TEMPORARY MEMO ON THE NEW DRAFT LAW
October 15, 1971

The new draft law, signed by President Nixon on September 28, drastically changes draft classifications and procedures. The new Selective Service Regulations, written under authority of the new law, have not yet been published at this writing. The new regulations are expected to make even more major changes.

This memo is intended to be a temporary supplement to other written materials on the draft until all the new procedures are known. Since the situation is changing day by day as revised directives are issued by Selective Service, BE SURE TO CONSULT A DRAFT COUNSELOR BEFORE TAKING ACTION.

Major Provisions of the New Law As They Affect Individuals

STUDENTS: The law gives the President discretionary authority over deferment of undergraduate college students. He is expected to carry out his promise to abolish II-S deferments. However, the law provides specifically that men enrolled full-time as undergraduates in college during the "1970-1971 regular academic school year" shall be allowed II-S deferments until graduation, so long as they continue to qualify under the old II-S rules. (See CCCO's TEMPORARY MEMO ON STUDENT DEFERMENTS) According to the conference committee's statement, the President could "eliminate /II-S undergraduate/ student deferments for those who enter college in the summer of 1971, or later." Note that a student who had not yet registered for the draft, did not request deferment, or for some other reason was not classified II-S during the 1970-71 school year, should nevertheless be able to get a II-S and keep it until graduation, so long as he met the "academic requirements" for II-S during the 1970-71 school year. Men in college this summer or fall are legally entitled to II-S deferments, but they would lose them when the new regulations take effect.

The law also abolishes I-S(C) deferments, previously available to college undergraduates (and a few graduate students) who were sent induction orders when attending school full-time. It does require that college students ordered for induction be allowed postponements of induction "until the end of the semester or term," or, for seniors, the end of the academic year. Of course such a postponement is a poor substitute for a I-S(C), since a postponement is normally followed by a letter setting a new date for induction, while a I-S(C) is followed by reopening of classification with full personal appearance and appeal rights. It is possible that men already classified I-S(C) will lose their deferments, since the law does not require the President to continue existing I-S(C) classifications.

Though the President will still have authority to defer graduate students, he has said he will not use this power. Presumably the only graduate students who will still get II-S will be those studying medicine and allied professions. Divinity students (also certain undergraduates pre-enrolled in divinity schools) will also be eligible for deferment of some sort, not IV-D exemption as before; the change in designation has little practical effect. Perhaps other graduate students will get postponements of induction until the end of the academic year, as before -- though the law probably requires only postponements to the end of the semester for most graduate students.

The I-S(H) deferment for high school students is also eliminated. As a poor substitute, the law requires that students ordered for induction must be allowed postponements if they continue full-time in high school, until graduation or age 20,

whichever is earlier. A high school student who reaches age 20 during his senior year is to receive further postponement until the end of that academic year. Apparently present I-S(H) classifications, like existing I-S(C) deferments, could be ended.

The President has said that he will eliminate II-A deferments for apprentices and students enrolled in non-degree college programs as soon as the II-S is eliminated. However, it seems likely that a man who enrolled in such a college or apprenticeship program before a cutoff date will be able to keep his deferment until the program ends. We do not know the cutoff date.

DRAFT PROCEDURES: Some of the most important provisions are those creating four major new procedural rights for all registrants.

Under the law, a man must be allowed a personal appearance before any appeal board considering his case, in addition to the one with his local board. A man now requesting an appeal to a state appeal board probably should also request an opportunity to appear in person before it. The Presidential appeal board and transfer appeal boards are required to grant personal appearances, too.

Local boards (but not appeal boards) are required to admit and hear witnesses on a man's behalf, "subject to reasonable limitations on the number of witnesses and the total time alloted to each registrant." The new rules on witnesses should be of great help to men associated with groups and organizations whose officials and delegates will testify on their behalf--conscientious objectors whose pastors or church officers will be witnesses, for example, or men seeking hardship deferments whose welfare caseworkers, community-organization leaders or political-party representatives will speak for them. Men should also use relatives and friends as witnesses, especially now that no one will be humiliated by being excluded from the proceedings.

The law also states that "a quorum of any local board or appeal board shall be present during the registrant's personal appearance." A quorum is a majority of the board's members. No more appearances before one member of the board.

Finally, the law says that whenever a local or appeal board decides to turn down a man's claim, it must state its reasons for the decision, if the man requests reasons. Surely it is unwise for a man to request reasons before the board decides against him, however; for the board might decide in his favor. It may even be wise for a man not to request a board's reasons until after its final adverse decision--after the personal appearance, instead of after the initial reclassification, for example. Other men will wish to request boards to state reasons for denying their claims as soon as they are reclassified, however, so that they can rebut the reasons at personal appearances. Certainly a man should check his file for a statement of reasons after every adverse decision, including an initial adverse reclassification; the statement may be there even if he has not requested reasons. And surely a man should now request reasons from both the local and the appeal board. Every statement of reasons a draft board gives should be promptly, carefully rebutted by the man, in a written reply, before the next stage in the proceedings in his case.

SURVIVING SONS: The law creates a broad new exemption for surviving sons "if the father or a brother or a sister...was killed in action or died in line of duty while serving in the Armed Forces after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in line of duty during such service." One no longer need be the sole surviving son to qualify for exemption.

(The old rules still apply for the son or brother of a serviceman who died on or before December 31, 1959; the man then must be the sole surviving son to qualify.) In addition, the draft-age men of a family are to be exempt "during any period of time in which the father or a brother or a sister...is in a captured or missing status as a result of / military/ service." Brothers and sisters, under this provision, must be "of the whole blood." Men already inducted into the military who would be exempt under this provision are to be discharged upon request, unless they are in custody of military courts. Surviving-son exemptions, like the old sole-surviving-son exemptions, will be withdrawn in the event of a war or national emergency declared by Congress.

ALIENS: All aliens admitted to the United States in "non-immigrant" status, on various temporary visas, are to be exempt from registration. Presumably those who have already registered will be reclassified IV-C without giving up eligibility for permanent-resident status or citizenship. Permanent resident aliens, who were before subject to the draft almost exactly like citizens, are not to be inducted during their first year in this country. This provision is also to apply to refugees here in "conditional entry" or "parole" status, who are treated as permanent residents by Selective Service. Note that many permanent resident aliens spend their first year here before they reach age 18 and register for the draft; many others spend their first year here on temporary visas, exempt from registration. These two groups presumably will not be allowed any additional delays as permanent residents.

In addition, 12 months' service (not 18) in an allied foreign army is to be required for a veteran's exemption. And certain aliens admitted to this country as permanent residents, but eligible for temporary visas as diplomats, representatives to international organizations, etc., are to be deferred as long as they remain in their work.

CONSCIENTIOUS OBJECTORS: Section 6(j) of the draft Act, the C.O. provision, is almost unchanged. The legal definition of conscientious objection remains the same.

However, the law does change Section 6(j) in one way: it removes authority over alternative service assignments from local boards and gives it to the Director of Selective Service. Reports from Washington are that we should expect National Headquarters to issue nationwide lists of jobs and employers approved for alternative service. Very likely such lists will include several programs which place C.O.'s in isolated camps where they are to perform heavy labor at subsistence wages, as in the California Ecology Corps, but they are also likely to include such government programs as VISTA, Peace Corps, and National Teachers Corps, now hard to get approved. The conference committee, in two long paragraphs in its explanatory statement, emphasized its belief that a C.O. performing civilian work should "parallel, to a reasonable extent, the experience of the young man who is inducted in his stead."

OTHER DRAFT MATTERS: The law makes non-registrants subject to indictment and prosecution until age 31, not age 23 and 5 days as now. New Selective Service regulations are to be published in the Federal Register 30 days before they become effective, unless the President "determines that compliance with such requirements would materially impair the national defense." The President may--and surely will--do away with the complex system of state and local quotas, substituting nationwide calls for men with certain lottery numbers. Post-induction-order enlistments are to be allowed only under rules made by Selective Service and the Defense Department.

The military is required to "identify those individuals examined at Armed Forces

examining and entrance stations who are drug or alcohol dependent persons. Those individuals ... shall be refused entrance into the Armed Forces and referred to civilian treatment facilities."

TEMPORARY PROVISIONS PENDING ISSUANCE OF REGULATIONS: Selective Service has issued several temporary directives instructing local boards on procedures to follow during this transitional period. Because these provisions are changing, and since many of them may be illegal, it is important for persons facing the draft to keep in close touch with a draft counselor to get the latest information. During the first months that the new law is in effect, any man who gets a form or letter ordering him for induction, and who wishes not to be inducted, should see a draft counselor or an attorney specializing in draft law, for advice on how the several court challenges to the transitional procedures may affect him.

-- adapted from the CCCO Draft Counselors Newsletter

Mimeographed by American Friends Service Committee
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20 October, 1971
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