with income level between 5 and 10 minimum wages. Evidently, that reduction will occur without - in a first moment - the correspondent reduction of the percentile of contribution, so that the costing of the benefit will continue in the previous form (8 to 11% of contribution on the wage), but the benefit will be, proportionally, smaller.

Indirectly, although RGPS will continue formally to assure maximum benefits around 10 minimum wages, it will be quite rare to happen the benefit concession in that value, since the calculation period, associated to Insurance Factor's application, will reduce the benefits value in a cumulative and virtually inevitable way, forcing the workers that earn above 5 minimum wages (about of R\$ 680) to look for other forms

of retirement income complementation, in spite of the fact that it is not very probable that it produces an immediate reduction of their consumption, in view of the reduced level of income of the great majority of those insured, as demonstrated previously.

In the ambit of the public servants regimes the situation is more complex and, under the financial aspect financial, worrying. According to the Ministry of the Planning, Budget and Management<sup>19</sup> the expenses with benefits reached, in 1999, R\$ 44,2 billion, while the revenues of those regimes were of the order of only R\$ 9,9 billion, presented a “deficit” of the order of R\$ 34,3 billion, as demonstrates Table 12:

**Table 12 - Public Servants Retirement Systems - Results 1997-1999 - R\$ Billions**

Year		Union	States	Municipalities	Total
1997	Contributions	2.6	3.6	0.4	6.6
	Expenses	18.4	15.8	2.7	36.9
	Results	15.8	12.2	2.3	30.3
1998	Contributions	2.5	3.9	0.4	6.8
	Expenses	19.4	16.7	2.9	39
	Results	16.9	12.8	2.5	32.2
1999	Contributions	4.8	4.7	0.4	9.9
	Expenses	23.3	17.9	3	44.2
	Results	18.5	13.2	2.6	34.3

Source: MPAS, SRH/MP, INSS and MF. Elaboration: SRH/MP. Boletim Estatístico de Pessoal # 44, dez 1999.

Like in RGPS, the retirement systems of the public servants have, at the present time, contributive nature. Though, in practice, and taking in consideration the historical evolution of those regimes, the situation is gigantic mosaic, under the point of view of the rights or under the point of view of its legal and constitutional regulation, but especially under the point of view of the funding regime.

Although ruled by the Federal Constitution, the political entities, in the exercise of their autonomies instituted, along the years, compensation systems that rebound directly on the benefits granted by the respective regimes, without taken into account the correspondents funding rules. Therefore, it becomes virtually impossible to assure actuarial or financial viability to the respective plans of Social Security, due to concession of advantages for time of service that, a lot of times, double or they triplicate the wages of the public servants, and the incorporations of advantages in “over night” regime, especially to the vespers of the retirement, but without withdrawing correspondent contributions.

If they are heterogeneous in terms of benefits, these regimes are still more diversified with relationship to their funding rules. Since 1993, the art. 40 § 6° of Federal Constitution, instituted by the Constitutional Amendment # 3/93, tried to open space to the financial viabilization of the insurance regimes, establishing that "the retirement and pension benefits of the federal civil servants shall be financed by

<sup>19</sup> There is a divergence among official sources. The data here presented by MPOG for 1997 are different from the presented in Table 2 of the page 16, supplied by MPAS.

resources originating from the Union and from the contributions of the civil servants, under the terms of the law.”

On the other hand, the article 149, sole paragraph, foresaw that "the states, the Federal District and the municipalities may institute a contribution payable by their employees to fund social security and assistance systems for the benefit of the latter" This rule would allow to the municipalities and state governments to administer, in each case, their responsibilities and insurance revenues, through costing and benefit plans adjusted to the wages and age profile of their labor forces, whichever is the juridical regime of their servants, in consequence of the art. 13 of the Law # 8.212, of 1991 aforementioned.

Nevertheless, the question did not find, in the ordinary legislation, adequate treatment, so still subsist situations in that there are not funding mechanisms related to the benefit plans that assure the necessary actuarial and financial balance. As the own retirement systems deal with the responsibility of maintaining integral benefits, in many cases the contribution required to face the financial needs of the system is not verified, falling to Treasury to deal with eventual deficits and financial needs, although administered by specific institutions.

In the federal level the problem, even complex, deserved larger attention: already in 1938, the legislation that created IPASE foresaw the contribution of the servants of the order from 4 to 7% of the compensations. In 1952, the percentile was unified in 6%, but reserved to the costing of pensions. In 1974, with the reintroduction in the federal level of the CLT regime, almost 80% of the civil servants started to contribute for RGPS, by the same marginal rates of contribution and under the same ceiling of benefits.

With the Constitution of 1988, the federal civil servants were again excluded of RGPS. The Law # 8.112/90, when instituting the unique juridical regime defined in the art. 39, “caput” of Federal Constitution, foresaw that the costing of the public servants specific insurance system would be integrally financed by the National Treasury (art. 231, § 2º), but it foresaw a contribution to be destined to the costing of the Public Servants Social Security Plan, to be instituted by law. According to the art. 249 of the Law # 8.112/90, until the edition of this law it would be maintained the form and percentile then established, in other words, through a marginal rate of 6% destined to the costing of the pension benefits.

However, in January of 1991 the Law # 8.162 (article 9º) raised the contributions, becoming from 9% to 12% over the compensation of the effective public servants, not including the bonus paid in reason of the exercise of commissioned position (according Normative Orientation # 79-SAF). This norm, nevertheless, was canceled by the Supreme Federal Court after the judgment of the Direct Action of Unconstitutionality promoted by the Attorney-General of the Republic (ADIn 790-DF), given the inexistent regulation of the Public Servants Social Security Plan that justified the marginal rates` elevation.

With the Constitutional Amendment # 3/93, the retirement of the federal servant lost its characteristic until then legally recognized as a right just owed in reason of the exercise of the public job, or *pro labore facto*, and the benefit of the retirement lost its nature as a premium, expressly admitted by the legislation since the edition of the Federal Statute of 1939. With the expressed contributive nature that it was given, it was justified the institution by law of contributions to fund the retirement benefits, what was made through the Law # 8.688, of July 21, 1993, that altered the art. 231 of the Public Servants Statute.

This law established, for one year, the contributions to be collected, in the same percentiles established by the Law # 8.162/91, incidents, however, about the totality of the remuneration, and it established period even June of 1994 for definitive regulation of the Public Servants Social Security Plan. The Union would contribute to the PSS with fiscal budget resources in the same amount of the contribution of each servant, and spent additional resources, when necessary, in the amount equal to the difference between expenses and contribution incomes. It was foreseen, still, through the Law # 8.212/91, that resources of the Social Welfare budget were used for that expense, as a form to cover the inexistence of the financial compensation among the insurance regimes for the General Regime of Social Insurance, established in the art. 202, § 2° of the Federal Constitution, once, with the general implementation of the Unique Juridical Regime to the federal civil servants, all the servants that had contributed, also for more than 25 years, for the General Regime of Social Security, administered by INSS, began to retire with the rights of the art. 40 of the CF<sup>20</sup>.

At the end of the validity period of the Law # 8.688/93, the President of Republic adopted the Provisional Measure # 560, just turned into law in 1998 (Law # 9.630), which originally maintained the same percentiles, incidents over the totality of the servant's compensation. Starting from May 1996, in face of the Provisional Measure # 1.415, they were also included as taxpayers the inactive servants, starting from the conception that - maintained the rule of equal treatment among active public servants and inactive for adjustment proposals - would also be justified equal treatment in terms of taxation to fund the retirement and pension rights<sup>21</sup>. Finally, starting from April 1997, they were unified the contribution marginal rates under the percentile of 11% about the totality of the remunerations, picked up by the Union and for the public servants.

This rate meant a total revenue in the year of 1999, as counted by the Secretary of National Treasury, of the order of R\$ 3,1 billion<sup>22</sup>, that corresponds, however, for only 19,74% of the total expense with retirements and civil pensions.

In the case of States and Brazilian Municipalities, these measures were not implemented in the same extent. In many cases, the adoption of the unique juridical regime by law, without any precaution related to the funding of the benefits has been producing what is had called as "time bomb". In fact, the volume of benefits to be paid hereafter won't find easy solution, already given the critic financial situation of

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<sup>20</sup> The first attempt to regulate the matter was adopted with the art. 247 of the Law # 8.112/90, according to which should have accounts settling between the National Treasury and the General Regime of Social Security, corresponding to the contribution period of the former CLT public employees incorporated to the statutory regime.

<sup>21</sup> While in effect that taxation, thousands of inactive servants obtained judicial provisions suspending the collection of the contribution. Most of the sentences were arrested to the fact of the collection was instituted through Provisional Measure, and not for law. In several States, state laws instituted taxation over the inactive servants and pensioners. The Law # 9.630/98 canceled the collection over retired and pensioners in the federal level. But in December of 1998, as part of adjustment compromises with the International Monetary Fund the President adopted a new Provisional Measure, that it was rejected by the Congress, and he sent in January 1999 a new bill of law to the Congress to reinstitute the contribution of retired and pensioners in the public service. This bill passed in the form of the Law # 9.783/99, that had its validity indeed initiate in June of 1999, after judicial decisions declaring it unconstitutional. In September of 1999, finally, the Supreme Federal Court decided to consider rates above 11% confiscatory and declared exempted of any contribution the retired ones and pensioners, benefiting all the federal servants. After that, same State laws were under equal decisions by the Supreme Federal Tribunal.

<sup>22</sup> That information, from the Demonstrative of the Budget and Financial Execution of National Treasury published in February 2000, relative to the year of 1999, does not coincide with the data from the Ministry of the Planning (Table 10), nor with the data from the Ministry of Social Security and Assistance (Table 8).

many of those municipalities nowadays. To that are sometimes added excessive or even unconstitutional benefits and, when existent a contributive system, the deviation for several purposes of resources collected to pay benefits or constitute a financial reservation destined to that commitment. It reveals the short term vision that characterizes irresponsibility and administrative improbity for purpose deviation. To restraint such practices, the Law # 9.717/98 established some rules, ratified partly by the Constitutional Amendment # 20/98, while since 1997 has been approved laws in several States and Municipal districts fastening new rates of insurance contribution. Table 13 illustrates the effective situation in States in the first four months of 2000:

**Table 13 - Contributions to State Public Service Retirement System - 2000 - as % of Wages**

State	Active	Retired	Pensioner
AC	8 to 10	4 to 5	4 to 5
AL	11	0	0
AM	14,00	0,00	0,00
AP	8	8	8
BA	6,50	6,50	6,50
CE	8,50	0,00	0,00
DF	11,00	0,00	0,00
ES	10,00	10,00	0,00
GO	6,00	0,00	0,00
MA	8 a 10	0,00	0,00
MG	7,70	7,70	7,70
MS	4	0	0
MT	8 to 12	0,00	0,00
PA	8,00	0,00	0,00
PB	8	0	0
PE	13,50	0,00	0,00
PI	8 to 12%	0	0
PR	10 to 14	10 to 14	10 to 14
RJ	11,00	0,00	0,00
RN	8	0	0
RO	8	8	8
RR	11	0	0
RS	7,40	7,40	0,00
SC	8 to 12	8 to 12	8 to 12
SE	10	10	10
SP	6,00	6,00	0,00
TO	9	9	9

Source: MPAS/SPS/DPS

Under the point of view of the actuarial and financial balance, the current problem of the specific retirement systems is, therefore, in two essential subjects:

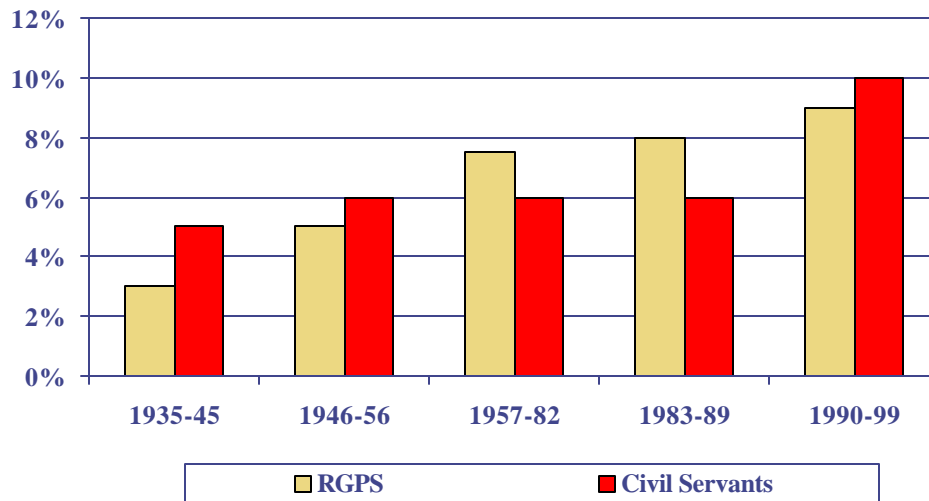
a) its contributive nature, that it is of constitutional origin, in face of the Constitutional Amendments # 3/93 and 20/98;

b) which is the amount of contribution capable to assure financial viability to the system. And, moreover, it accomplishes to appreciate if, solved those aspects, how to overcome the eventual disparity between revenues and expenses, in face of the aforementioned non realization, until the moment, of financial compensation between the systems and the liability of benefits already granted or in acquisition phase.

About that point, it is interesting to compare the mechanisms of costing of the Retirement System of the federal public civil servants and military, and of the General Regime of Social Insurance, *vis a vis* the granted benefits, to have a minimum notion of its balance potential.

Under the historical point of view, disparities are enrolled between both systems, although the contributions for RGPS were in general terms limited to the total of 10 minimum wages, not being payable on salaries above that value; nevertheless, the servants contributions, destined to the pensions costing, were being payable on the total compensation. The Chart 4 shows the evolution of the collected medium marginal rates of the public civil servants, since 1935, in comparison with the ones in RGPS:

**Chart 4 - RGPS and Federal Public Civil Servants Retirement System - Average rates of Contribution payable over the Salary and Compensation - 1935-1999 -**



Source: Federal Legislation. Elaboration: Author.  
 Considered only salaries and compensations below the ceiling applicable to RGPS;

The current situation is demonstrated in Table 14 below:

**Table 14 - RGPS x Federal Public Servants Retirement Systems - Contributions and Benefits (1999)**

<b>Minimal Contribution and Benefit</b>						
System	Contribution to Retirement and Pension %	Only Pension %	Contributory Basis	Lower Contribution Basis R\$	Lower Contribution Value R\$	Minimal Benefit R\$
Civil Servant	11	-	Total Monthly Wage	312,00	34,32	312,00
Military	-	5,6	Basic Monthly Wage	312,00	17,47	312,00
INSS Insured	9	-	Salary below legal limit	136,00	12,24	136,00
<b>Maximal Contribution and Benefit</b>						
System	Contribution to Retirement and Pension %	Only Pension %	Contributory Basis	Higher Contribution Basis R\$	Higher Contribution Value R\$	Maximal Benefit R\$
Civil Servant	11	-	Total Monthly Wage	8.000,00	880,00	8000,00
Military	-	5,6	Basic Monthly Wage	1 604,10	90,49	8000,00
INSS Insured	11	-	Salary below legal limit	1.255,32	138,05	1.255,32

\* Considering the constitutional limit of compensation fixed by law, without personal advantages

As the Table demonstrates, to deserve equal benefits, civil servants and military contribute in a different way. While the civilians contribute under rates of 11% on the total of the compensation, the military contribute with smaller rates, incident only on part of the compensation. Due that, equivalent benefits are financed in an unequal basis. And in the General Regime Social of Insurance, the benefit is subject to a reduced maximum ceiling (R\$ 1.255,32), which at once also limits the employee's discounted contribution.

In terms of employer contribution, in the General Regime of Social Security it occurs about the totality of the payroll, under rates up to 22%, as aforementioned. Therefore, it does not matter how much each employee earns, since it is on the total of the paid wages that is applied the employers contribution rate.

The same system is valid for the contribution of the Union and its entities to fund the Public Servants Retirement System, with a basic difference. The Union must contribute with identical importance to the one of the servant, what immediately evidences to be a system under the minimum proportion of 1x1 among the contribution of the servant and of the employer (Union). Being the contribution rate of the employee about of 11%, it implicates that the contribution rate of the employer on the total of the payroll is, also, of 11%, that is, smaller, in thesis, that the one established for the RGPS. However, the obligation of finance the difference between revenues and expenses increases the obligation of the National Treasury. Due that, the monthly expense of the Federal Government with the payment of retirees and pensioners reaches, now, 79% on the expense with active public servants, in the civilians case, and 182% of the expense with actives, in the case of the military. Also being considered that the Union picked up identical contribution to fastened for the companies in the ambit of RGPS, there would still be a debit of R\$ 16,27 billion in the last fiscal year. The Table 15 demonstrates the situation verified in 1999:

**Table 15 - Expense with Active, Retirees and Pensioners - Union - Accumulated in 1999**

Item	Total expense in R\$ billion/99	%	Servants Contribution R\$ billion/99 (1)	Union Contribution (20%) R\$ billion	Expenses with inactive covered by other sources - R\$ billion
Active civilians	19.92	42%	2.19109	3.98	
Civil – Retiree and Pensioners	15.70	33%			9.52
Active Military	4.23	9%	0.134136	0.85	
Military – Retiree and Pensioners	7.72	16%			6.74
Total	47.57	100%		4.83	16.27

Source: STN/MF and MP/SRH - Boletim Estatístico de Pessoal # 44 - Dez 99 Elaboration: Author

(1) The estimate of civil servants contribution was made following the legal rate of 11%, taking in consideration that the collection indeed accomplished includes part of the collection from inactive that was considered unconstitutional for STF. The contribution of the military corresponds to the total picked up to the National Treasury in 1999.

Obviously, the inexistence of a previous fund for finance such benefits contributes to this situation. The fact of, before 1993, the retirements of the effective public servants under the statutory law have had the nature of *propter laborem* benefits, without contributive basis, in the same way that stay still today the military<sup>23</sup>, more the fact that until 1990 about 80% of the servants were affiliated to the General Regime of Social Security (having contributed, therefore, for INSS), produce as a consequence that more than 250.000 civil retirements happened after 1990 did not have a previous defined costing source, nor financial reserves for their payment. This situation produced an unbalanced situation that, however, tends to be overcome in the medium term, as the contribution rates are enforced and the labor force is maintained in constant number, aspects of the problem that we will approach in the Chapter 4 of this study.

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<sup>23</sup> Although the Constitution has established the application of the same costing rule imposed to the civil servants to the military, that device was never regulated.



### **3. Public servants retirement systems in the United States of America**

Although the situation of Social Security in Brazil has quite peculiar characteristics, derived from its political, historical and economic conditions, the experience of some countries can serve as a parameter for an evaluation of its deficiencies and virtues, and eventual solutions to be implemented.

In that sense, one of the most important experiences, in what refers to insurance regimes, is the one of United States, that structured, along the 20<sup>th</sup> century, a complex regime of Social Security that in some important aspects is efficient for its objectives, if we consider in view the socio-economic characteristics of the country.

Moreover, the Social Security insurance regime is complemented by a wide system of private insurance, that covers 78% of employees in medium and large private sector establishments, or about 22,4 million of full-time employees, and 45% of employees in small private sector establishments (about 16,1 million full-time employees). In the public service, there are different compositions, but it is also frequent, the concession of insurance benefits that surpass the basic regime, by complementary plans of defined benefit and/or defined contribution. At the federal level, the totality of the public servants is covered for plans like that, and in the state and local levels, 93% of the public employees count with such benefits<sup>24</sup>.

In the present chapter, we will try to describe how the federal government and some state governments (New York and California) have structured their public employees retirement systems in order to provide retirement wages for their civil servants, in terms of value of benefits and contributions, and the use of pension funds as an alternative to assure adequate retirement benefits, reduce cost, prevent free rider behavior and improve responsibility on the management.

#### ***3.1 Old Age, Survivor and Disability Insurance - OASDI and the Social Security Administration***

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<sup>24</sup> Data to 1992 and 1993. Source: Bureau of Labour Statistics, URL <http://stats.bls.gov/datahome.htm>.

As in Brazil, the concept of Social Security in the USA surpasses the notion of a general insurance regime to provide pensions and retirement. In the USA it has several programs, such as Old Age, Survivors and Disability Insurance (OASDI), Medicare Health Insurance (HI), Supplemental Security Income (SSI), and Black Lung Program. Moreover, there are other programs of assistance nature, as unemployment insurance, Food Stamps program, Medicaid, special nutrition programs, housing subsidies, housing for the homeless, Head Start, and Temporary Assistance to Needy Families (TANF), and the Veteran Benefits.

Each one of these programs has origins and specific purposes, and is also financed by specific sources, and managed in some cases by both the federal and state or local levels of government.

For the goals of this study, we will approach the principal of those programs, that is Old Age, Survivor and Disability Insurance - OASDI, under the management of Social Security Administration, that is destined to assure retirement and pension benefits for the workers and their dependents in case of age, disability or death.

OASDI had its origin in the 1930's. During the Depression, it was verified that the traditional systems of support - the family, private charities and local government - failed in the sense of assuring the welfare of the unemployed and elder people. Not even the individual saving was capable to ease the difficult times - a lot of people exhausted their savings, and less than 10% of seniors had enough savings to assure their survival.

So, in 1935 Congress approved the Social Security Act, establishing two Social Security Programs: the Federal system of old-age benefits for retired workers in commerce and industry and a federal-state system of unemployment insurance. It was the beginning of what is considered in the USA "the most complex Government program that God and Congress ever created". In 1965, the Medicare and Medicaid programs were created, for medical attendance to seniors and low income people.

The program of Social Security (Old Age, Survivor and Disability Insurance - OASDI) is administered by Security Administration, the governmental agency that became independent in 1995. The first payments of monthly benefits were made in 1940. Since 1956 SSA also grants disability insurance benefits.

OASDI and Medicare are maintained by employees and employers contributions. The contributions are equivalent for both parts, and they are destined to the retirements costing and benefits by disability; an additional of contribution is destined to the costing of the Medicare benefits.

The deductions are authorized by the Federal Insurance Contributions Act - FICA, the law that establishes Security payroll tax. Since 1990, the contribution was from 7.65% to employees and 7.65% for the companies, incidents until the limit of US\$ 76,200, of the which 6.2% are destined to the costing of the retirements. The others 1.45% are destined to the costing of Medicare, and also happen above the maximum limit of the insurance contribution. Self employed people pay both shares (15.3%).

OASDI is a basic and compulsory insurance program, whose benefits are related to the taxable earnings of the covered workers and paid regardless of incomes from savings, pensions, etc. Monthly benefits are payable at age 65 to workers, and lump-sum payments are made to the estates of workers who die before reaching 65. To receive Social Security benefits, generally it is required to have worked for 10

years in a job in which the worker have contributed to the Social Security Fund. People born after 1929 need to obtain a total of 40 credits, and every year of service corresponds to 4 credits. When reaching the required minimum age, the “full retirement age”, the benefit amount that is payable is considered as the full retirement benefit.

In the USA, Social Security is designed to benefit low-income workers. The average recipient receives benefits equivalent to 42% of an average working years earning. Then, people in upper income brackets generally receive a lower percentage of their working year’s earning when they collect their benefits.

In general, Social Security benefit is based on the average earnings over the covered working lifetime. In the case of retirement benefits, they are calculated using the 35 highest years, but the earnings are adjusted for wage inflation. Those years determine the average adjusted monthly earnings, and the average is multiplied by percentages in a formula specified by law. According to SSA<sup>25</sup>, in the beginning of year 2000, the average benefits were:

- a) retired worker: US\$804;
- b) retired couple: US\$1,348;
- c) disabled worker: US\$754;
- d) disabled worker with a spouse and child: US\$1,255;
- e) Widow(er): US\$749
- f) young widow(er) with two children: US\$1,611.

According to SSA, using data relative to 1999, and assuming steady lifetime earnings, at full retirement age the benefit can vary from US\$ 841 to US\$ 1,433, to a worker earning between US\$ 20,000 to US\$ 72,600. If there is spouse and children in the family, the benefit can be increased to a maximum monthly benefit about US\$ 2,149. But, for a retired worker only, the maximum benefit at full retirement age can be, for the same year, US\$ 1,433, as shown in the Table below:

**Table 16 - Approximate Monthly Benefits at Full Retirement Age - 1999**

Insured’s Age In 2000	Members of Family	Insured’s Earning in 1999				
		\$20,000	\$30,000	\$40,000	\$50,000	\$72,600 Or More <sup>1</sup>
45	Retired Worker Only	<b>\$ 841</b>	\$1,107	\$1,352	\$1,477	\$1,774
	Retired Worker and Spouse <sup>2</sup>	1,261	1,660	2,028	2,215	2,661
55	Retired Worker Only	841	1,107	1,352	1,475	1,713
	Retired Worker and Spouse <sup>2</sup>	1,261	1,660	2,028	2,212	2,569
65	Retired Worker Only	769	1,014	1,224	1,307	<b>1,433</b>
	Retired Worker and Spouse <sup>2</sup>	1,153	1,521	1,836	1,960	2,149

<sup>1</sup>Earnings equal to or greater than OASDI wage base and are determined to be \$72,600 for 1999 and \$76,200 for the year 2000 and later.

<sup>2</sup> Assuming that spouse and worker have the same age. Spouse may qualify for a higher retirement benefit based on his or her own work

<sup>25</sup> Social Security Administration. Understanding the Benefits. *Publication Number 05-10024, January 2000.*

record.

Though, if we consider a worker that was born in 1938 and that contributed all his life for the applicable maximum limit, and adjusting the wages for the factors applicable every year, the possible maximum value of an individual retirement to be granted by SSA in 1999 was of US\$ 1,570, in case of a beneficiary with 65 years and 2 months of age.

People can start their Social Security benefits as early as age 62, but the benefit amount will be less than their full retirement benefit, except if they deserve disability benefits. The reduction is permanent, and is based on the number of months receiving benefits before reach full retirement age. To a full retirement at 65, the reduction for starting Social Security at age 62 is about 20 percent; at age 63, it is about 13.3%; and at age 64, it is about 6.66% percent.

Because of longer life expectancies, full retirement age will be increased in gradual steps until it reaches age 67. This change will start in 2003, and it affects people born from 1938 and later. The Table below shows the increase in full retirement age previewed to the next 27 years:

**Table 17 - Age To Receive Full Social Security Benefits**

Year of Birth	Full Retirement Age
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

Source: Social Security Administration

The benefit does not depend directly on the numbers of years worked, but on the average earnings over the working lifetime. But each additional year worked after full retirement age adds another year of earnings to Social Security record. Higher lifetime earnings may result in higher benefits: the benefit is increased by a certain percentage if people delay retirement. The percentage added varies depending on year of birth. The Table below shows the increase according to year of birth:

**Table 18 - Increases For Delayed Retirement**

Year of Birth	Yearly Rate of Increase
1917—1924	3%

1925—1926	3.5%
1927—1928	4%
1929—1930	4.5%
1931—1932	5%
1933—1934	5.5%
1935—1936	6%
1937—1938	6.5%
1939—1940	7%
1941—1942	7.5%
1943 or later	8%

Source: Social Security Administration.

Differently from what occurs in Brazil, where the Insurance Factor happens on the value of the benefit in RGPS with the purpose of reducing it, just allowing increase in the values of benefits in extraordinary situations, once does not exist constitutional or legal minimum age but only a requirement in terms of years of contribution, the American system considers an associated minimum age higher than 65 years and a 10 year minimum time of contribution. After this full retirement age, so will the value of benefit increase, in function of postponement of starting the retirement.

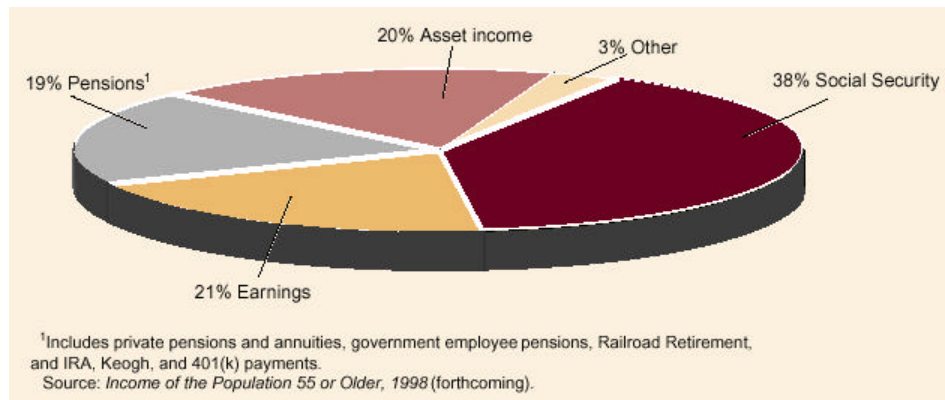
Until March 2000, people employed while collecting Social Security under age 65 had reduced benefits if earning more than US\$ 10,080 in one year, and also beneficiaries between 65 and 69 had reduction if they received more than US\$ 17,000. After those limits, for every US\$ 2 or US\$ 3 in earnings US\$ 1 was withheld from the benefits. Only after 70 a beneficiary could receive any amount of money while collecting Social Security benefits. In March 22, 2000, the Senate finally joined House and passed a new Act to allow those who want to keep working once they turn 65 to collect their full Social Security benefits, no matter how much money they earn<sup>26</sup>. The elimination of the **earnings test** for seniors was supported by President Bill Clinton, who stated that the outdated policy discourages healthy senior citizens from continuing to work past 65 if they choose to do so. According to the President, the change opens “a new era of opportunity for older Americans by signing this measure into law”<sup>27</sup>, and is an important step in undertaking comprehensive Social Security reform.

In December 1999, 44,595,600 people received Social Security benefits, in other words, about one out of every six Americans, and about 72% are older than 65 years. In the total, 62%, or about 27,8 million are old age retirees, more 5,7 million of disabled workers and children, and 5,2 million of pensioners. The OASDI covers approximately 80% of the population with more than 17 years of age.

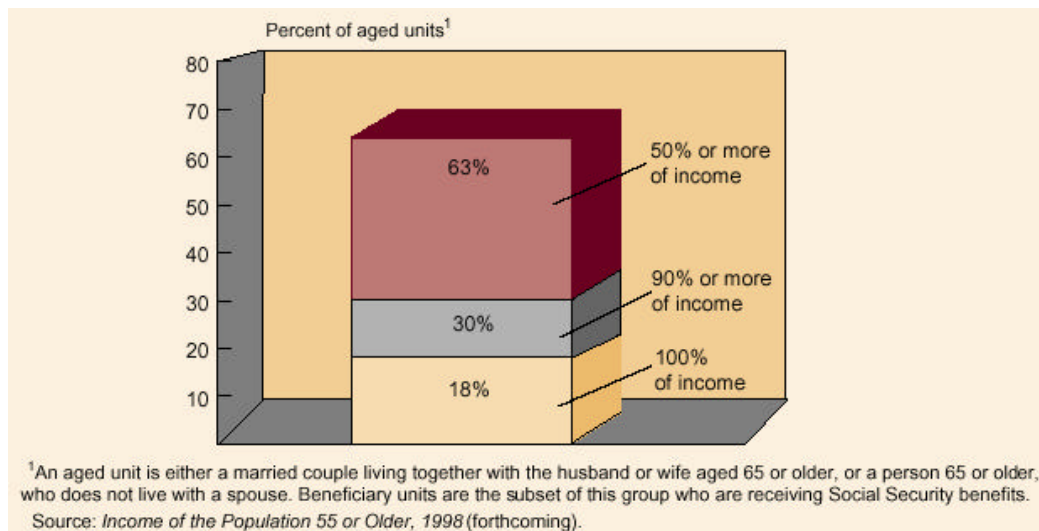
On average, 38% of the revenue of the retirees come from benefits of the Social Security, what demonstrates its relative importance for the support of those beneficiaries. Nevertheless, it is significant the weight of asset incomes (20%) in the composition of the wages, revealing an outstanding characteristic of the American society. And, for 63% of Social Security beneficiaries, benefits represent 50% or more of the family total wages, and for 48% of them it overcomes 90% of the income.

<sup>26</sup> GOLDSTEIN, Amy. Senate joins House on Repealing Social Security Earnings Cap. Washington Post, 03.23.00, p. A-6

<sup>27</sup>In URL Internet <http://www.ssa.gov/rettest.html>.

**Chart 4 - Social Security Benefits as % of Retirees Total Incomes - 1998**

Source and Elaboration: Social Security Administration

**Chart 5 - Social Security Benefits as % of Retirees Total Incomes for Aged Units - 1998**

Source and Elaboration: Social Security Administration

Under the financial aspect, although employees and employers pick up contributions lower than those demanded in Brazil for the costing of the Social Security, the financial situation of OASDI is quite different, and reveals much better results.

The relationship between active covered workers and beneficiaries is of 3,4 for 1. For the 44 million beneficiaries, there are 149 million contributory workers. In relation to the retirees, the proportion is of 4,6 active covered worker for retiree.

The expenses with benefits are totally covered with resources of the SSA, whose budget has been presenting significant surpluses. In 1998, the expense with paid benefits to retirees and disabled workers and their families, and to survivors of deceased workers, was about US\$ 376 billion, or about 5% of GDP. The revenue from contributions for Social Security, including Hospital Insurance, however,

reached US\$ 557,8 billion, in the same year<sup>28</sup>. In 1999, tax revenues increased 7.0%, reaching US\$ 612 billion, and expenses reached US\$ 387 billion. To 2000, according Congressional Budget Office, OASDI expenses will reach about US\$ 402 billion.

In total, 70 % of total Social Security incomes goes to a trust fund that pays monthly benefits to retirees and their families and to widows, widowers and children of workers who have died; 19% goes to a trust fund that pays for the health care of all Medicare beneficiaries; and 11% goes to a trust fund that pays benefits to people with disabilities and their families. The total collection destined to the retirements benefits by age and disability was of US\$ 451,82 billion in 1998.

Trusts Funds resources are maintained in the U.S. Treasury. Social Security and Medicare taxes, premiums and other income are maintained in separate accounts and Social Security and Medicare benefits are paid from them.

The main funds are the Old-Age and Survivors Insurance (OASI) Trust Fund, that pays retirement and survivors benefits, and the Disability Insurance (DI) Trust Fund, that pays disability benefits. From these trust funds, Social Security also pays the costs of administering the Social Security programs. Those costs are less than one cent of each Social Security tax dollar collected - in 1998, administrative expenses for the OASDI program were US\$ 3,5 billion, or about 0.9% of benefit payments in the year.

The resources of those funds only can be used to pay benefits and program administrative costs. The excess of money collected in the current year and not used to pay benefits and administrative costs must be invested in special Treasury bonds that are guaranteed by the U.S. Government. A market rate of interest is paid to the trust funds on the bonds they hold. Interest earnings on the invested assets of the combined OASI and DI trust funds were US\$ 49,3 billion in calendar year 1998, that represents an effective interest rate of 7.2% earned by combined assets.

The entire amount of taxes paid for Medicare (1.45 percent of total earnings) goes to a trust fund that pays for some of the costs of hospital and related care of all Medicare beneficiaries. Medicare is administered by the Health Care Financing Administration.

In 1999, Social Security trust funds run a combined annual surplus of US\$ 154 billion. According to Congressional Budget Office (2000), by 2010 that surplus is expected to increase to US\$ 295 billion.

For the next 50 years, the forecast is that the expense with retirement benefits will increase to about 8% of the GDP, if the actual surpluses of the trust funds are saved and applied, or up to 12% of GDP, if the spare resources are destined to other purposes, as the reduction of the public debt or defense spending or in consequence of eventual tax reduction.

That increment will result, also, because of the increase in life expectancy beyond 65 years in the USA. Since 1940, the additional life expectancy has increased 38%. In the men case it changed from 14 years in 1980 for 15,8 in 2000 and it should reach 17,9 years in 2050. Men and women born in 1997 can expect to live 73 years and 79 years, respectively. The senior population, in 1970, was a little bit more than 20 million inhabitants; in 2050, elderly should reach about 75 million, with a growth of almost 100%

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<sup>28</sup> Internal Revenue Service. URL Internet [http://www.irs.gov/tax\\_stats/soi/other\\_em.html](http://www.irs.gov/tax_stats/soi/other_em.html).

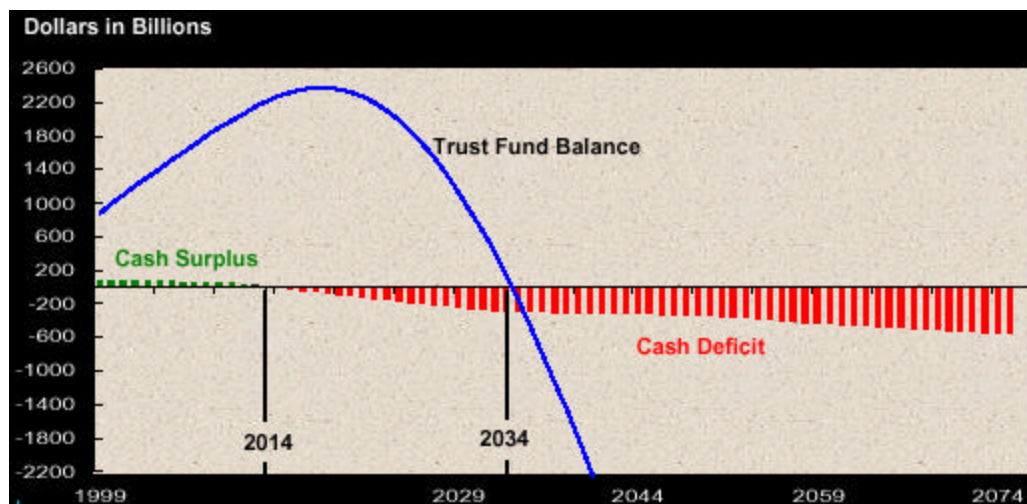
in relation to 1995<sup>29</sup>. In relation to the federal government total revenue, the estimate is that the expenses will increase of 20.8% (1998) for 39% (2074)<sup>30</sup>.

To face the increase of expenses and of the dependency rate, the contributions for the costing of OASDI and of Medicare will need to be progressively high of the current landing for something around 27% of the revenues in the next 75 years. In the current conditions, the current cash surpluses, whose accumulated amount overcomes US\$ 890 billion, will become cash deficit starting from 2015, when the OASDI outgo will exceed tax income. Trust Fund Balances will present positive results until the year 2037, when OASI and DI trust fund assets will be exhausted. In 2075, the estimated deficit will be of US\$ 550 billion annual. Considering each fund separately, the OASI Trust Fund would have sufficient funds for the next 39 years, and the DI Trust Fund for the next 23 years, to enable timely payments of benefits.

According to the *2000 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds*, issued on March 30, 2000, for the next 15 years, OASDI income from contributions on taxable earnings and from income taxes on benefits is expected to exceed total expenditures. Starting in about 2010, however, OASDI costs, relative to taxable earnings, are expected to begin increasing rapidly as the "baby-boom" generation reaches retirement age. In contrast, the program income from contributions payable on taxable earnings and income taxes on benefits will remain a relatively constant percentage of taxable payroll.

The situation of Social Security Trust Funds, for next 75 years, is previewed as in the following Chart:

**Chart 6 - Social Security Trust Fund - Financial Outlook - 1999 - 2074**



Source and Elaboration: United States General Accounting Office, 1999.

<sup>29</sup> Social Security Reform. United States General Accounting Office, November 1999.

<sup>30</sup> Social Security Reform - Information on the Archer-Shaw Proposal. Report to the Ranking Minority Member, Subcommittee on Social Security, Committee on Ways and Means, House of Representatives. **United States General Accounting Office, January 2000.**



As it is recognized unanimously, such forecasts cannot be realized, depending on multiple assumptions and factors, being essential how will be the development of the American economy. Actually, the current period of economical growth has been taking specialists to review estimates<sup>31</sup>, pointing a postponement of the beginning of the cash deficit in OASI Trust Fund for 2023. Nevertheless, the aging of the population activates is unquestionable: as Kenneth S. Apfel, Commissioner of Social Security, stated in April 2000, there are 76 million of baby boomers, and each day and every day for nearly 20 years 50,000 Americans will reach retirement age, changing dramatically the societal landscape<sup>32</sup>. This process will carry significant effects and recommends measures to be adopted in the long run.

To face that, Congress has introduced numerous proposals addressing Social Security financial difficulties, several focused in raising the Full Retirement Age. In 1983, The Congress already approved a change in the retirement age, increasing the FRA from 65 to 67 over a 22 year period beginning in 2000. But there are other, like the flexibilization of the rules that limit the application of the Social Security surpluses in federal bonds<sup>33</sup>, in order to allow revenue increase through more lucrative applications. Other hypotheses contemplate the adoption of a system of individual accounts and defined contribution benefits, proposal that is still in the initial phase of discussion in the Congress.

The principal difference to be considered, however - besides the socioeconomic characteristics of the country - it is the capacity that American Social Security have shown, until the moment, of being administered with seriousness, without the volume of frauds and resources deviations experienced in Brazil. Like this, a system that operates in simple partition regime, with lower contribution rates than those demanded in Brazil, operates with efficiency and collects resources that are more than enough for the costing of its expenses, realizing expressive surpluses. It reaches significant index of coverage, and although does not have the same importance that has Brazilian RGPS in the composition of the family wages, even so has a great weight for most of the families, working, just as RGPS, as an important instrument to reduce poverty.

### **3.2 Public Servants Retirement Systems in The USA**

As well as in Brazil, public servants in USA receive different treatment in terms of insurance system, and these regimes are quite diversified and complex.

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<sup>31</sup> In fact, according Congressional Budget Office (apud GIST, 1998), 1993 projections showed deficits doubling from \$ 300 billion in 1992 to more than \$ 600 billion by 2003, and by 1998 the deficit projections for years 2000-2003 were US\$ 450 billion to US\$ 700 billion lower annually than they were in 1993. This situation shows how deficit projections have been subject to substantial errors, however in a positive direction.

<sup>32</sup> APFEL, Kenneth S. Retirement Planning and the Internet: Web-based Information and Services at the Social Security Administration. Choose to Save Forum On Retirement Security and Personal Savings. Washington, DC April 5, 2000.

<sup>33</sup> In his last State of the Union Address, President Clinton recommended investing a small share of the Trust Funds in equities to further extend the life of the Trust Funds. According Mr. Clinton, this measure and better interest rates would achieve Social Security a 75-year actuarial balance in the trust fund.

That diversity comes from the possibility, given to the federal entities, to choose or not for the inclusion of their servants in OASDI. State and local government employees are covered by Social Security and Medicare if is made a federal-state agreement, authorized under Section 218 of the Social Security Act. Employees covered under a Section 218 agreement or by law have the same Social Security coverage and benefit rights as employees in private industry.

But, for the most part of these regimes, Social Security programs roles an important function, also as a basic regime that provides a first tier retirement benefit. According The American Federation of Labor and Congress of Industrial Organizations - AFL-CIO, seventy percent of state and local government employees and all federal employees hired after December 1983, are covered by Social Security.

There is, therefore, outstanding differences between OASDI and the public employees retirement systems, and also among the public employees systems, that we try to approach in this section.

### 3.2.1 Retirement Systems in the Federal Level

The federal employees in the USA have different retirement systems, according to their functional situation. In the case of the civil servants, coexist basically two systems: the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), that cover about 90% of the total of the federal employees. The military have a specific retirement system, administered separating.

Each one of those systems has its specific characteristics, but both guarantee better benefits than those granted to the employees covered only by Social Security. In comparison, however, with retirement plans offered to private employees in order to assure retirement complementation, the replacement rate is quite differentiated between both.

Together, those two systems cover 2,4 million annuitants and the Military Retirement System others 1,756 million retirees and 631 thousand pensioners (OPM, 1998). In 1999, the federal budget foresaw expenses about US\$ 21,65 billion in payments for the Civilian Service Retirement and Disability Fund. The Table below demonstrates, for the fiscal year 1997, the situation of each system in number of participants:

**Table 19 - Number of Participants in FERS and CSRS - 1997**

<b>Participants</b>	<b>FERS</b>	<b>CSRS</b>	<b>Total</b>
<b>Employees</b>			
Active	1,497,000	1,189,000	2,686,000
Former	91,000	34,000	125,000
<b>Total Employees</b>	<b>1,588,000</b>	<b>1,223,000</b>	<b>2,811,000</b>
<b>Annuitants</b>			
Retirees	84,500	1,671,000	1,755,500
Survivors	6,600	624,000	630,600
<b>Total Annuitants</b>	<b>91,100</b>	<b>2,295,000</b>	<b>2,386,100</b>

<b>Total Participants</b>	<b>1,679,100</b>	<b>3,518,000</b>	<b>5,197,100</b>
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Source: OPM, Annual Report of The Civil Service Retirement and Disability Fund for Fiscal Year 1998.

In the next years, there will be a significant increase in the retirees number, especially in terms of the active labor force, that is decreasing as a consequence of the downsizing politics implemented by the federal government<sup>34</sup>. The civil servants medium age, around 45.6 years, and high number of employees eligible for retirement, that surpasses 21% of the total, are the main reasons the number of retirees comes to reach the number of actives in the next 10 years.

According to the 1998 Annual Report of The Civil Service Retirement and Disability Fund, the unfounded liability of both Systems, that means the amount which would fully finance to total cost of the FERS and CSRS retirement benefits for the current, closed group of employees and annuitants, is about US\$ 505,6 billion. However, the unfounded liability of the CSRS is about US\$ 515 billion, reduced by the US\$ 9.6 billion actual surplus in the FERS.

In the following topics we will describe the situation of each one of those regimes.

### 3.2.1.1 Civil Service Retirement System

The Civil Service Retirement System (CSRS) was established in 1920, with the objective to provide retirement, disability and survivor benefits for civilian employees in the Federal government. Before this, many of the civilian employees in the Federal government simply worked until they died, with a large proportion of elderly or infirm civil servants and bad results both to Government and public employees.

As an immediate result of its creation, over 4,000 employees, some in their 80's and 90's, took advantage of the new retirement law. By the end of 1920, over 6,000 people had retired, deserving, with over 30 years of service, 60 percent of their average salary.

Since then, the system evolved into an employee-oriented system, becoming a progressive element in the personnel management system, and has allowed the Federal government to attract and retain a professional and dedicated workforce. Originally administered by the Department of the Interior, in 1930 it was moved to the new Veterans Administration. In 1934, it was transferred to the Civil Service Commission and in 1979 to the Office of Personnel Management.

Benefits also changed since then. They are now financed by both employee and Government contributions to the retirement fund, and provide benefits based on length of service and the average salary over the highest three years of pay.

Civil servants may retire under the CSRS after 50 years old, and receive an immediate annuity, whit a minimum amount of Federal service, as show the Table below:

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<sup>34</sup> Between 1988 and 1998, the civilian total labor force was reduced from 3.1 million to 2.79 million (OPM, 1999)

**Table 20 - Minimum Age and Federal Service under CSRS**

Type of Retirement	Minimum Age	Minimum Service (Year)
Optional	62	5
	60	20
	55	30
Special Optional	50	20
Early Optional	Any Age*	25
	50*	20
Discontinued Service	Any Age*	25
	50*	20
Disability	Any Age	5

\* Annuity is reduced if under 55.

\*\* Application must be prior to retirement, or within 1 year of separation, except in cases of mental incompetence.

Special Optional provides retirement for air traffic controllers or law enforcement and firefighter personnel, and air traffic controllers can also retire at any age with 25 years of service exclusively in this job. As in disability retirement, there is no age reduction in the annuity for these situations. Early Optional retirement requires major reorganization, reduction in force or transfer of function as determined by Office of Personnel Management. Discontinued service retirement occurs when separation is not voluntary and not consequence of misconduct or delinquency. In these cases, annuities are reduced by one-sixth of 1% for each full month under 55.

CSRS is a defined benefit plan, and was designed for a workforce that was likely to retire from the Federal Government after many years of service. For that reason, the highest benefits are given to employees who put in many years of service, especially if they retire before age 60. The annuity formula especially rewards employees who spend many years in Federal service. On the other hand, CSRS does not provide good benefits to employees who leave the Federal Government before they are eligible to retire.

The basic annuity is computed based on length of service and "high-3" average pay, that is the highest average basic pay earned during any 3 consecutive years of service. Generally, the basic annuity cannot be more than 80 percent of the "high-3" average pay. This amount is added of (a) 1,5 percent of "high-3" average pay times service up to 5 years; (b) 1,75 percent of "high-3" pay times years of service over 5 and up to 10; and (c) 2 percent of "high-3" pay times years of service over 10. The basic annuity will be reduced if retiring before age 55, unless if it is for disability or under the special provisions for law enforcement officers, air traffic controllers, and firefighters.

Widows and widowers of employees who die in service receive 55% of the annuity the employee would have received had the employee retired on disability. In case of deceased annuitants, widows and widowers receive 55% of the annuity unless the employee annuitant and spouse waived provisions of a survivor benefit. Children receive a flat monthly amount.

According to OPM, in 1995 employees who retired under CSRS averaged about 62 with 30 years of service. So, nevertheless retirement can happen at age 50 or 55 so it cannot be considered a system that provides early retirement to its annuitants.

After retirement, there are no links between the salary in the activity, like in Public Service Brazilian Retirement Systems. The CSRS annuity is readjusted periodically by cost-of-living increases, on the same basis as OASDI, to maintain retiree purchasing power. However, according GAO, limitations on CSRS benefit adjustment over a 10 year period in the 1980's and 1990's caused expressive losses - about 20% of original value.

For its funding, CSRS requires employees contribute, in most cases, 7% of their salaries. The law fixes an equal contribution to employers of payroll.

But CSRS is not fully funded from agency and employee contributions. Its annual normal cost<sup>35</sup> for fiscal year 1997 and 1998, according to OPM, was 24.2% for CSRS. However, for that year, the combined contributions of agencies and employees was 14 percent, or about 10 percent less than the full normal cost. So, in the fiscal year 1998, agencies had to pay an additional 1.51 percent of pay towards their CSRS employees retirement costs. Employees covered by CSRS also had to pay an additional 0.25% in 1999, 0.4% in 2000, and will pay a final extra 0.5% percent in 2001. In 2003, the contributions of employees and employers will revert to 7%.

Employees also can make voluntary contributions, if they want to receive a larger annuity than would be payable based on salary and service. Each \$100 in a voluntary contribution account, including interest earned, will provide an additional annuity of US\$ 7 a year plus 20% for each full year the employee is over age 55. But total contributions may not at any time exceed 10% of the accumulate base pay the employee has received during Federal service.

All voluntary contributions with interest may be withdrawn at any time before receiving additional annuity on those contributions. Employees who separate from Government service or transfer to a position not covered by CSRS are eligible for a refund of their accumulated contributions. If the employee has more than one but less than five years of civilian service, also interest is paid.

Due to its nature, employees in CSRS are not covered by Social Security through their federal employment. This system is going to be discontinued: in 1983, the Federal Retirement Act created a new Federal Employees Retirement System to replace the Civil Service Retirement System in 1987. Nevertheless, there are still more than 1,1 million civilian Federal employees covered by the Civil Service Retirement System, and over 2,2 million people receive Civil Service Retirement System retirement and survivor benefits. The program was closed to new entrants after December 31, 1983. The Table below shows the reduction occurred in CSRS's coverage since 1990, as a result of that fact:

**Table 21 - Participants of Civil Service Retirement System (CSRS) - Fiscal Years 1990 - 1998**

	1990	1991	1992	1993	1994	1995	1996	1997	1998
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<sup>35</sup> "Normal cost" measures the costs of pension benefits, which are earned during an employee's working years but paid during retirement, on an accrual rather than a cash basis.

CSRS	1,754,280	1,667,628	1,608,455	1,484,037	1,401,821	1,311,465	1,235,153	1,194,166	1,108,083
% of total	61.5	58.6	56.9	54.3	52.0	48.9	47.1	44.5	41.7

Source: Office of Personnel Management. THE FACT BOOK 1999 Edition - Federal Civilian Workforce Statistics.

According to OPM actuaries, the program is estimated to end in about 2070, when all covered employees and survivor annuitants are expected to have died.

### 3.2.1.2 Federal Employees Retirement System

In the early 1980s, Congress began to consider a new retirement system for federal civilian employees that would be more like private sector retirement systems. As a result, in June 6, 1986 the Federal Employees Retirement System Act (Public Law 99-335) was enacted, which closed the Civil Service Retirement System (CSRS) to new entrants and established the Federal Employees Retirement System (FERS) for employees generally hired after December 31, 1983.

Almost all new Federal civilian employees hired after 1983 are automatically covered by FERS, that became effective only in 1987. In 1998, more than 1,549 million of public employees were covered by FERS, who first entered federal service after 1983 as well as those who transferred from CSRS to FERS. Because that, the number of participants is growing fast, as show in Table below:

**Table 22 - Participants of Federal Employees Retirement System (FERS) - Fiscal Years 1990 - 1998**

	1990	1991	1992	1993	1994	1995	1996	1997	1998
FERS	1,096,874	1,176,993	1,219,051	1,250,934	1,296,461	1,370,953	1,385,181	1,487,284	1,549,698
% of total	38.5	41.4	43.1	45.7	48.0	51.1	52.9	55.5	58.3

Source: Office of Personnel Management. THE FACT BOOK 1999 Edition - Federal Civilian Workforce Statistics.

The retirement system is a flexible three-tiered retirement plan, and covered employees are able to choose what is best for their individual situation. Retirement benefits are made as a “package” from three sources. The three components are:

1. Social Security Benefits,
2. Basic Benefit Plan, and
3. Thrift Savings Plan Benefits.

The first available part of the retirement benefit Social is Security, that observes the same rules established for the private sector, also in terms of the 6.2% contribution on the wages, until the annual limit of US\$ 72,600. It provides monthly payments to retired employees that have reached at least age

62, monthly benefits to the disabled, monthly benefits to the eligible survivors, and a lump-sum benefit upon death.

The second one is the FERS Basic Benefit, financed by a small contribution from the employee and from the Government. Basic Plan Benefits are a monthly payment depending on the employee's pay and length of service.

And the third one is the complementary benefit from the Thrift Savings Plan, granted in accessory character and administered by Federal Retirement Thrift Investment Board. The Thrift Savings Plan is a tax-deferred retirement savings and investment plan that offers the same type of savings and tax benefits that many private corporations offer their employees under defined contribution pension plans, or 401 (k) plans.

The FERS benefits are about 66% of final salary for employees who retire at age 62 with 20 years of service. At age 62 with 30 years or more of service, FERS benefits are about 81% of final salary. The composition of this benefit is about 19% from Social Security (OASDI), 32% from the FERS Basic Benefit and 30 % from the TSP, but if the employee made not contribution to TSP, he would receive only about 53% of final salary at retirement.

The FERS's average replacement rate for employees who retire at age 65 with 30 years of service is about 87%, more than defined benefit only or defined contributions only plans, or than defined benefit plus defined contribution plans. FERS provides also higher benefit than CSRS, that does not include the Social Security tier. Even with inferior time of contribution - 20 years - at age 65 FERS assures replacement rate of 70% of the final average salary.

Many of the FERS's features are "portable" so that employees who leave Federal employment may still qualify for the benefits.

#### 3.2.1.2.1 FERS Basic Benefit

The FERS Basic Benefit is administered by the Office of Personal Management (OPM), that grants benefits whose payment is made by Treasury Department. In general it consists of 1% of the high-three average salary multiplied by the number of years and months of service. If the employee counts with more than age 62 and more than 20 years of service, the annuity is 1.1% of his high-tree average salary multiplied by his years and months of service.

The disability retirement follow the same rule, but if at disability retirement the employee is under age 62 and is not eligible for voluntary retirement, the benefit will be during the first twelve months equal to 60% of the "high-3" average less 100% of the value of the benefit granted by OASDI. After that period, the benefit will be of 40% of the high-3 average salary minus 60% of the Social Security disability benefit.

Retirement can be requested after reaching Minimum Retirement Age (MRA), that varies according to the year of birth, increasing gradually. For employees born before 1948, MRA is age 55; for the born ones between 1953 and 1964, it is 56 years; and the for the ones born starting from 1969, is age 57.

According to OPM, in 1995 employees who retired under FERS averaged about 63 with 14 years of service.

Employees who retire at MRA also receive a "Special Retirement Supplement" which is paid as a monthly benefit until the employee reaches age 62, that is the minimum wage to receive a SSA benefit. This supplement approximates the Social Security benefit earned by the employee while they were employed by the Federal government, and is calculable as if they were eligible for receive SSA benefits on the day the retired. But, if the public servant has 10 years or more of service and he retires with MRA, the benefit is reduced in 5% a year that he is under 62. However, there will not be reduction if computed at least 30 years of service, or 20 years of service to the 60 years of age.

Widows and widowers of employees who die in service after at least 18 months of service receive a lump-sum payment of US\$ 15,000 plus one-half of the annual rate of pay at death, or one-half of the highest three years average pay as of the date of death, whichever is higher. If the employee had at last 10 years of service, the surviving spouse also receives one annuity equaling 50% of the accrued basic retirement benefit.

In case the employee chooses a dependent to receive pension after his death, the benefit of the retirement will be reduced. To generate a pension of 50% of the retirement, the employee needs to renounce to 10% of the value of his retirement. For a pension of 25%, the reduction is of 5% of the value of the retirement. Widows and widowers of deceased annuitants receive 50% of the annuity, unless the employee annuitant and spouse waived provision of the survivor benefit or elected the benefit of 25%.

In this way, FERS continues the CSRS objective of encouraging employees to spend their working careers in federal service by making unreduced benefits at the MRA only to employees who serve 30 or more years with the government.

The benefits are adjusted by the Cost-of-Living Adjustments (COLA), if the retiree already has 62 years of age, or in case of retirement for disability, or have retired under the special provision for air traffic controllers, law enforcement personnel, of firefighters. The amount of the COLA is determined by the percentage increase in the Consumer Price Index (CPI): if the change in CPI is from 0% to 2%, the COLA is the same; but if CPI changes over 3%, the change is reduced in 1% (e.g., for a CPI of 4%, the COLA will be 3%).

Eligibility to a FERS Basic Benefit requires a minimum of 5 years of contribution. Until 1998, the contribution to the Basic Benefit Plan was the difference between 7% of basic pay and Social Security's old age, survivor, and disability insurance tax rate, or **0.80%**. Members of Congress, law enforcement officers, fire-fighters, air traffic controllers and congressional employees contribute an extra 0.5%. After January 1999, the employees contribution was increased to 1,05%. In 2000, it was increased to 1.2%, and 1.3% from January 2001 to December 2002. The contributions will revert to 0.8% in January 2003.

The contributor may withdraw his basic benefit contributions if he leaves Federal employment. In this case, there is no vesting: the ex-contributor will not be eligible to receive benefits based on service covered by the refund.



By law, employers contribute an amount equal to the dynamic normal cost less the employee contribution rate in effect before January 1, 1999. In 1997/98, for most covered employees the normal cost was 11.5%. Thus the employer contribution was 10.7% (11.5% less 0.8%).

#### 3.2.1.2.2 Thrifty Savings Plan

The Thrift Savings Plan (TSP) is a retirement savings and investment plan for Federal employees. It was established by the Federal Employees Retirement System Act of 1986, with the purpose to provide retirement income and offers Federal civilian employees the same type of savings and tax benefits that many private corporations offer their employees under “401(k)” plans.

The TSP is a **defined contribution** plan: the retirement income will depend on how much the Federal employee and his agency have contributed to the his account during his working years and the earnings on these contributions. The TSP benefit is also in addition to the FERS and SSA benefits, as an integral part of the retirement package.

Participant accounts are managed by the Federal Retirement Thrift Investment Board (FRTIB), an independent government agency established by the Federal Employees Retirement Act to administer the TSP “prudently and solely in the interest of participants and their beneficiaries”. The agency is run by a five-member board of presidential appointees and a executive director selected by those appointees. Each of these individuals is required to have substantial experience, training an expertise in management of financial investment and pension benefit plans. The Congress designed the TSP management structure using fiduciary standards applicable to private sector employee benefit plans. The Board is exempt from the normal budget appropriation process and the legislative and budget clearance process of the Office of Management and Budget. All the funds held in the trust by the plan belong to the participants and must be managed independently from political or social considerations. The five members of the Board and the Executive Director statutory fiduciaries, that are civilly and criminally liable in case of breach their responsibilities.

Participants in TSP may direct the investment of their accounts using three investment funds: the “Government Securities Investment Fund - G Fund” that is invested in short-term nonmarketable U.S. Treasury securities, the “Common Stock Index Investment Fund - C Fund” that is invested in the stock of the same 500 companies selected by the Standard & Poor’s Corporation for its S&P 500 index, and the “Fixed Income Index Investment Fund - F Fund” that is invested in U.S. government, corporate, and mortgage-backed securities. FRTIB manages the G Fund, that are held in trust in the U.S. Treasury, and contracts private enterprises to manage C and F Fund assets in trust, but acts as the investment manager.

Between 1988 and 1996, G Fund had return annual rate of 7,67%. C Fund offered annual average rate of return of 15,87%. And F Fund reached 8.37% on average a year, presenting, in 1994, negative revenue of -2,96%. In 1999, the negative revenue repeated, reaching -0.85%<sup>36</sup>.

As a personal decision of each participant, TSP is not responsible for the investment results, especially in C and F funds, but the TSP must provide a 10 year history of investment returns on corresponding securities. Through the access to such data, TSP tries to avoid current problems from misinformation, giving larger safety to the participants in the moment of doing their options, that can only be changed once every year, during the TSP open season.

The contributions to TSP accounts are voluntary, made only by payroll deductions and are separate from contributions to FERS Basic Benefit and Social Security. The employees do not have a minimum contribution per pay period - even small amounts can be contributed. Each participant has his individual account, where both employee and employers deposit their contributions.

All the FERS employees receive an Agency Automatic Contribution of 1% of their basic pay each pay period, whether or not they contribute to their accounts. However, to receive maximum employer contributions to their accounts, FERS participants need to contribute 5% of their salaries to TSP. In this cases, the employee make Agency Matching Contributions, that is the principal benefit of the TSP. Agency Matching Contributions are paid on up to 5% of basic pay<sup>37</sup> that the participant contributes each pay period. The maximum agency contribution is 5%; the maximum total contribution (employer+employee) is 15% of basic pay.

But FERS participants can contribute up to 10% of their basic pay each period to their TSP accounts, under the annual limit of US\$ 9,500.

Employees in CSRS may contribute to TSP, but the government does not make any contribution to their accounts.

The vesting in Agency Matching Contributions is immediate, but only after 3 years the participants are vested in Agency Automatic Contributions. Generally, the participants can not withdraw any portion of their accounts until they have separate from Federal service. But participants can access the loan program, including residential loans, in a minimum amount of US\$ 1,000. The participant loaned only his own contribution that limits the amount of each loan. The interest rates are the latest available on the G Fund. After 1997, participants who have more than 59.5 years or older can make a one-time withdrawal from their accounts while they are in Federal Service.

The Thrifty Savings Plan is tax deferred: contributors reduce their current taxable incomes and do not pay Federal and, in most cases, state income taxes on the money in their accounts until withdraw money at retirement. It is one of the principal attractives of TSP specially when compared with private pension plans. This advantage covers both FERS and CERS employees. Before-tax contributions also benefit participants, reducing the amount of tax to pay each fiscal year, once the amount of contributions for TSP is deduced of the taxable income.

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<sup>36</sup> In URL <http://www.tsp.gov/rates/history.html>

<sup>37</sup> Basic pay excludes awards, bonuses, buyout incentives or premium pays.

Every year, all TSP participants receive by mail a Participant Statement with information on their TSP account balances and detailed summary of the activity on their accounts during the previous 6 month period.

The TSP benefit can significantly increase public employees retirement income. According GAO (1997), although FERS provides an annuity in addition to Social Security and defined contribution pension benefits, many financial planners believe that under current market conditions income from participant and government contributions to TSP alone could generate 50 percent or more of the retirement income available to most FERS participants.

So, starting early is important, because the more contributions received, the more will be compound over the time. As a defined contribution plan, the size of the account balance, and of the benefit, depends on how much each individual contribute and how the accounts grows as a result of earnings on the investments. According TSP, one participant that contributes 5% of basic payment each pay period, receiving total contributions of 5%, can accumulate, after 25, 30, 35 or 40 years an expressive amount, able to pay also more than 30 years of full benefit, as shows the Table below:

**Table 23 - Projected Account Balance of a FERS Employee Who Contributes 5% of \$ 28,000 Annual Basic Pay**

Account Balance After:	Account Balance at Assumed Annual Rates of Return (Compounded Monthly)		
	4%	7%	10%
25	120,120	189,280	310,240
30	162,100	285,040	526,640
35	213,360	420,840	887,880
40	276,080	613,480	1,478,960

Source: Federal Retirement Thrift Investment Board, 1997.

The concession of the benefit observes some peculiar characteristics. With the accumulated resources, when granting the benefit TSP buys an annuity of an insurance company of its trust, observing some rules. The annuities to be paid monthly are calculated taking in consideration multiples factors, and they observe several plans. Among the factors that influence the annuity value, besides the accumulated value in the individual bill are the participant's age in the retirement's date and the decision of granting survivor benefit for spouse, as well as the value of that benefit (50% or 100% of the annuity). In 1998, the running contract with Metropolitan Life assured, assuming an interest rate from 7% a year, the following benefit value, for each US\$ 1000 in the TSP Account to Balance:

**Table 24 - Approximately Monthly Annuity Payments per US 1,000 in TSP Account Balance**

Account Balance After:	Age	Joint Life Annuity 100% Spouse same age (US\$)
25	55	6.62
30	60	6.93
35	65	7.38

40	70	8.05
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Source: Federal Retirement Thrift Investment Board, 1997.

Pursuant to those values, it would be possible to assure the participant and wife or husband an annuity, in the example before used (annual basic payment of US\$ 28,000), annuities to be paid monthly in the value from US\$ 1,253 to 4,939, to the 25 or 40 years of contribution and ages 55 and 70, respectively. In a participant's case that had contributed for 30 years, retiring to age 60, the monthly annuity would be of US\$ 1,975, in other words, 23,700 annual.

This assumption does not consider potential effects of inflation that obviously can reduce the purchasing power. By its nature, TSP benefits are not subject to cost-of-living adjustment. However, as pointed by the TSP, higher rates of inflation are often accompanied by higher pay increases and higher rates of investment return.

Those simple mathematical exercises demonstrate that, in fact, TSP has conditions more than enough of accomplishing its objectives.

With more than 2,3 million accounts, **TSP is the largest defined contribution plan** in the USA. In 1998, the overall participation rate of FERS employees was of 86.1%. The participation rate for employees with age 50 and over was above 90 percent, and 68.3% of workers with less than 30 participate of TSP. The higher rates are between employees with higher incomes: more than 90% of employees that earn US\$ 40,000 or more contribute to TSP.

The TSP success is being discussed as a model for reform Social Security's OASDI. But, as pointed by BEEDON (1999), using TSP experience as a model for the investment of Social Security requires caution, specially because Social Security benefits were designed to provide retirement to lower-income workers than higher-income workers. The individual and inherently risky nature of TSP is not compatible with the redistributive intent of Social Security. Renounce portions of FICA taxes to individuals to invest on their own over the premise that it would be provide a higher rate of return to beneficiaries than current Social Security benefits must increase risks, but does not guarantee, as required, the expected level of investment, and the same level of benefits, reducing public savings without increasing private savings.

And, as a matter of fact, TSP is a complementary plan, not a primary source of retirement income, that only adds to FERS basic benefit and Social Security benefit its own benefit - that is a result of compound earnings - to increase participants wages.

### 3.2.1.3 Retirement Systems in the Federal Level and Private Sector Retirement

As occurs in Brazil, one of the themes that has been attracting the interest of the American Congress is the comparison among the federal public employees retirement system the one of private sector workers.

In 1997, the General Accounting Office published Report, accomplished in partnership with Congressional Budget Office, contemplating an exhausting exam of the differences among those systems, especially in relation to the replacement rate and contribution system. The Report was accomplished with base in data of 661 employers retirement programs, most of them (61%) covering 2.500 or more employees.

The result of that Report reveals, although it is very difficult to compare private enterprises retirement plans and those offered by Federal Government, the benefits from FERS and CSRS can be larger, smaller or equivalent to those from private sector retirement programs, depending on the considered factors, such as age at which employees retire and at which programs provide unreduced benefits, the extent to which employees and employers contribute and the impact of cost-of-living adjustments.

As a rule, according GAO, greater benefits are available from FERS than from CSRS, but FERS participant must contribute higher percentages of their salaries to receive the greater benefit amounts. Benefits available from FERS could be 65% of an employee's final salary at age 55 with 30 years of service, and CSRS benefits would be 53% of final salary. But benefits available from the private sector programs averaged 19% in the same case for programs with defined benefit plans only, and 26% for programs with defined contribution plans only, and 45% for programs with both defined and defined contributions plans. Benefits available from FERS for employees with retire at age 62 or older are generally comparable to the average benefits available from private sector programs that include both defined contribution plans (around 70% of total plans compared).

In comparative terms, while FERS participants need to pay 5% of their wages for TSP, private sector employees would need on average to contribute 6% of their salaries to receive maximum employer contribution to their defined contribution plans. But several private programs with defined benefit plans did not require employee contributions, while FERS participants need to contribute with 7% of their compensations for FERS Basic Benefit and Social Security benefit. Under the same contribution rate (12%), FERS would offer reposition rate of about 87%, higher than all the others.

In conclusion, GAO affirms that does not exist definitive answer for the question of whether federal retirement programs offer greater of smaller benefits than private sector programs. But the empirical data suggest that, in general lines, the effective system is not only competitive, in terms of the benefits, as well as in costing terms, allowing a favorable cost-benefit relationship to the participants and contributing to reduce opportunity cost to those that remain in the federal public employment.

#### 3.2.1.4 Military Retirement System

As well as in Brazil, the military of the USA have specific retirement systems, separate from the civil employees system, but that observes some similar rules. The American military has three different systems, whose participants vary depending on when they joined military careers.

However, differently from the civil employees systems, Military Retirement Systems require no contribution from the servicemember.

Retirement of the military in the USA is deserved, normally, after 20 full years of creditable military service. There is also the Disability Retirement, for military who become disabled as a direct result of their duties, that can qualify for disability retired pay after eight or more years of active service.

The amount of military pensions depend on when servicemembers joined. After 1980, reforms altered the pension calculations, changing the computation base from 50% of the final monthly basic pay to 50% of an average of the highest 3 years of basic pay (High-3 system).

So, the first system allows 50% of final basic monthly pay after 20 years of service. The second one (after 1980) provides 50% of an average of the highest 3 years of basic pay.

To military members who joined after 1986, the H-3 average determines the monthly retirement pay in a formula that awards 2% of the High-3 average for each year of service up to 20 years, plus 3.5% of the High-3 average for each year of service beyond 20 years. For example, to a military with 20 years of service, the monthly retired pay is equal to 40% of High-3 average monthly basic pay; after 25 years, military yields 57.5%; and after 30 years of service yields 75%.

Under all three systems, servicemembers are eligible after 30 years of service for 75% of final monthly basic pay or, after 1980, 75% of High-3 average.

As in CSRS and FERS, military retired pay is increased annually by a percentage equal to the rise in inflation as measured by the Consumer Price Index (CPI). But after REDUX, COLA is reduced in one percentage point each year (e.g. if the CPI rises 3% in a given year, the subsequent retired pay COLA will be 2%).

To servicemembers who joined after 1986, military retired pay is recalculated on a one-time basis when the retired member attains age 62. As of the first month after the 62nd birthday, the member's new retired pay is increased to an amount equal to 2.5% of High-3 average basic pay for each and every year of service, plus fully inflation-adjusted to age 62, adding the losses occurred after partial application of COLA. Annual COLA subsequent to age 62 will continue to be computed at CPI-1%, but will be applied over the higher retired pay amount payable after age 62.

Reforms followed in 1986 changed the system in consequence of budget deficits and considerations about excessive generosity of the retirement system. The Military Retirement Reform Act (REDUX) reduced the retired pay calculation, introducing a less costly system. According Department of Defense estimates, between 1986 and 1999 the expenses were reduced in US\$ 7,5 billion as effect of REDUX (GAO, 1999:4).

But also REDUX has as an objective to provide an incentive to personnel to stay past 20 years of service and increase the size of the senior career force, once 47% of retirees leave within 1 year after reaching 20 years of service; by 3 years, almost 70% of servicemembers have left. Nevertheless, this incentive was created by a reduction of benefits - not an increase.

As there is no requirement of contribution and no minimum age to retire, retiree becomes eligible to receive an income for life at a relatively young age: to a military who joined service at 20, retirement is available at 40. It means that usually retirees remain in the workforce, with time enough to have a second career outside the public service.

More than 2/3 of the current military force came in after 1986. So, after 2006, when begin effective, REDUX will reduce monthly basic pays, but there is no certainty about its effects to encourage servicemembers to remain in the military. In fact, there is growing dissatisfaction among military members about their retirement benefits, and it is being cited in successive reports as an important reason for separating from the military (GAO, 1999:9)

In 1999 the Department of Defense proposed pay and retirement changes as a means of addressing declines in retention, like restoring the provision to allow service members to earn 50% of their high-3 after 20 years of service or accept a \$30,000 career retention bonus in return for signing an agreement to continue serving at least until 20 years of service and remain under the REDUX retirement system. It is, in part, a repealing of REDUX, or a recognition of its perverse effects against retention and attractivity to military personnel. However, those measures will cost about US\$ 6 billion in a period of 6 fiscal years (2000/006), and the Congressional Budget Office estimates that when the costs reach their full dimensions, entitlement costs for military pensions will rise 11 percent above what they would cost under current law; this would result in increased costs of about \$5 billion a year<sup>38</sup>. The actual situation of unfounded liability in the military retirement trust fund, that is over US\$ 500 billion and is to be fully amortized in 2033 by the Treasury, makes the problem difficult to solve.

### 3.2.2 Retirement System at State Level

At the State Level, there is an enormous diversity in terms of public employees retirement systems. Since Massachusetts became the first state to develop a retirement program for general service state employees, until 1947, when every state provided retirement benefits, to nowadays, there was great changes on how the retirement systems are structured and managed. In 1997, there were 2,140 public employee retirement systems nationwide.

Briefly, we can say that all states uses two or more components to design their retirement systems. But few of them had all of the same components as FERS or CSRS. According General Accounting Office (1999b) the majority of states (35) included three components (defined benefit, defined contribution with no employer contribution, and Social Security) and differed by only one component for either FERS or CSRS.

All states have a defined contribution component, but only nine states contribute to the plan. The lack of employer contribution is the most important difference from FERS, where the government contributes also to the basic benefit and to TSP benefit. Three state programs had the same components as FERS and six had the same components as CSRS A defined benefit component is offered by 48 States, and a Social Security component is provided in 43 States. Only two states have no defined benefit plan.

As in the Thrift Savings Plan, State defined contribution plans permits to employees defer receipt of income until retirement or termination of employment, and it is a key motivation of these plans.

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<sup>38</sup> CBO ANALYSIS, OTHER STUDIES RAISE SERIOUS DOUBTS ABOUT COSTLY MILITARY PAY AND PENSIONS BILL. Center on Budget and Policy Priorities, april 1999. In URL Internet <http://www.cbpp.org/4-29-99Bud.htm>

All states have in some way change the design components of their retirement programs since they were established. However, changes only affected the entrants after its implementation, and never had broken right's expectancies.

Changes are being studied in 21 state programs, in terms of dropping defined benefit plans in favor of a program consisting solely of a defined contribution component with an employer contribution and Social Security. The reason why to implement changes is reducing government costs, enhancing portability and lobbying by special interests. But there are also reasons to not dropping defined benefit plans, as studies that show no need for the change, need of the further study and the labor unions opposition, and lack of interest or support for the changes. Other 27 States do not consider those kind of changes, and the main reasons are why defined benefit plans provide greater benefits, and they are considered better to retain employees. Only one State (Michigan) had made changes in recent years, as a means of reducing government costs.

To prevent financial and actuarial unbalances, each State government have to fill a Comprehensive Annual Financial Report (CAFR) where they provide information on liabilities, including any unfunded future pension obligations. This estimate must consider factors as future growth in state employees, number of future vested retirees, longevity of retirees and estimated financial return on pensions funds help in trust for future retirees. Except for States that offer pay-as-you-go systems, they tend to try cover any unfunded liabilities over some period of years, to not face problems with large increases in pension cost or to impose benefit reductions in future years<sup>39</sup>.

Benefit formulas and contributions vary enormously between State plans. Some States use final average salary (FAS) and years of service, with a minimum retirement age between 50 and 60, and different rates (between 1% to 2% for year of service) of FAS to calculate benefits. Employees contributions also vary (4.2% to 11.5%). In Some states, that does not provide Social Security benefits (similar to CSRS) employees contributions vary from 7% to 17.71% of covered payroll, but benefits observe higher rates of (1.5% to 2.5% for year of service). Type III plans include all three design components, and states like Florida, Georgia, Arizona, Delaware and Illinois does not require minimum age for unreduced benefits employees contributions vary from 3.85% to 16.77 of covered payroll.

Other State plans are less representative, and more different. It is the case of Indiana, Tennessee, Alaska, Michigan and Nebraska. In these two states, there is no defined benefit, but only defined contribution and Social Security benefits. In Michigan, there are no employer contributions to the defined contribution plan.

The States of New York and California are in this group, that is the most representative. In the sections below, we will try to describe the main characteristics of these State programs.

### 3.2.2.1 New York State Public Employees Retirement Systems (NYSLRS)

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<sup>39</sup> This is a requirement also introduced recently in Brazil by Law # 9.717/98 and also by the Fiscal Responsibility Law that is going to be introduced by the Federal Government.



New York Public Employees Retirement System (NSRPLS) provides retirement to New York State Public Employees, except teachers, and participating municipalities, except New York City, under a three-tiered plan. There are two systems: the New York State and Local Employees Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS).

These systems provide defined benefit pension plans for public employees, and measured by assets, NYSLRS is the second largest public pension fund in the USA, behind CALPERS. In March 1999, assets reached US\$ 111 billion.

Systems benefits are provided under the provisions of the New York State Retirement and Social Security Law, and are guaranteed by the State Constitution. Benefits can be reduced for future members only by an act of the State Legislature.

Public employees hired after August 31, 1983 (59% of total annuitants) are required to have at least 10 years of service to be eligible, and aged 55 with 30 years of service, aged 62 with 10 years of service, or aged 70 with 5 years of service for normal unreduced retirement benefit. The final average salary is calculated under the High-3 rule, and benefit formula is 1.67% at 25 years of service, plus 2.0% of FAS for years between 25-30, plus 1.5% for each year after 30. So, after 35 years of service, defined benefit will be 59.25% of H-3 average, plus Social Security Benefit and defined contribution benefit.

Reduced benefits can be received after age 55 with less than 30 years of service, but the reduction is very significant: at 55, early retirement age reduction is 38.33%, and at age 60, 6.67%. Public employees hired before 1983 have lower reductions, but the lowest is also very high: 27% at age 55, and 6% at age 60.

In 1999, average allowances to pensioners and beneficiaries were US\$ 15,619. Pension benefits for new pensioners reached a little bit low value: US\$ 14,693. In the Police and Fire System, however, averages were higher: US\$ 36,266 to new retirees, and US\$ 23,889 to all pensioners.

Annual COLA is provided, and members contribute 3% of pay to defined benefit component.

There are almost 519,000 active members in NYSLRS, almost the same amount found in the Brazilian federal government, and 289,000 annuitants, with a 1.8 active per annuitant ratio. But only 193,000 members are State employees - the most part are made of counties, schools, cities and towns employees. In recent years, active membership has declined from 649,000 to the actual amount, with a 21% reduction in active annuitants. The membership age distribution reveals that more than 50% of annuitants are older than 45 years, and more than 20% are going to reach the required years of service to retire, what means a potential reduction in the same amount in the next ten years, when they will be eligible for retirement.

Contributions reached US\$ 802 million, and expenses were of US\$ 3.6 billion. In 1998-1999 Fiscal Years, income sources were 92% from investment income, and only 4% from employees contribution and 2.9% from employers contributions. However, according estimates from New York State Comptroller, that administrates the systems, contributions rates as percentage of salaries must raise to almost 10% until 2010 to face increasing expenses.

In the last two years, The New York Common Retirement Fund achieved investments with a return of 8.81%, against a 1.7% inflation rate. In 1998, the total fund rate of return reached 30.4% - an

exceptional rate. In the last 5 years, the average return rate was 15.8%, and in the last 10 years, 13.7%. Assets are invested as shown below:

**Table 25 - New York State Common Retirement Fund - 1999 - Investments and Return Rates**

Investment	% of total assets	Return rate
Domestic equity	50%	11.7%
Fixed income	32.8%	6.61%
International Stock equities	8%	5.31%
Equity real estate	2.7%	12.6%
Private equity	2.8%	11.6%
Emerging market equities	1.7%	
Short term	2%	

Source: New York State and Local Retirement Systems Annual Report 1999, p. 4.

For many years, the New York Common Retirement Fund has made sound investments throughout the State of New York. This investment policy has been getting good results, and in 1999 more than US\$ 6 billion have been invested directly in the State in housing loans, commercial loans and private equity investments.

The third component is the defined contribution benefit provided by The New York State Deferred Compensation Plan. This is a voluntary retirement savings plan, created by federal and state law, available to employees of the State and participating local employers, governed by Section 401(k) of the United States Internal Revenue Code.

Contributions are deferred under the limit of US\$8000.00 or 25% of compensation from current federal and New York State income taxation, so employees don't pay any current federal or New York State income tax on their contributions. The amount chosen to defer under the Plan is subtracted from the salary or wages before federal and state income tax withholding, and saved accumulates tax-deferred until the amounts are distributed, generally during retirement

Pay out is due only after employee permanently leave work for his government employer, or when attaining age 70 ½, or after death. Severe financial emergency resulting from either illness, accident, or property loss also authorizes withdrawal from the individual account.

Benefits can be paid in a lump sum, monthly, quarterly or annual payments over a fixed period of time or a partial lump sum followed by periodic payments. In case of separation, participants can choose either to begin to receive payment or defer the commencement of payment to a fixed future date. In case of deferring payments, the amount in account will continue to accumulate tax-deferred earnings until benefits are paid.

Contributions can be made from 1% up to 25% of individual compensation (after all before-tax contributions, including pension and health contributions), but not more than \$8,000.00. The amount of contribution can be increased or decreased each month, or suspended. There is no employer contribution to this plan.

Participants can select how their contributions must be invested, between several types of investment options: Balanced Funds, Bond Funds, U.S. Common Stock Funds, International Stock Funds, Money Market and Stable Income Fund. In 1999, funds invested by The New York State Deferred Compensation Plan reached different return rates, according the funds invested, but in general the results were positive: some funds reached more than 45,85% of return, and most of them reached annual return rates over 20% on average the last five years<sup>40</sup>.

The plan provides portability, if the participant takes a job with another employer that maintains an eligible §457(b) deferred compensation plan. In this case, the Plan Account balance is transferred directly to that employer's deferred compensation plan.

### 3.2.2.2 California Public Employees Retirement System (CALPERS)

California is among the States where retirement systems are most complex and diversified. California has 66 public employee retirement funds. There are several systems in the State, with total assets higher than US\$ 359 billion, serving more than 1.6 million members, providing retirement to district employees, city employees and state employees. As in New York, teachers have their own retirement system (California Teachers Retirement System).

To describe and analyze each one of these systems probably would be impossible in the context and for the purposes of this study. So, we will concentrate our approach in the main public employee's retirement system in California, the California Public Employees Retirement System (CalPERS), that is also the greatest pension fund in the world. In 1999, CalPERS's total assets reached US\$ 168,5 billion. The plan covers more than 720,000 active and inactive members and more than 330,000 retirees, survivors, and beneficiaries.

The System provides retirement to California State Public Employees also under a three-component plan.

The first component is Social Security, and all the State public employees are covered, although not all the CalPERS participants are.

The second one is the Public Employee's Retirement System, that is a defined benefit retirement plan and provides retirement benefits based on members years of service, age, and final compensation. CalPers also provides benefits for disability, death, and payments to survivors or beneficiaries of eligible members. CalPERS membership is divided approximately in thirds among current and former employees of the state, schools, and participating public agencies.

CalPERS is a compulsory system: all employees of participating public employers who work on a half-time basis or more are required to participate. Several different retirement plans are administered. The benefit structure for state and school employees is defined by statute. The benefit structure for public

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<sup>40</sup> New York State Deferred Compensation Plan - Investment Options. In URL Internet <http://www.nysdcp.com>.

agencies such as cities, counties, and special districts are established by contract with the System in accordance with the provisions of the California Public Employees Retirement Law (PERL).

As in New York, public employees are required to have at last 10 years of service to be eligible, but the minimum age to have unreduced benefit is 65- 10 years more than NY -, but only 10 years of service are necessary. Members are allowed to retire with reduced benefits at age 55 whit 10 years of service.

Also the benefit formula differs: final average salary is calculate under High-1 rule, and benefit formula is 1.25% of FAS for year of service. So, after 35 years of service, defined benefit will be 43,75% of H-1 average, plus Social Security Benefit and defined contribution benefit. As in New York, safety employees, such as police and firefighters, receive higher benefits than general employees. The benefit factor at age 55 is 3% of FAS. State Patrol members have the same right at age 50 and above, with a limit of 90% of final compensation.

Annual COLA is also provided. However, another remarkable difference is that in California State members are not required to contribute to defined benefit component. Only the State and agencies contribute to fund this plan. In 1996-1997, median employer contribution rate was 9.3% of covered payroll for defined benefit general systems, and 16.7% of covered payroll for defined benefit safety systems<sup>41</sup>. To State employees, the contribution rate for defined benefit general systems was 15.03%. This situation is going to change: employees hired after January 1, 2000 are automatically under a new contributory Second-Tier system, and employees on this date have the option to choose the Second-Tier, where the benefits are a little high. Employees that elect to convert past service also need to pay the past contributions, plus interest.

In the Second-Tier, retirement formula has changed to 2% at 55 retirement, that means benefit will be, at age 55 with 30 years of service, 66% of High-1 average. The contributions are 5% of gross earning in excess of US\$ 513. The employer contribution is 8.5% of employee salary.

Public Employee Retirement System revenues totaled US\$ 63.1 billion in the 1996-97 fiscal year. Defined benefit systems accounted for US\$ 62 billion, or 98.2% of total revenues. Defined contribution accounted for only 1.8% of total revenues. Employees contributions reached US\$ 3.7 billion in the same period, or 5.8% of total revenues, and employer contributions totaled US\$ 6.6 billion, or 10.4% of total revenues. In the other hand, investment income accounted for 83.76% of incomes, or US\$ 53.9 billion.

Although CalPERS does not provide portability, there are several reciprocity agreements that allow an employee to move from one system to the other without losing retirement and related benefits. It provides equal treatment between systems, in the same way as portability does.

Expenses totaled, during the same period, US\$ 13,4 billion, but 98.1% were spent in the defined benefit system, while defined contribution systems spent US\$ 252,4 million. In 1999, CalPERS paid out US\$ 5,3 billion only in benefits.

Constitutional and statutory law authorize the System to invest in stocks, bonds, mortgages, real estate, and other investments. Asset allocation is as show below:

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<sup>41</sup> Controller of the State of California. Public Retirement Systems Annual Report 1997, p. XIII.

**Table 26 - CalPERS Asset Allocation - 1999**

<b>Allocation</b>	<b>% of Total</b>
Domestic equities	46%
Domestic Fixed Income	23%
International Equities	18%
International Fixed Income	3%
Real estate	5%
Cash and other	4%

Source: State & Local Pension Exchange. URL <http://www.pensionexchange.com>

In 1999, CalPERS had earned a return on its investments of 18%. The fund of investment in U.S. stocks returned more than 27%<sup>42</sup>. In the last 5 years, CalPERS has averaged 15.7% return, above the 8.25% actuarial rate needed to pay retirement benefits.

In addition to retirement, disability, and health programs to general, safety and industrial employees, CalPERS administers several other programs, in separate Funds, including the Legislators Retirement System, the Judges Retirement System, the Judges Retirement System II, the Deferred Compensation Program, the Member Home Loan Program, and the Long-Term Care Program. So, differently from New York and Federal Government, CalPERS administrate all the retirement plans provided for its participants, that represents 1% of total assets.

The third component is the defined contribution benefit, provided by the CalPERS' Deferred Compensation Program. It is also tax deferred, and contributions can be made either by payroll deduction or in cash payments. Contributions are invested with the CalPERS investment portfolio. Earnings on these funds are tax-deferred. The annual limit on the amount of additional contributions the member can set aside is US\$8,000 per year, or 25% of gross compensation, whichever is less.

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<sup>42</sup> CalPERS ends very fine year. San Francisco Examiner, dec 31, 1999.

## 4. Viability of the Public Employees Retirement Systems in Brazil

One central aspect of the problem approached in this study is the financial viability of the retirement systems granted by the Constitution to the Brazilian public servants, in face of their our funding rules, especially after the validity of the Constitutional Amendment # 20/98.

The description of the public employees retirement systems in the United States is usefull to demonstrate that, after all, does not exist incompatibility between specific retirement systems and their financial or actuarial viability. On the contrary, the American experience is eloquent when demonstrating the vigor and the strength of the Social Security and public employees retirement systems trust funds and pension funds in terms of accumulated financial resources and investment.

Evidently, problems do happen in any retirement systems, as a consequence of the imprecision of the actuarial forecasts and statistical evaluations. If they did not happen, all the forecasts done ten years ago would have turned reality, and the situation of the American retirement systems would be much more critical than it is nowadays. The supervenience of not correctly previewed factors, as the current process of economic development, disassembled pessimistic scenarios, but it does not move away, in the long run, important issues for the viability of the retirement systems, as the aging of the labor force.

In Brazil, the elevation of the retirees to be maintained by the specific regimes, although it is reason of concerns in the short run, as it commits the balance of the public finances by the excessive expense with inactive personnel to be financed with tax incomes, it does not also configure unexpected phenomenon.

As in any retirement system, the reduction of new taxpayers entrance tends to provoke an elevation of the weight of inactives in the expenses, which, in case of public service, poses the question if it is or not necessary to maintain or to raise the number of active public servants to face the increasing needs of the population in the country.

As a matter of fact, the situation has been deteriorating, in the federal public service, in consequence of the high number of granted retirements in the last ten years, and by reduced rate of the personnel's replacement. As demonstrated in Table 8, only in the Federal Government there was a reduction of public jobs over than 270 thousand servants, in other words, servants that retired or they died and that were not substituted.

If 45% of the Federal Government payroll expenses are with retirees and pensioners, and in States it reaches 31.3%, that is the result of a proposital policy of downsizing, that harms hugely the public services, especially in essential services areas like exclusive State activities. In the same proportion, it is

increasing the expense with retirees and pensioners, according to data presented by the Federal Government:

**Table 27 - Expenses with Public Servants Compensations - Active Employees and Retirees - 1987/1999**

Base=dec 1997			R\$ millions
Year	Active	Retired	Total
1987	12,537	4,577	17,114
1988	15,965	5,746	21,711
1989	19,649	6,850	26,499
1990	23,177	8,878	32,055
1991	19,673	6,773	26,446
1992	15,438	6,201	21,639
1993	17,361	11,773	29,134
1994	19,348	14,701	34,049
1995	25,647	18,186	43,833
1996	24,677	18,350	43,027
1997	24,729	18,837	43,566
1998	24,774	20,526	45,300
1999	23,184	21,129	44,313

Source: Ministry of Planning, Budget and Management. Bol. Estatístico de Pessoal, # 44, jan 2000.

Intergovernmental transferences and global benefits and adjustments not included

Deflated by IGP/DI-FGV

1999 – acumulated dec/98 to nov/99

In the Military, the current situation, where there is more inactive than active personnel, it is not new: reveals, actually, a historical situation, perfectly assimilated by the society and never pointed as cause of the public deficit or as factor of public budget unbalance - although that does not justify the omission in regulate the Constitution in relation to those servants, that continue contributing much less than would owe to observe the requirement of financial and actuarial balance.

If, for absurdity, there were not new entrances in the public service, it would become the day in that the total expense with personnel would be to the pay retirees and pensioners. Therefore, we cannot consider the viability of the social security system taking into account an incidental situation that is the existence or not of a certain number of inactive and active, mainly when associated to downsizing processes, contracting out or huge reduction of the labor force.

Another complication is the system of time of service counting, that has been allowing distortions that affect the costing of benefits and puts in check the right of the public servant to the integral retirement.

To solve that problem, is necessary to recognize that the right to the integral retirement should be harmonized with its purpose, that is to assure to the individual that enters in the public service a reward for his subjection to a strictly ruled labor relationship in that the responsibilities and duties impose larger sacrifices and limitations than the private labor relationship. Like this, the reciprocity counting of time of service should be relativized, in order to avoid that - entering in the public position to the vespers of the

retirement - it serves as a springboard condition for a retirement to which individual would not have access in normal conditions.

They are legitimate, under that point of view, the rules that establish requirements of minimum period of affiliation or contribution, inhibiting situations like that. In Brazil, until the validity of the Constitutional Amendment # 20/98, that requirement did not have constitutional support, having controversies in the tribunals about its validity. Starting from the effectiveness of the Constitutional Amendment, the 5 year-in-the job and ten in the public service requirements were legitimated, reducing the future incidence of those situations and materializing, under some circumstances, the requirement of financial and actuarial equilibrium introduced by the Constitutional Amendment.

It is important to remember, however, that the reciprocal counting of time of contribution existent in Brazil is problematic only if it is not implemented the financial compensation among the retirement systems. Taking in consideration the public servants profile of revenue, the pointed perverse effects are located in the field of excepcionalities, since more of half of the public employees have access to practically the same amount of benefits in both regimes, it is, less than RS 1,255.32.

Evidently, the value of the maximum benefit to be granted by RGPS is decisive to maintain that equivalence, as well as the calculation formula, and the changes recently introduced by the Insurance Factor and the forecast that in the medium run the RGPS current ceiling could be eroded by cumulated inflation rates and insufficient adjustments, puts in check that situation, deepening the disparities among the different regimes as is still reduced more the medium value of benefits granted by RGPS.

Therefore, it its not correct consider that has a deficit in public employees retirement system, but financial needs, because the current situation was not created in a short period of time, or results from momentary unbalances, but it is a result of a long process.

Nevertheless, the Brazilian situation is much more serious in consequence of the improvidence and the bad administration that marked the retirement systems in Brazil than of that factor.

If in the federal level the difference between the expenses with retirements and pensions and the collected contributions from the active public employees is huge, that happens, among other reasons, because the statutory public servants started to contribute for retirement only after 1993, once before they contributed only to the dependents benefits, and because Treasury did not have provisioned resources nor have constituted a trust fund to finance the future retirements to be granted. Besides, while the civilians pay, since 1993, 11% on the total payroll, until today the Federal Government did not solve the problem of the military contributions, that still pay 1.5% for pensions costing.

In States, however, the situation is still worse, revealing unbalances that commit the public finances seriously in the short run. Actually, many States did not fasten consistent contributions for the costing of its retirement systems until today. Besides, the history is full of debts and embezzlements in the Retirement Institutes.

Therefore, according to the Ministry of the Planning there is a difference today between revenues and expenses in the retirement systems that reaches the sum of R\$ 18,5 billion in the Federal level, R\$ 13,2 billion in States and approximately R\$ 2,5 billion in the Municipalities. While the expense with benefits is about R\$ 23,3 billion in the Federal level and R\$ 17,9 billion in States, and R\$ 3 billion in the Municipal



level, totaling about of R\$ 44 billion/year, the contributions from the employees payroll, collected monthly, under rates from 3% to 25%, just add R\$ 9,9 billion/year.

The historical absence of concern with the funding of the retirement systems imposes, therefore, urgent measures that allow, the medium and long period, to balance the regimes, or to reduce their unbalances. One of those measures was adopted by the Constitutional Amendment # 20/98 through the introduction of minimum age requirements (ages 60 and 55) that will produce effects only in the long run, although smaller minimum ages (ages 53 and 48) are already in effect, reducing the concession of retirements even when computed the demanded time of 35 or 30 years of contribution. Differently than it is verified in the retirement systems of the American public employees, it is a general requirement, to be observed by all the federation members, although it does not affect the General Regime of Social Security annuitants, except in case of early proportional retirement.

Therefore, to complement that framework and to assure the sustainability of the retirement systems is required to find an fair contribution rate that allows to the State and the employees to contribute in order to sustain the benefit in the long run, being the rates to be fitted to guarantee the global costing of the benefits.

The contribution of the public employee, besides to allow the funding of the system and assure its transparency, also has the effect of sharing with the employee the responsibility on his own economical safety after retirement, also producing a commitment relationship among what it is picked up and the destination that will be given to those resources<sup>43</sup>. In some cases, it generates the fact of, in the first moment, to be the Public Administration done take to increase the wages of the public employees, in order to can make than able to face their contribution.

It is important once again to point out that, in the case of the Federal civil servants, those contribution rates are already high, having little maneuver margin to increase their rates.

To establish contribution demands to consider which king of benefit will be granted. As well as in Social Security and in most of the public employees retirement systems in the USA, the Brazilian public employees retirement systems is a simple partition, pay-as-you-go, defined benefit regime. This benefit is the remuneration of the employee in the date of his retirement. The current Constitution did not change that situation, although it has introduced sensitive changes in the sense of to restrict the joy of benefits and to make possible the introduction of a new retirement system for the public servants.

But the compulsory contributive nature of the public servants retirement systems and the requirement of actuarial and financial equilibrium approximates its benefits plan of the conception of a defined contribution plan, where the benefit is sustained directly by each individual's contribution. With that measure, it was looked for to associate the benefit to the value of the employer-state and employee's contribution.

This nature requires to look for mathematical answers that are, in general, associated to defined contribution plans, where the benefit depends directly on the amount of contribution, as on the time of

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<sup>43</sup> Allen, Everett et alii. Planos de Retirement. ICSS/Consultor, 1ª ed., 1994, p. 248.

contribution, and the value of the medium remuneration. So, is possible to evaluate, virtually, how funded is the benefit, as if he was capitalizing the contributions.

Being considered valid this reasoning, is reached surprising conclusions. Actually, it is verified that, in the long run, the public employees retirement system not just tends to the balance, but even to reach surpluses and a financially advantageous situation to the State, in case they are valid some presuppositions.

The first one is it that the State contribution for funding the future and present retirements of its public employees will correspond, as in the General Regime of Social Security, to the double of the employees contribution. As each employee picks up 11% of his compensation, it means that the agencies must pick up 22% on the same value. This implicates in that the public employer will be subjecting itself, for this proposals, to the same rules imposed to private employers while taxpayers of the General Regime of Social Security.

The second presupposition is that public employee will have to contribute, to do right to the benefit, indeed, for 35 consecutive years. In the public service, the informality degree is inexistent, what does not impede, however, that some public employees enter in the service after having gone by informality periods. Like this, only who effectively satisfies the 35 year of contribution requirement would deserve unreduced benefit; in another way, the employee will deserve proportional benefit at his time of contribution, as foresees the Federal Constitution in the case of the elderly-retirement after age 60 or 65 years.

The third presupposition is that the average salary serves as parameter for the benefit concession. Besides, it should be verified which is the maximum benefit value that the average salary can hold, once it is starting from her that it can evaluate the financial viability of the system. Alternatively, the annual salary increases held by the system should stay in the normal standards. In the case of the public service, the international pattern of medium increases of 4% every year of service seems to be compatible with that presupposition. Then, the individual maximum benefit would correspond to the remuneration landing reached by the public employee in the moment of his retirement, not being considered, since then, eventual increases in the real value of the benefit.

The fourth presupposition is that, any that is the collected amount, there will be conditions of protecting those resources of the inflationary losses and, stiller, to obtain with them financial revenues that revert in benefit of the system. A reasonable rate of profit for that proposes corresponds to the application of compound interests rates from 6% each year on the amount accumulated month to month, profitability that maintained after the entrance in the retirement as the sole source of resources of the individual plan.

Being valid these presupposed, the results indicate that, after 35 years of contribution under a constant rate of 33% (11% of the employee and 22% of the employer) over the total monthly remuneration of the public employee, capitalized under annual compound interests rates of 6% (0.5% monthly), and considered the annual elevation of remuneration of the servant under the annual 4% rate, the accumulated amount would be enough to finance full retirement in the same value of the final salary for an **infinite number of annuities**.

If, on the other hand, we consider the current contribution of the active public employees, of 11%, followed by a contribution of 22% of the agencies, and considering a monthly interest rate about 0.3%, the accumulated amount after 35 years would be enough to assure the following benefits:

**Table 28 - Benefit Payable after 35 years of Contribution under a 0.3% interest rate of Capitalization**

Time of Contribution	Salary evolution	Benefit to Be granted	Time of Duration of the Benefit
After 35 years of contribution	Initial wage: R\$ 500 Final wage R\$ 1,973	Benefit of R\$ 2000 Monthly interest rate: 0.3%	14.84 years of benefit (193 annuities)
After 35 years of contribution	Initial wage: R\$ 500 Final wage R\$ 1500	Benefit of R\$ 1500 Monthly interest rate: 0.3%	18.15 years of benefit (236 annuities)
After 35 years of contribution	Initial wage: R\$ 750 Final wage R\$ 1500	Benefit of R\$ 1500 Monthly interest rate: 0.3%	27.23 years of benefit (354 annuities)

Elaboration: Author

The variable interest rate to be considered in such estimates is a core point, once, second OLIVEIRA et al (1999), in Brazil there is a conviction, almost widespread, that it is possible to obtain high capital remuneration rate, also in the long run. This specialist clears that the Law # 6.435 establishes as minimum real profitability 6%/year, and that although the variance can be enormous in the short run, the rates of remuneration of the capital in a wider temporary context they tend to be modest. Besides, the adoption of high actuarial interest or discount rates is extremely imprudent: if it is a defined benefit regime, we would be taking the risk of underestimating the contribution marginal rates; if is a defined contribution regime, the risk is to be waiving a lot with a benefit above that can really happen.

However, a real profitability rate like 0.3% a month are quite inferior to that is obtaining, in the last ten years, applications made by as Social Security as FERS, TSP, NYSLRS and CalPERS, for us to be just in the examples already analyzed in this study.

Being considered as valid projections from IBGE, the federal bureau of statistics in Brazil, that point the life expectation of Brazilian citizen's to age 50 years in more 25.2 years of life and to age 55 more 21.3 years; and that the medium retirement age is 54,92, starting from the following distribution of frequencies for age group, according data from the Ministry of Planning, Budget and Management, relative to federal employees, as shown in Table 28, we can say that, on average, it would be possible to guarantee the costing of the benefits for period higher than the esteemed for their average life expectancy at the retirement date.

**Table 28 - Medium Age of Retirements of the Executive Branch Civil Servants in Brazil - Distribution % according to the age group - 1999**

November 1999

Age Range	Male	Female	Both
Up to 40	4.7	2.8	3.9

41 to 45	5.4	10.5	7.7
46 to 50	12.5	27	19.1
51 to 55	22.3	25.4	23.7
56 to 60	22.6	16.9	20
61 to 65	11.5	9.7	10.7
66 to 70	15.9	6.5	11.6
above 70	5.1	1.2	3.3
Total	100	100	100

Source: SRH/MP. Boletim Estatístico de Pessoal # 44, December 1999. The existence of data registering retirements with age below to 40 is due to imperfections in the cadastral information.

The presented results do not differ a lot, besides, of the results found by studies elaborated by IPEA, that presents the following necessary rates of contribution to balance the public servants retirement system:

**Table 29 - Total necessary contribution (as % of income) to equilibrate Retirement System**

	Entrance Age			
	15	20	25	30
Discount Rate: 3%				
Age at Retirement	Net	Net	Net	Net
45	31.34	36.89	43.86	52.44
50	25.01	29.25	34.58	41.38
55	19.74	22.89	26.86	31.91
60	15.46	17.72	20.55	24.17
65	12.07	13.61	15.55	18.02

Source: OLIVEIRA et al, 1999.

Therefore, with the current contribution rates, if the system were not unfounded, the full normal cost would be already barely reached, without need of drastic contributive fittings.

In the medium and long run, consequently, the current conditions are enough for the system to be self-sufficient, without deficits. But that implicates in that federative entities recognize their responsibilities in funding the systems to assure actuarial and future public employees benefits, since they did not make it in the past.

It is worth observing that, besides stable, the expenses with inactive and pensioners have been decreased in relation to the net current revenues of National Treasury, from about 20% in 1995 for a little below 13% in 1998.

In the other hand, the data below are eloquent when informing growing importance of the expenses with liabilities interests and responsibilities, that overcome, in a lot, the nominal evolution of the net current revenue, whose growth only loses for expenses with military personnel payroll. However, the debate is centered in the evolution of the expense with civil personnel, and in the need of rising contribution for the

costing of the public employees retirement systems, looking after the deficits verified due to the insufficiency of picked up contribution.

**Table 30 - Nominal Evolution of Net Current Revenue and Liquid Expenses with Retirees and Pensioners and Interests, Responsibilities and Amortization of the Internal and External Liabilities (1995=100)**

	1995	1996	1997	1998	1999 (projected)
Civil personnel	100	102	118	134	140
Military personnel	100	125	137	160	175
Total	100	111	125	143	152
Net Current Revenue.	100	124	138	162	179
Debt	100	106	133	214	258

Source: STN/MF

Of the total of the R\$ 19 billion "deficit" foreseen for 1999 in the Federal level, about R\$ 11.3 correspond to the civil personnel, and it would demand, for its payment, considering the maximum rate allowed by Law # 9.717/98, a contribution of 28.27% on active civil servants. Being included the inactive personnel and pensioners as taxpayers, the medium marginal rate would be reduced for 15,29%.

However, the retirees contribution and pensioners could reduce this expense in barely R\$ 2,2 billion at the Federal level, and 1,7 billion, in States. That would be, in thesis, the percentile of reduction in the expense with personnel, that, however, would have evidently confiscatory effect, as it would produce reduction of benefits earned with the proposal of reducing expenses. That is: it would not be the problem's solution, but a mere palliative that would be gotten after reducing rights of people who already accomplished their part in the deal and are in joy of the benefit, or would come to enjoy it after being punished for long years.

It is important to remember that the statutory public servant cost, every month, is at least 8% lower than the "celetista" employee, once the employer has not to pay the contribution for the Fund of Warranty of the Time of Service (FGTS, that corresponds to 8% of payroll, monthly). Besides, the statutory servants up to 1986 were not entitled to the 13rd monthly wage. During the whole period in that they had contributed theoretically "less" for the retirement system, the statutory civil servants contributed indirectly, because they were not entitled to "celetistas" rights, resulting, therefore, in significant economy for the employers (Union, States, Federal District and Municipalities).

Like this, the immediate solution that is placed as valid is the taxation of the active labor force, but in actuarially justified and reasonable bases, as well as the adoption of accessory fiscal measures that assure to the federative entities means for to honor commitments with their public employees, as well as with the other citizens. But there is no possibility of ignoring the acquired rights, or reduce those rights through artifices that are contrary to the notion of legal democratic State that is one fundamental principle of the Brazilian Constitution.

It does not mean, however, to credit to the current retirees, or to them and the current actives, the obligation of solving, for itself alone, one given situation that results from misunderstandings and improvidence accumulated in more than 50 years. If, along the time, the Brazilian State did not promote the fixation of reasonable contribution rates to provide funding on its insurance systems (what also happens in RGPS) it is not able to dilute, now, the obligation of that improvidence among those that are in benefit joy or in phase of acquisition of rights. That because the public employees retirement systems are not closed systems, but their expenses have the same nature that those accomplished with the active servants payroll.

That means, evidently, that the Society as a whole have to support the payment of the benefits, since the servants are linked to the Federal Government, to States, to the Federal District and to the Municipalities, that are the responsible for the financial situation of their retirement systems.

One of the alternatives to face this question is pointed by OLIVEIRA et al (1999): the financing of the liability could be made by emission of public debt, with period of 30 years and real remuneration of 3% e.y., to be absorbed by private insurance companies.

Like this, any solution to the public employees retirement system should consider the conditions of financial viability and actuarial and, still, the variables capable to turn such a system subject to adversities, be them financial or political character.

## **5. Public Service Pension Funds in Brazil: how can they contribute to reduce deficits in social security**

One of the most important alterations introduced in the Brazilian retirement system concerns the introduction in the Constitution of norms destined to increase the private insurance sector in the country.

That option is materialized in the article 202 of Federal Constitution, with the wording given by the Constitutional Amendment # 20/98, and it affects the insurance regime of the public employees in a significant way, once, to authorizing the fixation of a ceiling of benefits same to the RGPS for the specific regimes specific when insured the complementation through plans of complementary retirement, the federative entities start to discharge of guaranteeing the payment of defined benefits above the ceiling fixed to RGPS. In the Federal level, this provision can reduce, in the future, the expenses for 45% of the current annuitants, that is the proportion of civil servants whose compensation surpasses the RGPS' ceiling. Those civil servants would need to appeal to the plan of complementary retirement, under penalty of reduction in their future benefits.

Estimates indicate that throughout Brazil the potential clientele would reach 20% of total public employees, whose compensations are responsible for about 35 to 45% of the total expense with payroll, in the several government levels.

In the RGPS, although complementary retirement plans does not configure an innovation, the effect can be amplified as the medium benefit is reduced in the future under the Insurance Factor, taking a portion of the workers that still obtains benefits until the value of the ceiling look for complementation that reduces the losses after minimum age effects indirectly imposed by the Insurance Factor, or to compensate the loss due to the elevation of the number of months considered in the benefit formula.

The perspectives in the medium and long run, therefore, is of growth of the pension funds, in capitalization regime, and of defined contribution plans, in detriment of the current defined benefit plans, to the likeness of what happens in several state companies and, mainly, in countries that adopt several insurance systems, as it is the case of American public employees retirement systems American before described.

The complementary pension funds, although they are an instrument to guarantee the rights of the employees, at the same time is highly attractive to the private sector, as a form of collect savings for retirement proposals. They would have the capacity to attract extraordinarily voluminous resources, and the present situation in the United States demonstrates the potential of institutions destined to manage such resources: the public employees pension funds are among the largest accumulated patrimonies of

the country, and also of the world, administering billion of dollars, assuming decisive role as investors in the national and international markets.

Current Brazilian Constitution establishes some basic rules that will induce the process of growth of the pension funds, mainly starting from the changes in the public servants retirement systems.

Firstly, it is insured to the public servants that come to be maintained in the statutory regime a basic, specific regime, however submitted to the same general rules that the General Regime of Social Security, which it will assure the benefit legally until the limit defined, added of a complementary retirement system, under capitalization regime, for which will contribute the public employees and the agencies in same bases.

Any that is the solution to be adopted that it considers such funds viable alternative to substitute retirement plans directly provided by the State, it should be wide insured participation of the interested ones in the administration of the resources, in way to avoid the political manipulation of their financial resources, as well as effective fiscalization instruments and external control concerning the regularity of their management.

The Constitutional Amendment # 20/98 assisted this need in a partial way when establishing that the supplementary law that should regulate the complementary system should assure the participants of the retirement plans private entities "full access to the relative information to the administration of their respective plans".

In any way, a contradiction subsists with the proposal of invigoration of the pension funds while alternative of warranty of the retirement benefits, that is the imposition of a limit to the public entities participation in sponsor's condition.

The fixation of a maximum participation in the proportion of 1x1, that it is inferior to the of RGPS costing rules indicates intention of impeding that the resources carried to the pension funds are enough to assure satisfactory benefits for the public employees, reducing the capacity that those pension funds turn into real alternative to the retirement benefits maintenance. Besides, is contradictory with the practice adopted for many private companies that sponsors pension funds, and even with the experience of American TSP, where the public employees contribution for the defined contribution plan is not obligatory, although the agencies are forced to collect a minimum contribution.

Another issue concerns the administration of the public employees pension funds. One of the proposals appreciated by the National Congress in Brazil, presented by the Workers Party, foresaw the creation of a public complementary retirement system, maintained by the Union, by States, Federal District and Municipalities, destined to retirements complementation, besides allowing the costing to be made upon the proportion 2x1, and to foresee, as it happens in FERS, the universalization of RGPS through the inclusion of the public employees in this regime, whose maximum benefit would be of, at least, ten minimum wages. The proposal also have defined the public nature of the public employees complementary retirement, in other words, managed through a state entity, as it happens in the experiences of States of New York and California and also in FERS, although Thrift Savings Plan is managed by a totally independent agency.



The adoption of uniform rules for the funding and warranty of the public employees insurance rights through pension funds will be able to configure, indeed, in an instrument to reform and homogenize the system, especially as the Union rules on the matter and establish fiscalization mechanisms.

Another effect to be considered is the role of the pension funds as instrument to increase savings or to assure better benefits to annuitants. There are some controversies about that capacity.

According to the World Bank, there is not empirical evidence about this effect, but there is a relationship between Social Security expenses and Pension Funds Savings. According to International Association of Social Security there is scarce testimony that capitalization raise saving rates; also there is no indication that reduces economic costs to face aging of society (IASS, 1998). As stated by ORSZAG & STIGLITZ (1999:10), privatization and broad prefunding by pension funds are distinct concepts, and privatization is neither necessary nor sufficient for broad prefunding. Although a large academic literature exists on whether the introduction of a pay-as-you-go social security system reduces national savings, shifting an existing pay-as-you-go to one of individual accounts would not necessarily raise national savings.

However, a fort movement exists, all over the world, around the growth of the pension funds. According The Economist,

*“Although statistics on the growth of existing European pension funds are somewhat ropey, several trends in their development are clear. For a start, once savers realize that they can no longer count on a state-financed safety net, they tend to increase savings dramatically. Dutch pension funds had assets equivalent to 73% of GDP in 1991; since the figure has risen to almost 85%, according the European Federation for Retirement Provision.*

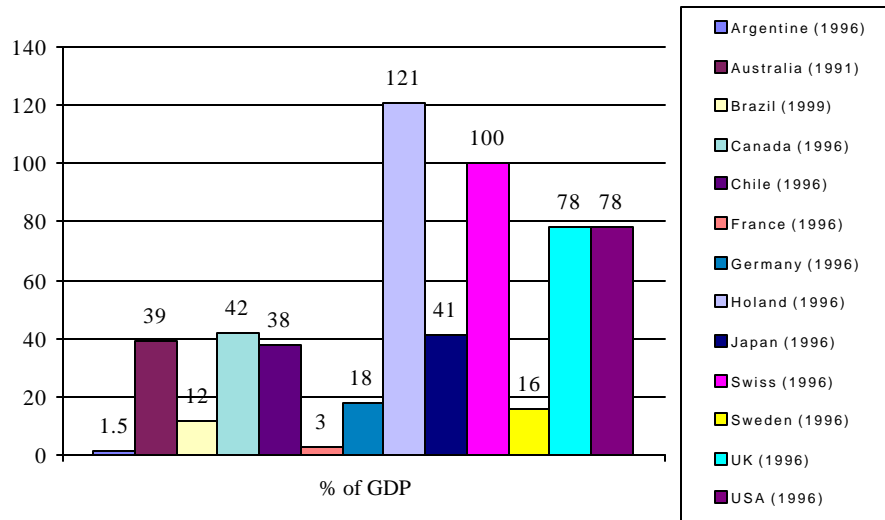
*Pension funds have also shifted away from bonds and other assets toward equities, which provide higher returns over the long run. According to Jonathan Hoffman, an economist with CS First Boston, an American investment bank, British pension funds held more than 75% of their assets in equities in 1994, compared with 63% in 1990 and just under 50% in 1970. There is been a similar, though less pronounced, shift in other European economies.”<sup>44</sup>*

The general situation in USA and European countries, expressed in Chart below, demonstrates the importance of the pension funds as sources of investment resources:

### **Chart 7 - Pension Fund Investment as % of GDP - 1991/1996**

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<sup>44</sup> When George Soros meets Granny Smith. The Economist, 22 apr 95



Source: World Bank; ABRAPP

In Brazil, according to the closed pension funds association (Associação Brasileira das Entidades Fechadas de Previdência Privada), there are more than 362 authorized private retirement closed entities, sponsored for about 2.200 companies, with superior patrimony to R\$ 115 billion. About 115 pension funds are sponsored by public entities (state companies, essentially). The pension funds, according to the Secretary of Complementary Insurance of Ministry of Social Security and Assistance embrace a total of 1,617,000 active participants, besides about 4,700,000 assisted.

No matter how impressive these numbers can seem, they also show still the incipient character of the sector: the embraced population does not arrive to 3% of the economically active population in Brazil (or approximately 6.2% of the labor force in the formal sector) and its patrimony represents only 12% of the Gross Domestic Product.

The Brazilian pension funds are still very far away from the reality of countries as the United States and United Kingdom, where more than half of the labor force participates in closed pension funds, which patrimony represents about 80% of the country's GDP. In Brazil, there is a potential of 48 million of workers that don't participate in any private pension plan, but whose inclusion depends fundamentally of the improvement of the income distribution in the country.

Even so, since 1994, the volume of resources managed by pension funds increased 147% in nominal terms, reaching in December 1999 R\$ 115 billions, around 12.5% of Brazilian GDP. In this period, investment in Stock Markets decreased, but investment funds increased considerably, especially Fixed Rent Investment Funds, as a result of raising of interest rates. The Table below demonstrates the volume of investments and coverture in twenty principal Brazilian pension funds:

**Table 31 - Investment and Participants of the 20 Biggest Pension Funds in Brazil - 1999**

Pos	Fund	Investment R\$ - Millions	Participants	Dependents	Assisted
1	PREVI	31.874.667	70.328	269.993	48.987
2	SISTEL	7.200.986	52.228	200.798	22.076
3	FUNCEF	6.459.996	54.918	158.097	12.735
4	PETROS	6.021.998	40.665	240.169	39.656
5	FUNDACAO CESP	4.274.260	26.060	88.353	18.265
6	CENTRUS	3.695.503	82	2.111	1.246
7	VALIA	2.416.692	13.005	80.373	13.877
8	ITAUBANCO	2.079.581	30.588	30.507	1.611
9	FORLUZ	1.822.491	11.807	56.813	7.653
10	REAL GRANDEZA	1.525.630	5.536	25.192	4.506
11	AERUS	1.443.916	33.360	51.682	5.083
12	FAPES	1.420.820	1.798	6.303	742
13	TELOS	1.170.092	8.260	31.310	3.264
14	FUNDACAO COPEL	1.103.679	6.816	25.540	4.457
15	BANESPREV	1.014.766	21.442	33.881	2.584
16	CCF	1.013.001	48.505	156.303	3.596
17	FUNBEP	1.003.189	9.908	27.314	3.004
18	CAPEF	990.622	3.494	16.063	3.107
19	ELETROCEEE	983.369	8.646	23.631	2.162
20	REFER	977.322	9.370	62.029	22.210

Source: ABRAPP, 1999

The total volume of pension funds resources is distributed in a quite heterogeneous way, but there is a larger concentration in investment funds, especially in fixed income, and stock market, in order to assure better return rates to the participants. Table 32 below demonstrates the evolution of the investment portfolio in the last 5 years:

**Table 32 - Consolidated Investment Portfolio of the Private Insurance Closed Entities - Brazil - 1994-1999**

Discrimination	Dez/94	%	Dez/95	%	Dez/96	%	Dez/97	%	Dez/98	%	Dez/99	%
01. Stock Markets	18.177	39,1	16.923	29,5	22.162	30,9	24.724	28,5	17.465	19,2	30.259	26,3
02. Real Estate	6.692	14,4	8.548	14,9	9.225	12,9	9.038	10,4	9.684	10,7	10.110	8,8
03. Term Deposits	5.334	11,5	8.367	14,6	6.891	9,6	6.623	7,6	8.818	9,7	5.313	4,6
04. Investment Fund - Fixed Income	5.779	12,4	6.826	11,9	12.064	16,8	16.729	19,3	20.648	22,8	36.423	31,6
05. Fund of investments - Variable Income	ND		ND		1.832	2,6	9.302	10,7	9.214	10,2	14.066	12,2
06. Loans to participants	887	1,9	1.067	1,9	1.592	2,2	1.623	1,9	1.740	1,9	1.805	1,6
07. Real estate financing	2.145	4,6	3.328	5,8	3.688	5,1	3.923	4,5	4.021	4,4	3.868	3,4

08. Debentures	862	1,9	2.992	5,2	3.446	4,8	3.384	3,9	3.229	3,6	2.892	2,5
09. Securities	1.771	3,8	2.557	4,4	4.115	5,7	3.240	3,7	5.918	6,5	7.307	6,3
10. Other	1.201	2,6	1.445	2,5	1.704	2,4	1.878	2,2	2.382	2,6	3.011	2,6
11. Oper. W/Sponsors	3.642	7,8	5.408	9,4	4.954	6,9	6.396	7,4	7.637	8,4	70	0,1
TOTAL	46.488	100	57.461	100	71.672	100	86.861	100	90.757	100	115.124	100

Source: ABRAPP

The private insurance sector estimates that the open and closed pension funds reserves will increase for R\$ 500 billion by year 2011. More optimistic evaluations estimate that is possible, up to 2005, to elevate the participation of the private insurance sector in GDP for 40%<sup>45</sup>.

This prospects is attracting the attention and interest of open private insurance funds administrators, whose evolution has also been significant in the last six years, as show the Table below. Since 1994, the resources managed by open pension funds, that provide individual retirement plans (similar to Individual Retirement Accounts - IRA offered in USA by private financial enterprises), increased 312%, and resources invested in Free Benefits Generator Plans - PGBL reached in 1999 more than R\$ 500 million, overcoming the resources invested in Programmed Individual Retirement Funds - FAPI (R\$ 300 millions) and in regular savings (R\$ 111 millions). The investment in private insurance funds is going to assume, gradually, an important role in the sense of attracting savings, as it happens at other countries, although it that does not mean increase in the total savings, but its redirection.

**Table 33 - Open Pension Funds - Brazil - Evolution 1993/99**

Year	Investment Portfolio	Open Pension Funds Revenue
1993	1.575.000	281.815
1994	3.017.627	670.382
1995	3.539.466	1.050.181
1996	4.605.287	1.405.040
1997	6.254.606	2.163.893
1998	8.267.257	3.220.051
1999	12.447.397	3.758.259

Source: ANAPP - Associação Nacional da Previdência Privada.

That section still suffers of a credibility lack, starting from the Brazilian self experience in the seventies and of some recent failure examples, as registered in United Kingdom starting from 1986, where the offer of individual private plans of retirement for the companies insurance companies with the offer of

<sup>45</sup> VIANA, Francisco. Em busca de um novo modelo. ANAPP, 1999.

exaggerated or unreal return and high commission rates took more than 2 million workers that migrated from closed private insurance plans or from the social security to open insurance plans to arching with great damages.

Though, some well succeeded experiences, as it is the case of the analyzed retirement systems of the United States allow us to bet in the success of the pension funds amplification, if this system comes to be administered in a responsible and consistent way, answering to the larger interests of those participants, and since that it does not mean dismounts of the Social Security system.

It is important to point out that the main reason to adopt that alternative, in the case of the public employees, is the reduction of costs, rather than the offer of better benefits to annuitants, also because defined contribution and individual capitalized accounts plans does not have, necessarily, capacity to assure better incentives than defined benefit plans, or to introduce effective incentives to retard the insurance benefits once accomplished their requirements (ORSZAG & STIGLITZ, 1999).

Besides, the State is not able, nor owes, to adopt that conception with the purpose of privatizing Social Security, because, after all, the State is responsible for assuring rights and covering market failures.

But the State can improve pension funds as one alternative to provide complementary pensions above the pay-as-you go/public system benefit ceiling, and measures in that direction can be adopted without more serious damages to the public employees retirement system objectives in the sense of assuring competitiveness, attractiveness and qualified personnel's retention.

That requests a competent regulation of Constitutional Amendment # 20/98 by supplementary laws, defining the institutional and legal framework to open and closed pension funds. Those laws must assure flexibility to offer benefit defined or contribution defined plans. In this direction, the proposals directed to the National Congress, that are in final phase of approval, result almost satisfactory in order to motivate the closed Pension Funds to compete in good conditions with open pension funds and other saving forms offered by financial sector.

The provision of deferred income tax, as occur in the USA's systems, is a very important improvement achieved by the Congress in the new legislation. Also the introduction of portability and vesting to retain long term investment is very important, increasing incentives to retain investment in the medium and long run and to reduce immediate consumption. The bills also have good provisions in the sense of increase systemic trustworthiness and transparency by participation on management, accountability and social control.

However, there is a gap to be solved in the short term, that is to develop government skills and agencies to effective regulation, since the actual government institutions have not conditions to develop its tasks as required by the market complexity. It is important to take in consideration the alert of the International Association of Social Security that the private pension funds regime requires a very elaborated regulation and supervision to assure that the problems generated by the dynamics of the public sector will not be merely substituted by a different series of problems from the dynamics of the private sector operations (AISS, 1998).

In the case of the public employees retirement systems, the adoption of pension funds is not compulsory - it will depend on the evaluation of advantages and disadvantages that each federative entity will do

according its specific situation. The effects will only be visible in the medium run - in the short run, even it can happen an increase of the public expenses with retirement systems, especially as a consequence of the imposition of funding rules and mechanisms originated in the Federal level. But the way is traced, and certainly there will be, in a period of approximately 10 years, important effects from the changes for now introduced, when will then be able to begin to evaluate in a more effective way its suitability degree to the Brazilian reality.

## 6. Conclusion

The complexity of the theme approached in that study does not allow us to sketch sufficiently a conclusion that can offer all the necessary answers.

Starting from the data that we got to obtain and to present, it was however plenty clear that excluding or certain alternatives in order to assure the sustainability or viability of the public employees retirement systems don't exist.

Besides being instrument of social justice Social Security it is also a form, in the public service, of compensating situations in that the low wages turn public service a little attractive option, and the absence of politics to improve and valorize human resources is seriously unstimulating. To think about the retirement issue with the eyes only in the financial aspect is to give up a powerful instrument of valorization of the public servants.

The measures for now in implementation phase in Brazil can not be characterized as a complete innovation, but they should be considered under the point of view of their purpose and of the interest that they seek to protect. Does not matter the private sector interest, or the immediate interest of the Government, but the larger interest of the society that needs to have a professionalized public service and with conditions of exercising its functions as an instrument to help citizen to exercise his own citizenship. And the insurance rights, far away from if they configure in privilege, are part of a larger system, guaranteeing to the public employees, beside the protection of the merit system, safety in the exercise of the job and a not immediatist perspective in their relationships with the employer-state.

The experience of the USA in the issue is so significant as the Brazilian's one, and it allows us to see that results have been obtain if the same roads were thrashed, kept the due proportions.

Actually, the American experience could be transposed to Brazil, without losses for the objectives be looked for by the Social Security systems, but they demand changes of political and institutional order, and above all of economical order that are not to the reach of short term policies.

The multiples open roads for the American experience - mixed systems, with defined contribution and defined benefit, two or three pillars, with or without employee or employer contribution - show us that there is a lot to be done. But the public insurance stays being an important component of the system, that needs to be strengthened rather than disassembled.

The reforms in the retirement systems, all over the world, are imposed by reasons of several orders, of the which the most important is the aging of the population, with reduction of the dependence rate (the number of workers active versus the number of inactive).

This rate tends to reach, in the public service, to 1x1, as a consequence of the aging of the public sector labor force and of the reduction of the rate of labor replacement; in the RGPS system, that rate, that today is about 2,1x1, will reach 1,5x1 next 30 years. The called “demographic transition” it is also a preoccupying fact, because the Brazilian population in age more than 60 years tends to reach, next 30 years, the today effective rates in Europe (in the European Community, now 20.6% of the population have age above 60 years, and in the year 2050, that rate will be of 33.9%. In Brazil, the rate is 7.9%, and it should reach 13,56% in 2020). Part of some adjustments, that could be done medium term, were already done by the Constitutional Amendment # 20/98 with immediate effects, and they are already reducing the retirements volume in the public service.

That situation places in risk the effectiveness of the Social Welfare concept, that if funded in the conception of solidarity and, in retirement questions, the “pact among generations”; in the inexistence of a “future generation” capable to sustain the benefits of the current one, it is almost obligatory the conclusion that the simple partition regime loses conditions of guaranteeing the future benefits of the current ones held.

Therefore, such conceptions as the one of the individual capitalization, real or scriptural, common to the recent Social Security reforms implemented in Latin America, are going fast, starting from the notion that each individual should be responsible for the funding of his own benefit. This conception, incorporated partly by the Constitutional Amendment # 20/98, has been implemented by the ordinary legislation that it regulates it, as the Law # 9.717/98, that orders that the Union, States, DF and Municipal districts count the contributions of the servants individually. Also the adoption of the Insurance Factor follows that notion of virtual capitalization, in order to seek that each individual takes the responsibility for his own benefit.

Paradoxically, that same conception contradicts the idea of contribution of the retiree and of the pensioners, that are in joy of an insurance previously and already acquired and financed by them. The Federal Government's in Brazil of to collect contributions from the retirees and pensioners, like this, it is fragile under the point of view of the own approved reform - and that was recognized by Supreme Federal Tribunal in its recent decision about the unconstitutionality of that contribution. In that new constitutional framework, one cannot speak, therefore, in distributing the obligation of the old system among the current employees, nor either with the inactive ones, that already acquired their rights according to the rules then in force.

The idea of demanding contribution of retirees and pensioners, that it prays if it presents as "consensual" among political leaders in Brazil, would have evident positive fiscal effect, reducing the expense with personal inactive, or avoiding its elevation.

However, besides they be constituted in palliative measure, those contributions invade a concept that, in the reforms implemented in the USA, has been strictly observed, that is not breaking with right expectations or acquired rights.



The convenience of establish a new conception to rule the public servants retirement systems in Brazil appears to be, in the present moment, conditioned by the financial pressures. There is not, at last, a unquestionable advantage in change the model established in the Constitution, although the pension funds could be implemented without sacrifice some of the main characteristics of those systems, as the power to offer benefits over the RGPS ceiling and provide adequate reposition rates as occur in FERS, CSRS, CalPERS and in the Military Retirement Systems in USA.

In the short run, there is no evident financial advantage for the Governments budget. In the medium and long run the uncertainty and bad management and insufficient growth rates can reduce the sustainability of the pension funds to provide good benefits. There is a lot of bets, and only the future can give us the correct answers.

But in any case politics and public managers and advisors responsible to formulate and implement those changes can forget that the interest of society surpasses the short run, and also that social and individual rights must be observed.

That would be, perhaps, the largest lesson to be picked of the American experience. The respect to the institutions is the base of any model that intends to be implemented and to reach its objectives. To define which are those objectives must be the result of a wide debate, made without fear of finding the truth wherever it hides, and without appealing to myths and confusions, it is essential for legitimate the changes by the largest interested, that are the affected citizens for them.

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