

Unemployment Compensation: Final Report



**National Commission
on Unemployment Compensation
July 1980**

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Where a Commission decision is indicated without a vote being shown, the action was either unanimous or by consensus without any specific dissent or abstention being registered. Any roll call on which the total votes cast add up to fewer than 12 took place when one or more members were absent.

Mr. Jackson did not participate in any of the votes.

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U.S. Government Printing Office, Washington D.C. 20402



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June 30, 1980

To the President and The Congress:

James M. Rosbrow
Executive Director

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Director of Research and Evaluation

Roger Webb
Deputy Executive Director

I have the honor to submit to you the Report of the National Commission on Unemployment Compensation, in accordance with the provisions of section 411 of the Unemployment Compensation Amendments of 1976 (Public Law 94-566, approved October 20, 1976), as amended.

This Report is based upon the most comprehensive and thorough going review and analyses of the Federal-State Unemployment Compensation program since it was established 45 years ago, as part of the Social Security Act (approved August 14, 1935). It also includes a comprehensive review of the Federal-State Employment Service system (established by the Wagner-Peyser Act of 1933) as well as other programs established in recent years which have an important relationship to the unemployment compensation or employment service program.

The Federal-State unemployment compensation and employment service system of our nation helps to stabilize the utilization and supply of labor and to cushion the adverse impact of unemployment on individuals and the economy. The system has proven its value under the impact of several recent recessions (especially in 1974-75 and again in 1980.) The system is essential to a competitive market-price and labor-exchange economy. It is also essential to a democratic and pluralistic society which values the importance of incentives, productivity, labor and capital mobility, and the alleviation of the hardships of jobless workers during periods of unemployment. But weaknesses in the system have become clearly evident. The system needs to be strengthened, and improved both at the State and Federal levels as soon as possible.

The recommendations in this Report warrant serious consideration and implementation in order to preserve a financially sound, adequate, equitable, effective and efficient Federal-State unemployment compensation and employment service system. The recommendations are a balanced, realistic and practical set of recommendations. We urge their adoption.

Sincerely,

The President

The President of the Senate

The Speaker of the House
of Representatives

WILBUR J. COHEN
Chairman

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Chairman's Introductory Statement

The Federal-State unemployment compensation system has been studied, criticized, debated, strengthened, evaluated, changed, and amended over the nearly 50 years since the first State law was enacted (Wisconsin, 1932). It is nearly 65 years since the first unemployment compensation bill was introduced in a State legislature (Massachusetts, 1916). The report of the National Commission on Unemployment Compensation is the first comprehensive examination of the system mandated by the Congress. Recent serious experiences with unemployment have shaken the financial integrity of the system.

The existing Federal-State unemployment compensation system established in 1935 was the product of constitutional, economic, and political decisions, compromises, uncertainties, and expectations. It would be relatively easy to develop on paper a simpler, more equitable, adequate, and efficient system. But that has not been the reality. The widespread urge in our nation that favors decentralization and adaptation of policy to State and local views tends toward minimizing the urgency of nationwide equity, adequacy, and efficiency. The task of a national commission is to balance all these factors.

Even if all of the recommendations included in this report were adopted they would not transform the Federal-State unemployment compensation system into a perfect or ideal institution. Over 30 of the recommendations are unanimous; but several of the major recommendations were adopted by a majority vote with minority dissents. The proposals are not simplistic solutions to complex problems. The supplemental statements included in the report and the recorded votes on specific issues indicate differences in a democratic society that prides itself in freedom of speech and pluralistic views.

As chairman, I submit that the unanimous and majority recommendations represent a sincere and balanced attempt to improve the Federal-State system in a democratic society, a market-price economy, and a Federal system of governance. It is significant that the employer, employee, and public representatives on the Commission endorse the principle that a public system of insurance against the hazards of unemployment is a logical and necessary institution in any free-enterprise economy. The controversy now shifts to the pro and con of specific proposals.

There will be two major policy objections to some of the recommendations that were not unanimous: (1) they go too far, and (2) they do not go far enough. As a public representative, I maintain that the major recommendations are a balanced and appropriate use of the State, Federal, employer, employee, and public roles.

Members of the Commission and the staff have worked diligently and creatively to develop recommendations that are responsible and practical. I believe that the proposals are responsible and practical. I believe they are conservative because they will help to preserve the Federal-State system. I believe they are feasible. I believe they are within our ability to pay, and I believe they are completely consistent with the underlying philosophy of the Federal-State system.

The Congress, obviously, will and should debate these issues and proposals. And I hope they will come to some action on them. But I urge the Congress to beware of the traditional attack on a particular proposal as "an entering wedge of federalization." The existing Federal-State system of unemployment compensation is unique. It is already part Federal and part State. It is a hybrid system. It already contains the elements of both Federal and State taxation, a 100 percent Federal grant for State administration, a number of Federal benefit and other standards, and explicit and restrictive Federal requirements for State employer experience rating. The issue is no longer the question of Federal standards in the system as a matter of principle. There are Federal standards in the Federal law. I suggest it is now a question of what are appropriate standards in the Federal law and appropriate standards in State laws. I hope it will be possible

to rise above narrow parochial interests and improve both the Federal and State laws for the overall benefit of the national interest. That is a paramount concern for the 1980's and the long-run future.

I recall how vigorously unemployment compensation was opposed in the late 1920's and early 1930's as an "entering wedge to socialism." I recall how Medicare originally was opposed during the fifties and early sixties on the same grounds. And today employers wholeheartedly accept unemployment compensation as a support to the enterprise-market system just as physicians today have accepted Medicare as a support to the existing doctor-patient relationship. We have made some progress during the past 45 years but neither fast enough nor adequately. There is still an urgent need to make further incremental progress promptly and extensively. No one knows in which State or community or industry the unemployment of tomorrow will occur. No one can predict the unemployment that will occur to particular families.

I urge all the parties involved in the coming debate over the recommendations in the Commission's report—and this includes the representatives in the Congress—to weigh the overriding importance to our society and economy of a strengthened and more adequate system of unemployment compensation.

Should the Congress and the State legislatures, in their wisdom, decide to reject any of the major recommendations in this report, probably the only alternative to future strategists of public policy is to sponsor more far-reaching revisions and drastic changes in the Federal-State system.

The volatile and corrosive effect of uncompensated unemployment can cost society much more than the cost of a reasonably improved unemployment compensation system. I strongly urge considered reflection on these significant points.

As chairman of the Commission, I tried, as mediator and negotiator, to find the widest area of agreement among differing views. The recommendations were not arrived at lightly or impulsively. They are transmitted with the hope that they will be evaluated as a sincere and careful attempt to forge a more equitable, adequate, efficient, financially sound, and responsible Federal-State system for the benefit of the entire nation.

I strongly urge the favorable consideration of the Commission's recommendations.

WILBUR J. COHEN

Improving the Financial Soundness of the Federal-State Unemployment Insurance System

The Commission is deeply concerned about the present and future financial soundness of a substantial number of State unemployment insurance programs and of the Federal Unemployment Trust Fund.

The Commission finds that at least 12 States are likely to be in very serious financial difficulties during the next two years: Arkansas, Connecticut, Illinois, Maine, Michigan, New Jersey, New York, Ohio, Pennsylvania, Vermont, Virginia, and West Virginia. In addition, very serious financial difficulties are ahead for the District of Columbia and Puerto Rico, and several other States may have financial difficulties. The Commission calls on the Governors and legislatures and their Employment Security Agencies to take prompt action to remedy present and future difficulties and to implement a prudent financial policy by the enactment of a sound State solvency policy.

As of June 1980, the Federal trust fund was in debt \$12.8 billion. A number of States are expected to have to borrow additional amounts during the next several years as a result of the current recession, possibly \$3.7 billion in FY 1981 and \$4.6 billion in FY 1982. Preliminary estimates made available to the Commission based on an assumption of unemployment averaging 8.5 percent for FY 1981 indicate that (because of the increase in the number of States with depleted reserves) the total net amount in the trust fund to the credit of the States may be virtually zero by June 30, 1982.

The Commission, in its interim report in November 1978, informed the Congress and the States of the financial difficulties facing many States and recommended several steps to reduce them. The Commission, in this report, urges both the Congress and the States to take prompt action to improve the financial integrity of the State and Federal programs. We believe that the specific recommendations made by the Commission warrant action by both the Congress and the State legislatures early in 1981. We earnestly urge the President, the Secretaries of Labor and Commerce, and Governors to take a vigorous leadership role in promptly proposing specific constructive measures to restore the financial health of the State and Federal programs. Our report outlines a number of concrete measures to accomplish this objective.

The unemployment being experienced during the current recession has many features that are markedly different from those of the unemployment of the previous postwar recessions. Many plants have closed down completely as a result of foreign imports. Many communities have high levels of unemployment with no immediate prospects of job openings in the community for most of those who have been laid off. There is indication of the probability of prolonged unemployment for many persons in a number of communities.

Some States that were hard hit in the recession of 1974-75 and have not had sufficient time to replenish their State unemployment funds are now being hit a second time with the probability of having to make substantial additional outlays and having to borrow additional amounts from the Federal Government. Any further delay in congressional and State action is likely to result in such serious damage to the State unemployment insurance programs that it will be difficult, if not impossible, for them to recover, especially if unemployment continues at high levels throughout the eighties.

Unemployment and Economic Policy

The Commission recommends that government, business, and labor work cooperatively to develop and implement political, monetary, fiscal, and other economic policies that will reduce unemployment.

It is the Commission's view that a number of government actions or inactions have significantly contributed to heavy job losses in steel, auto, textiles, garments, rubber, TV and radio, and other industries. The Commission recognizes, therefore, that government policies on trade, taxes, and regulatory and administrative actions will have a substantial impact on the efficiency of programs aimed at providing jobs and assistance to the unemployed.

Although the Commission supports many of the programs aimed at temporary assistance in replacing a portion of lost wages and/or providing retraining for those who have lost their jobs, the rate at which other government actions are exporting jobs leads us to emphasize the need for action by government, business, labor, and consumers that will expand rather than diminish job opportunities for American workers.

[*Commissioner Coleman:* One of the government actions that should be encouraged is providing incentives for the modernization of plant and equipment for the purpose of improving productivity. This, in turn, would enhance our competitive position in international trade.]

[*Commissioners Daniels, Morris, Seidman:* Although we support the Commission's recommendation, we believe it does not go far enough. To accomplish the Commission's objective, consideration should be given to establishing a National Economic Planning Council, composed of public, employer, labor, and consumer representatives, to determine national priority economic needs and appropriate policies for meeting them.]

1.0 Outline of Major Recommendations of the Commission

1.0 Outline of Major Recommendations of the Commission

I. *Removal of unemployment compensation accounts from the unified Federal budget*

State unemployment compensation revenues, benefit payments, and trust fund reserves should not be used in computing Federal income or expenditures. Inclusion of these items in the Federal budgetary process not only distorts Federal budget realities, but has led to congressional decisions based on truncated deliberations without full hearings and without adequate consideration of the substantive issues involved and their impact on State unemployment compensation programs.

II. *Financing: recommendations for putting the Federal-State program on sound financial footing*

A. *Increase in Federal Unemployment Tax Act (FUTA) taxable wage base*

1. Establish wage base as a percentage of national average total wage in covered employment so that as wages increase the base will increase automatically.
2. 50 percent beginning in 1983
55 percent beginning in 1985
60 percent beginning in 1987
65 percent beginning in 1989

B. *Reduce employer payroll taxes for past debts*

1. Reduce employer payroll taxes *under the FUTA* by canceling current indebtedness from FUTA collections to Federal general revenues:
 - a. Federal Supplemental Benefits (FSB) (\$5.8 billion)
 - b. Federal share of Extended Benefits paid when the national trigger was on in 1975 through 1978 (\$3.3 billion)
2. Reduce employer payroll taxes *under State unemployment compensation laws* by rebating to the States the State share of Extended Benefits paid when the national trigger was on in 1975 through 1978 (\$3.3 billion).

TOTAL REDUCTION IN EMPLOYER PAYROLL TAXES: \$12.4 BILLION

C. *Strengthen requirements for borrowing from loan fund to assure prudent financial policies*

1. Moneys borrowed in the future should bear interest;
2. Acceptable State solvency provisions required as a condition for borrowing;
3. No further deferrals of repayment;
4. Permit States to repay loans from their trust funds on an incremental installment basis as an alternative to recapturing through automatic increases in employer FUTA taxes.

D. *Reinsurance: provide States protection against unusually heavy benefit costs in order to maintain State solvency*

1. Financed from a contribution rate of 0.1 percent of taxable payrolls over at least a 7-year period (without increasing present FUTA tax);
2. Initial rate of payment not to exceed 30 percent of excess costs (however defined) and no payment before 1985 (prorated if balance in fund is insufficient for full payout);
3. Benefits costs must exceed 2.7 percent of taxable payrolls before a State could qualify;
4. Reexamine reinsurance experience at end of decade.

E. *Establish Board of Trustees for unemployment insurance (UI) trust funds to:*

1. Set investment policy for trust fund;
2. Report to the Congress on estimated amounts to finance sound administration;
3. Develop improvements in policies and laws governing management of

trust funds, and recommend changes to improve financing, benefits, and administration of UI and ES programs;

4. Explore State investment of specified portion of its reserve funds in non-Federal obligation to earn higher rate of interest than available by Federal investment.

Board to consist of three cabinet officers and representatives of employers, labor, and the general public.

F. *Correct FY 1982 shortfall in funds for State costs of administration*

Present appropriation ceilings that permit only a fixed portion of FUTA collections for administration of UI and ES programs will result in a \$230 million shortfall in FY 1982. Recommend a one-time congressional authorization to raise the ceiling and permit transfer from unused FUTA funds. An additional \$100 million advance from general revenues will also be needed.

G. *Recommendations to the States on financing (not Federal law changes)*

1. States should reexamine State solvency provisions and establish objective of a reserve balance based on careful evaluation of past and prospective benefit-cost ratios and future revenue-generating capacity;
2. Ensure effective charging of all benefits in fund replenishment provisions of solvency arrangements;
3. Eliminate zero minimum tax rates and establish maximum rates in terms of anticipated benefit costs;
4. New employer rates equal to average rate for their industry;
5. In any individual State, the operation of its system of experience rating and tax schedules should be adjusted in relation to the wage base and the amount of tax revenues needed to assure the solvency of the trust fund.

III. *Remove unemployment benefits from being subject to Federal income tax*

A. *Taxation of benefits may be offset by an equal increase in benefits.*

B. *Discriminatory treatment since not all other income is presently taxed under Federal income tax.*

C. *No effective way for IRS to police tax provision.*

IV. *Benefits: recommendations for ensuring a sound benefit structure*

A. *Repeal current Federal standards*

1. *Repeal* current FUTA requirement that States restrict eligibility of certain undocumented alien workers;
2. *Repeal* current FUTA requirement that States deny payment of benefits to professional athletes under certain conditions;
3. *Repeal* current FUTA requirement that States reduce benefits by amount of any pension payment received by a claimant;
4. *Repeal* FUTA provisions requiring States to deny benefits to professional employees between school terms and prohibiting States from applying such denial to nonprofessional employees of colleges and universities. *Permit* States discretion to handle issues of payment or denial during school breaks without Federal restrictions.

B. *Establish Federal basic minimum benefits standards*

1. Maximum equal to 55 percent of State average weekly wage beginning in 1982, 60 percent in 1984, 66⅔ percent in 1986;
2. Weekly benefit below State maximum that averages at least 50 percent of individual's average weekly wage;
3. No more than 39 weeks of work for 26 weeks of benefits;
4. Change current FUTA requirement barring total cancellation of benefit rights to prohibit any cancellation of benefit rights except for fraud and receipt of disqualifying income.

C. *Greater protection during periods of heavy unemployment and to older workers*

1. Change State Extended Benefit trigger to remove the 120 percent factor, establish the trigger as an IUR of 4.0 percent seasonally adjusted for a 13-week moving average, and repeal current 5.0 percent option;
2. Establish permanent (triggered) FSB-type program extending total benefits to maximums of 52 weeks and 65 weeks during periods of high unemployment;
3. Establish lifetime reserve benefit program for workers 60 and over with at least 40 social security quarters of credit and current UI eligibility—to a maximum total benefits of 52 weeks.

D. *Program for displaced homemakers*

Recommend that Congress and the Department of Labor give consideration to possible solutions to problems of this group through UI credits for equivalent work, transfer of unemployment compensation credits earned by spouse, and pilot projects or studies.

E. *Recommendations to States (not Federal law changes)*

1. Weekly benefit amount of not less than 50 percent, preferably 60 percent, of claimant's average weekly wage;
2. Maximum of 66⅔ statewide average weekly wage, with periodic adjustment to ensure that a significant percentage (75–80 percent) have a 50 percent wage replacement rate;
3. Partial benefit formula that provides strong incentives to accept part-time work;
4. Minimum qualifying requirement of at least 14 weeks but not more than 39 weeks for 26 weeks of benefits;
5. No disqualification for voluntary leaving with good cause, including compelling family obligations and sexual harassment;
6. Disqualification for misconduct limited to misconduct connected with the work;
7. No reemployment and earnings requirement for any disqualifying act;
8. Disqualifications for discharge for misconduct, refusal of work, and voluntary quit should be for a variable number of weeks, depending on seriousness of the action;
9. No specific "actively seeking work" availability requirement.

F. *Extend and maintain coverage*

1. To agricultural workers on the same basis as other workers instead of current limitation to farms with 10 or more workers or a \$20,000 quarterly payroll;
2. To household workers if employer pays \$50 (instead of \$1,000) for such service in a quarter;
3. Oppose pending legislation redefining independent contractor that would remove substantial numbers of workers from unemployment compensation coverage.

V. *Initiatives for income maintenance of the longer-term unemployed*

A. *Increase in CETA job slots*

In the absence of any other Federal programs to provide job opportunities to those who have exhausted unemployment compensation benefits, the total number of CETA job slots should be doubled, from 450,000 to 900,000.

B. *Financing of unemployment compensation benefits for CETA workers*

Proposals to repeal funding of unemployment compensation benefits to CETA job-programs employees from the Federal Unemployment Benefit Account (general revenues) should be rescinded. Repeal would require that annual cost of \$35

to \$50 million be paid from CETA program grant funds or other State or prime sponsor sources.

C. Unemployment assistance

Recommend establishment of a program of income-tested benefits, administered completely separately from unemployment compensation, to provide some minimum protection for all unemployed persons exhausting or not eligible for unemployment compensation benefits and for whom no other job or program is available.

VI. More efficient administration

A. Permit U.S. Treasury Department to delegate State collection of FUTA taxes.

B. Allocate additional Federal funds to improve techniques and develop special procedures for detection of fraud, error, and tax delinquency.

C. Require quarterly wage reporting to assist crossmatching and prompt payment of benefits.

D. Strengthen appeals process

1. Remove specific obstacles in State laws to fair hearings and take steps to ensure that all parties know and understand the law, their rights, and their obligations;
2. Improve quality of hearings and determinations by developing better-trained, more competent referees;
3. Establish specific promptness standard for second level appeals performance.

E. Strengthen and implement procedures aimed at speeding the processing of interstate claims and appeals.

F. Increased Grants-to-States for administrative financing for unemployment compensation and employment service

1. Full funding of cost model instead of 85 percent as in FY 1980;
2. Greater flexibility to States to use funds and retain funds until third quarter;
3. Reauthorization of Reed Act money for use by States;
4. Improved Federal staffing for technical assistance to States.

G. Strengthening and improving the United States Employment Service (USES)

A substantial and continuing increase in basic USES staffing is imperative to meet the needs of unemployment compensation claimants and all other unemployed workers and of employers in filling job vacancies promptly.

Instead of the present 15-year-old ceiling of 30,000 USES positions, a gradual increase should begin as quickly as feasible, using 4 USES staff years per 10,000 workers in the civilian labor force, to reach 50,000 positions by 1985.

H. Administrative costs of non-FUTA-subject employers (State and local government and nonprofit employers)

These costs should not continue to be borne by FUTA-subject employers, as at present. One possible option is to have such costs paid from Federal general revenues.

VII. Special employee protection programs (Trade Adjustment Act, etc.)

A. Special Federal programs should not be paid concurrently or be a supplement to UI.

B. Total costs of such programs should be paid from general revenues.

C. Amount and duration of special program benefits should not be considered a precedent or a pattern for UI.

2.0 Introduction

2.1 Federal Legislative History

Antecedents of the Federal-State system of unemployment insurance

In 1934, the year before enactment of the Social Security Act, over 18 million individuals, or 15 percent of the total population, were receiving assistance under general relief and special programs. About 11 million workers were unemployed, compared with a total work force of 50 million individuals. Several million had already depleted their entire savings. Even prior to the Depression, throughout the 1920's, the number of people dependent upon private and public charity had steadily increased. By 1934 State general relief programs had broken down. To some extent they had been supplemented by a succession of Federal programs—Public Works Administration (PWA), Federal Emergency Relief Administration (FERA), Civilian Conservation Corps (CCC), Works Progress Administration (WPA).

The economic conditions and the political climate of the 1930's, much more than any other factor, shaped the thinking and planning that resulted in the Federal-State system of unemployment insurance (UI) in the United States. These were not the only factors, however. The planning of the program was influenced also by programs that preceded it: State workers' compensation laws; voluntary UI plans in this country; and the Wisconsin UI Act.

Though an innovation in the United States, UI was not new in other parts of the world. The first compulsory UI law in Europe was enacted more than two decades before any such law was passed in the United States. Great Britain was the first country to establish national compulsory UI in 1911. By the time the Social Security Act was passed in the United States, 10 foreign countries had compulsory programs, and 10 others subsidized voluntary UI programs.

In the United States in the early 1930's, only a few groups of workers had protection against unemployment, through their unions or their employers. In 1934, about 100,000 workers were covered by trade union plans, and about 65,000 by joint union-management plans, chiefly in the garment trades. Another 70,000 were covered by voluntary company plans, mostly guaranteed employment plans designed to pay benefits to seasonal workers in the off-season.

The first proposal for a UI law in the United States was made in 1916, when a bill, largely modeled after the 1911 British act, was introduced into the Massachusetts Legislature. A similar bill was considered by New York in 1921. Neither bill was enacted, nor were other bills enacted that were introduced in several other States during the 1920's. In 1933, 83 bills aimed at establishing a UI program were introduced in 23 States, but none was enacted. By 1934, bills had

passed one house of the legislature in California, Connecticut, Maryland, Minnesota, New York, Ohio, and Utah. These bills were all defeated in the other house, chiefly on the ground that the payroll taxes required would put the State's employers at a competitive disadvantage with employers in other States.

In a special session in 1931, Wisconsin enacted the first UI law in the United States, and the law was approved in 1932. The effective benefit date was initially deferred for 2 more years and later put off until 1936.

On a national level, the first efforts to institute a system of UI also occurred in 1916. In that year a resolution to create a committee to draft a national UI law was introduced in the Congress. The resolution did not pass, and interest in the program subsided. In 1928 and again in 1931, the Senate Committee on Education and Labor held hearings on the problem of unemployment.

Senator Robert Wagner of New York made a full investigation of European insurance plans in 1931 and introduced several bills in Congress in 1932. In 1934, Senator Wagner and Congressman David J. Lewis of Maryland joined in introducing a UI bill on which hearings were conducted by the House Ways and Means subcommittee. Supporting the bill were such leading specialists as Dr. I. M. Rubinow, Ohio Unemployment Compensation; Paul Douglas, Consumer's Advisory Council, National Recovery Administration, later U.S. Senator from Illinois; John B. Andrews, American Association for Labor Legislation; and William Green, of the American Federation of Labor. Nevertheless, the Wagner Bill was not passed nor even reported.

In a special message to Congress on June 8, 1934, President Roosevelt promised that he would present to the next Congress a program for "furthering the security of the citizen and his family through social insurance" that would "provide at once security against several of the great disturbing factors in life—especially those which relate to unemployment insurance and old age."

Committee on economic security

In June 1934, President Roosevelt appointed a Committee on Economic Security to study the problem of unemployment as part of the whole complex of problems caused by the Depression. The Committee was composed of the Secretary of Labor, as chairman, the Secretaries of Agriculture and of the Treasury, the Attorney General, and the Federal Emergency Relief Administrator. In his June 8, 1934, message to the Congress the President emphasized his desire to involve the States as much as possible. He indicated also his preference for self-supporting financing of social insurance programs rather than financing from general tax-

tion. He recommended that the Committee attempt to develop a comprehensive social insurance system, covering all major personal economic hazards, and particularly the problems caused by unemployment and old age.

Committee's recommendations. UI provoked the most extended discussion and widest differences of opinion among Committee members, particularly over the question of the relative responsibilities of the States and the national government.

Ultimately, the Committee unanimously recommended a Federal-State system (established by legislation similar to the Wagner-Lewis bill of 1934) instead of a Federal system. The major reasons included (1) apprehension that a wholly Federal system might be declared unconstitutional and (2) failure of the Committee to agree upon such key provisions as the appropriate level and duration of benefits and the type, if any, of experience rating to adopt. This bill was drafted in the Department of Labor, but is believed to have been suggested by the late Justice Louis D. Brandeis. It proposed the levy of a Federal tax upon employers throughout the country against which they might offset their contributions paid to State unemployment compensation funds.

In its report to the President of January 15, 1935, the Committee recommended a Federal uniform payroll tax on all employers of four or more employees against which a credit, up to 90 percent of the tax, would be allowed for the amount of contributions paid by the employer under the State law. These credits against the Federal tax would be allowed, however, only if the State cooperated with the Federal Government in the administration of the program, expended the money collected solely for benefits, and deposited all contributions collected in an unemployment trust fund in the United States Treasury. The Federal Government would provide the States with sufficient grants for proper administration. The Committee recommended the creation of a board with power to decide whether State laws conformed with Federal requirements.

The President's recommended legislation went to Congress on January 19, 1935. The House Ways and Means Committee approved a bill on April 6. On April 19 the House passed the bill and sent it to the Senate. Two months later the Senate passed a bill, and it was almost another 2 months before House and Senate conferees on social security legislation agreed on an acceptable bill. On August 10, the Senate approved the conference report, and the social security bill went to the White House. The bill became law August 14, 1935.

Provisions of the original Social Security Act

Provisions were adopted substantially as recommended

by the Committee, with some exceptions. The framework of Federal law has not been altered appreciably since, although there have been additions to the body of requirements. The provisions that resulted in a nationwide Federal-State system were incorporated as Titles III and IX of the Social Security Act, with Title X codified in 1939 as the Federal Unemployment Tax Act (FUTA).

The Social Security Act provided for a payroll tax of 3 percent of wages paid by employers with 8 or more workers in at least 20 weeks. The tax was on total wages, but in 1939 the taxable limit of \$3,000 was adopted. At that time taxable wages were 97.7 percent of total wages. The most important excluded classes of workers were employees of small businesses, agricultural laborers, government employees, those in non-profit organizations, and household workers. Railroad workers were originally covered but later protected under a separate system established by the Railroad Unemployment Insurance Act approved in 1938.

The Social Security Act provided that employers subject to the Federal tax would receive credit against that tax for contributions they paid under an approved State unemployment compensation (UC) law. The maximum credit was 90 percent of the Federal tax, or an amount equal to 2.7 percent of the taxable wages. If the State law met Federal law requirements concerning experience rating, employers would also receive "additional credit" equal to the difference, if any, between 2.7 percent and the contributions they actually paid the State. The net (0.3 percent) Federal tax was to pay the costs of administering the program.

The additional credit provisions in the Social Security Act do not prescribe a single system of experience rating for the States to follow. Minimum standards for reduced contribution rates are described in terms of the type of fund provided by a State program. The Federal law provisions and their interpretations cover conditions for reductions in rates of contributions under experience rating.

The Social Security Board was responsible for certifying the grants to finance the costs of proper and efficient administration of necessary program activities. Within this framework, each State was allowed to adopt its own type of administration.

The Federal requirements for certification of State laws for tax credit, originally in Title IX, included the following broad conditions: to be approved, a State law must provide that all compensation be paid through public employment offices. (See chapter 7.7 for the legislative history of the employment service.) At the time the Social Security Act was passed, most States had already established such offices under the Wagner-Peyser Act or the National Reemployment Service. To enable the States to build up reserves, the Act required that no compensation shall "be payable with respect to any day of unemployment occurring

within two years after the first day of the first period with respect to which contributions are required." The funds collected by each State were required to be immediately transferred to the Secretary of the Treasury to the credit of that State's account in the Unemployment Trust Fund of the United States. The money collected was required to be used solely in the payment of UC. Finally, there would be no approval of a State that denied compensation to a claimant for refusing to accept new work where the position offered was vacant because of a labor dispute; or for refusal of a job in which the wages, hours, or working conditions were substantially less favorable than those prevailing for similar work in the locality; or for refusing a job that would require the claimant either to refrain from joining a bona fide union or to join a company union. The Act also required that all rights, privileges, or immunities conferred by the State law must exist subject to the power of the legislature to amend or repeal them at any time.

Administrative grants to the States had to be approved by the Social Security Board under Title IX. As conditions for grants, State laws were required to provide:

1. such methods of administration as are calculated to ensure full payment of benefits when due;
2. opportunity for a fair hearing before an impartial tribunal for all whose claims to benefits have been denied; and
3. full and complete reports to the Social Security Board on activities under the State laws, and requested information to other Federal agencies engaged in the administration of public works or assistance.

Enactment of State laws

Adoption of the Social Security Act did not result in the immediate enactment of laws in all the States. By the time the Social Security Act had been passed, the 1935 session of most State legislatures had adjourned, and the next regular session in most States did not convene until January 1937. Uncertainty existed as to whether the Federal law would be considered constitutional. The Congress had adjourned shortly after passage without making any appropriation to carry out the provisions of the Act. Thus, the Social Security Board did not begin functioning until October 1935, and it operated with a small borrowed staff until the Congress appropriated funds after reconvening in January 1936.

The Committee on Economic Security had prepared several drafts of model State UC bills to assist the States. Six States had passed State laws before the Social Security Act became law; another State did so within a month. At the same time, the Congress enacted a UC law for the District of Columbia. Then followed a period of 6 months in which only one addi-

tional law was passed—in Oregon—a measure drafted before the Social Security Act became law. Only six additional States enacted unemployment compensation laws before the Presidential election, and one more State enacted a new law because the Social Security Board would not approve its original law. In the 6 weeks following the reelection of President Roosevelt, almost all of the remaining States passed laws. To assure approval by the Social Security Board, these States used the model "pooled fund" State bill drafted by the Board. By the close of 1936, all but two States (Missouri and Illinois) had passed laws, and they did so within the next 6 months.

Since the law required a 2-year delay between the time a State enacted its UI law and the beginning of insurance payments, it was not until 1939 that all State laws were paying benefits to eligible claimants. The nation's first UI check was sent to Neils B. Ruud of Madison, Wisconsin. The \$15 check, issued in August 1936, came from a \$14 million fund that employers in the State had built up by tax contributions over the 4 years since the law had gone into effect.

Even before all the laws were operative, the constitutionality of both the State and the Federal laws was being challenged in the courts. Soon after payroll taxes became payable in January 1936, cases were filed in State courts in New York. In May 1936, the New York Court of Appeals declared the State UI law valid, and the U.S. Supreme Court upheld the State court's decision in November of that year.

The legality of the Federal and State laws was finally settled in a series of suits against the State of Alabama. More than 19 cases, on behalf of 638 subject employers, were filed in the Circuit Court of Montgomery County, Alabama, and in the District Court of the United States. In each case the courts granted temporary injunctions preventing the State Unemployment Compensation Commission from collecting contributions.

The legality of both the Social Security Act and the Alabama State UI law was established by a decision of the U.S. Supreme Court on May 24, 1937, ending further litigation concerning the basic constitutionality of the UI system. During the 4 years between 1935 and 1939, problems concerning coverage determinations, personnel, and accounting plagued the program. Amendments enacted in 1939 (PL 76-379) required State employment security agencies to adopt a merit personnel system as a condition for Federal administrative grants; established new standards for reserve accounts; set a limit of \$3,000 on taxable wages; and excluded from coverage certain small groups and added others.

Employer contributions began in half the States in 1936, but benefits were not paid throughout the country until the summer of 1939. The coverage of the program grew rapidly as employment expanded. The

number of workers employed in jobs with UI protection increased from 20 million in 1938 to 23 million in 1940 and to nearly 27 million by 1941. Collections to finance the program rose from \$800 million to over \$1 billion per year during this period, while benefit payments rose from about \$400 million in 1938 and 1939 to almost \$520 million in 1940. In 1940, the first full year when benefits were payable in all States, over 5 million workers received UI. This level was not reached again until the 1949 recession.

Wartime and postwar (1940's)

In 1942, with the war in full progress, covered employment mounted rapidly to a monthly average of 30 million. In 1944, 43 million of a civilian labor force of 55 million had some earnings in covered employment. Unemployment dropped to 2.7 million in 1942, and to the very low figure of 670,000 in 1944.

Apprehension that reconversion unemployment might be substantial led to consideration of proposals for Federal supplementation of the benefits provided under State laws. State amounts and durations appeared inadequate to meet the impact of the anticipated extended unemployment. No Federal bills were enacted.

The increased program activities resulting from the transition, though quite sharp, were brief. The number of individuals receiving benefits in 1945 increased fivefold and in 1946 increased more than ninefold over 1944, and the number exhausting their benefit rights increased 20 times. In 1945 benefit payments to unemployed workers were \$7 for each \$1 paid in 1944, and 1946 payments were more than double those of 1945.

A substantial part of the burden of unemployment in these years was carried by the Servicemen's Readjustment Allowance program (PL 78-346). Under this program over 5 million veterans drew \$1.5 billion during 1946. Enacted in September 1944, the act provided weekly allowances of \$20 for a maximum of 52 weeks to unemployed World War II veterans. In addition, it provided—to self-employed veterans establishing businesses—benefits equal to the difference, if any, between the veterans' net profit in the previous month and \$100. For most veterans, the program ended in July 1952. The Veterans Readjustment Assistance Act of 1952 (UCV Program) provided protection to unemployed veterans of the Korean conflict discharged between June 1950 and February 1955. It provided up to 26 weeks of benefits at \$26 per week. This represented the last of the temporary programs for unemployed veterans. The Ex-servicemen's Unemployment Act of 1958 (UCX) provided a permanent program of Federally financed benefits. Generally, the terms and conditions of benefits and the benefit levels are those of the State in which the claim is filed.

By 1947 and 1948, employment increased more than the level attained even during the height of wartime production. At the same time, elimination of governmental controls over wages and over the movement of workers between jobs, as well as increased strikes in basic industries, contributed to the continuance of a high level of unemployment compared with the war period.

From a low of 670,000 in 1944, average monthly unemployment increased to 2.3 million in 1946 at the height of postwar reconversion, then declined to 2 million in 1948.

Recessions and extended benefit programs (1950-1975)

The 1949-50 recession constituted a severe peacetime test of the program. More than 6 of each 100 insured workers drew benefits in 1949, over twice the 1948 level. Benefit expenditures rose to a new high of \$1.75 billion.

Unemployment declined after the 1949-50 recession. The number of individuals drawing benefits and exhausting their rights in 1951-53 dropped to about half the 1949 levels. Annual benefit expenditures leveled off at about \$1 billion per year. During the period from 1958 to 1975, five separate extended benefit programs were enacted to deal with recession conditions. The third recession in the postwar period began in 1957. States faced the heaviest claims load in their history then. In 1958, 7.8 million persons drew benefits, and 2.5 million exhausted their benefit rights. The response was enactment of the Temporary Unemployment Compensation Act of 1958 (TUC). TUC provided non-interest-bearing advances of Federal funds to States to finance a 50 percent extension of duration to unemployed workers exhausting regular benefits. The program was voluntary, and only 17 States participated fully.

In the fall of 1960, increases in exhaustions of regular State benefits prompted the Congress to take emergency action for the second time on behalf of the long-term unemployed. The Temporary Extended Unemployment Compensation Act of 1961 (TEUC) extended benefits equal to half their regular duration to persons who had exhausted their regular State benefits after June 30, 1960, but before April 1, 1962. Unlike TUC, TEUC was wholly Federally financed. All States participated.

During 1958-1969, in addition to the temporary Federal emergency programs, nine States added permanent extended benefit programs to their law. Usually the program provided for extended benefits to become available automatically when the UI rate exceeded a specified level. These triggered programs were activated in some States before enactment, in 1970, of the extended benefit provisions of Public Law 91-

373. That law (which provided for Federal-State sharing of benefit costs) made most of the additional State programs obsolete. This permanent extended benefits program is financed equally from Federal and State funds. It becomes operative on a national level when the seasonally adjusted insured unemployment rate (IUR) reaches 4.5 percent or more for 3 months. It becomes activated on an individual State level when the unadjusted State IUR averages 4.0 percent or more for 13 weeks and the rate is 120 percent higher than the rate for the corresponding 13-week period in the last 2 years. Generally, extended benefits are payable at the same weekly amount as the claimant's weekly benefit amount under the State law. Eligibility is determined in accordance with State law. Claimants receive half their regular benefit entitlement but not more than 13 weeks of extended benefits, for an overall maximum of 39 weeks.

About \$400 million in extended benefits was paid out during fiscal year 1971 in the 21 States in which extended benefits were triggered on by high unemployment. Near the end of 1971, Alaska was forced to suspend extended benefit payments. Its insured unemployment rate for the most recent 13-week period, though still high, had fallen and was no longer 20 percent above the average rate for the same period during the preceding 2 years. It appeared then that other States would soon have to suspend payments for the same reason. By January 1972, however, the seasonally adjusted insured unemployment rate for the nation had exceeded 4.5 percent for 3 consecutive months, triggering nationwide payment of extended benefits. The program was again triggered nationwide in February 1975.

Between October 1972 and the end of 1974, six bills were enacted by the Congress suspending temporarily the 120 percent requirement. Public Law 94-566, the latest such bill, permits States permanently to waive the 120 percent factor when the State insured unemployment rate reaches at least 5.0 percent. Thirty-nine States have adopted this option.

The Emergency Unemployment Compensation Act of 1971 (PL 92-224) provided a temporary third tier of protection for workers in States with higher unemployment rates than required under the extended benefit program, provided the State agreed to participate. Compensation was provided for weeks of unemployment beginning after January 29, 1972, in a State with a rate of unemployment of at least 6.5 percent over a 13-week period. The rate included the State's insured unemployment rate plus an exhaustion rate. Eligible individuals must have exhausted rights to regular benefits and to any extended benefits if they were payable. Potential entitlement amounted to one-half the number of weeks of regular duration but not more than 13 weeks. Benefits for those still entitled to at least 1 week before July 1, 1972, could continue until the individual exhausted all rights to benefits. No benefits were pay-

able for weeks after September 30, 1972. Public Law 92-329 extended both dates by 6 months.

In December 1974, another emergency program, also providing a temporary third tier of benefits (PL 93-572), the Emergency Unemployment Compensation Act of 1974, was enacted at the beginning of the most severe nationwide recession since the 1930's. The numbers of unemployed workers and benefit expenditures are dramatic indications of the enormity of the 1974-76 recession. In 1973, the year preceding the recession, the number of UI beneficiaries was 5.7 million. The number rose to 8.1 million in 1974. It reached 12.7 million in 1975 before dropping to 10.1 million in 1976. Total benefits paid under all UI programs amounted to \$4.6 billion in 1973. The figures for 1974, 1975, and 1976 were \$7.0 billion, \$18.1 billion, and \$16.4 billion, respectively.

The Emergency Act initially provided for up to 13 weeks of Federal Supplemental Benefits (FSB) to workers who had exhausted both regular and extended benefits and were still unemployed, met State law eligibility conditions of work search and availability, and were free from disqualification under State provisions. In March 1975, an additional 13 weeks of FSB were authorized (PL 94-12) until January 1, 1976, making an overall potential maximum duration of 65 weeks. Although originally triggered on the same basis as extended benefits, the FSB program was amended in June 1975 (PL 94-45) to eliminate the Federal trigger and to provide an expiration date of March 31, 1977. Public Law 95-19, enacted April 1977, extended the expiration date to October 31, 1977, for new claims. That act also limited FSB to 13 weeks, narrowed the concept of suitable work for FSB claimants to exclude considerations of past experience and wages, and imposed a special disqualification for work refusal by FSB claimants. It provided also for general revenue financing of FSB, but only for the period beginning April 1, 1977, until the end of the program.

Federal legislation in the 1970's: coverage, Federal requirements, and financing

Two major, comprehensive bills were enacted in the decade of the 1970's that made significant changes (in addition to the important extended benefit and emergency benefit provisions previously described) in three basic areas of the program.

Coverage. Prior to the 1970's the principal Federal extensions of coverage were to reduce the size of firms covered and to extend coverage to Federal workers and veterans through special Federal programs. The size of a firm subject to the Federal Unemployment Tax Act (FUTA) was lowered from 8 or more workers in at least 20 weeks to 4 in 20, effective January 1, 1956 (PL 83-767).

The 1946 Seaman's Unemployment Benefit Program (PL 79-719), the Servicemen's Readjustment Act of 1944 (PL 78-346), and the Veteran's Readjustment Assistance Act of 1952 (PL 82-550) all provided temporary programs of protection for unemployed World War II and Korean conflict veterans. The Ex-servicemen's Unemployment Act of 1958 (PL 85-848) established a permanent program for veterans.

Federal workers were covered beginning January 1, 1955, under the Unemployment Compensation for Federal Employees program (PL 83-767). Public Law 86-778 (enacted in 1960 and effective January 1, 1962) extended coverage to a variety of small groups including employees on American aircraft working outside the United States, nonprofit organizations not exempt from income tax, and certain feeder organizations of nonprofit organizations.

The first comprehensive UI legislation since the beginning of the program, the Employment Security Amendments of 1970 (PL 91-373, adopted August 10, 1970), contained a number of significant coverage provisions. The size of a firm subject to the FUTA (and, consequently, subject to State law) was reduced from 4 employees to 1 in 20 weeks with an alternate test of a quarterly payroll of \$1,500 or more. The bill extended coverage under the FUTA to various groups of employees, including agricultural processing workers, those performing certain services on aircraft and vessels, and those performing services for American employers overseas.

Most significant were the provisions extending coverage not by expanding the FUTA, but rather by making State coverage of certain jobs a condition for tax credit. Coverage effected by this approach included services performed for nonprofit organizations employing at least four workers, State hospitals, and State institutions for higher education—with minor exceptions. This approach, which proved successful in 1970, provided the format for important coverage extensions 6 years later to most State and local government employees.

The severe recession beginning in 1974 prompted two emergency programs, both enacted December 31, 1974. One was the Federal Supplemental Benefits program (PL 93-572) described previously. The second was Public Law 93-567, which established a temporary emergency program of Federally financed unemployment benefits for workers not protected under State or Federal UI laws. The Special Unemployment Assistance (SUA) program provided for benefits to be paid under the terms and conditions of the State law as though the services had been covered, with certain modifications concerning the base period (the 52-week period preceding the claim for all SUA claimants) and duration (maximum 26 weeks).

Public Law 94-566, enacted in 1976, broadened coverage considerably and resulted in 97 percent of the

nation's employees being protected under UI. Coverage was extended to agricultural workers on large farms (10 or more workers in 20 weeks or employers with a quarterly payroll of at least \$20,000); household workers employed by employers who paid at least \$1,000 for such services in a calendar quarter; most State employees and over 7 million local government employees, by far the largest single category of previously uncovered workers. The act provided also for continuous transition from coverage under the SUA program to coverage under State law by providing that, if a State not only provided coverage prospectively beginning January 1, 1978, but would also permit benefit payments on the basis of wages earned prior to that date, the Federal Government would reimburse the State for the cost of benefits based on such wages.

Federal requirements. Both comprehensive bills enacted in the 1970's added a number of Federal requirements as conditions for tax credit. Coverage of nonprofit organizations and of most services performed in the employ of State and local governments became a requirement for conformity with Federal law. This was the first time that State failure to cover a particular employer or service could jeopardize tax credit for all employers. The provisions in both the 1970 and 1976 amendments requiring denial of benefits between terms to certain school employees are also conformity requirements, as are the requirements of these two acts that States offer the reimbursement option of financing benefit costs to nonprofit and public employers. State enactment of all of the provisions of the extended benefits program was required under PL 91-373 as a matter of conformity. In addition, the following five specific provisions were added by the 1970 amendments as new requirements for tax credit:

- Section 3304(a)(7) requires States to deny benefits in a second successive benefit year unless the claimant has had some work since the beginning of the first benefit year.
- Section 3304(a)(8) prohibits denial of benefits on grounds of unavailability or work refusal to claimants taking training that has the approval of the agency.
- Section 3304(a)(9)(a) prohibits denial or reduction of benefits because a person files a claim or resides in a State (or Canada) other than where wage credits were earned.
- Section 3304(a)(9)(b) requires States to participate in arrangements for combining wages when the earnings are in two or more States.
- Section 3304(a)(10) prohibits cancellation of wage credits or total reduction of benefit rights except for misconduct in connection with the work, fraud in connection with a claim, or receipt of disqualifying income.

As indicated above, the 1976 amendments (PL 94-566) followed the example set by Public Law 91-373, by requiring, as a matter of conformity: State law coverage of public entities and nonprofit organizations; the between-terms denial provisions that the act extended to primary and secondary school professional employees; and the offer of the reimbursement option to all political subdivisions. The 1976 amendments also included three new requirements that directed States to deny benefits to professional athletes during the off-season—3304(a)(13); to deny benefits to illegal aliens—3304(a)(14); and to provide for the deduction from individuals' weekly benefits of the weekly amount of any pension or retirement pay received—3304(a)(15).

An amendment to the FUTA added in 1970 has become significant in the context of the increasing number and variety of Federal requirements. Public Law 91-373 provided that a State may seek judicial review of an adverse determination on a conformity issue by the Secretary of Labor. This provision has now been used by several States.

Financing. Financing was also an active area of legislative activity in the 1970's. Under the 1970 amendments (PL 91-373), the Federal unemployment tax was increased to 3.2 percent, with 0.5 percent apportioned to the Federal Government.

The Federal tax rate had been increased in January 1961 under Public Law 86-718 from 3.0 to 3.1 percent, with the Federal share increasing from 0.3 to 0.4 percent. Temporary increases of 0.4 percent for 1962 and 0.25 percent for 1963 were enacted to finance the TEUC program under Public Law 87-6. Receipts from 1970's 0.1 percent increase were earmarked in 1970 and 1971 for the new Federal Extended Unemployment Compensation Account. A temporary increase in the tax to 3.28 percent for 1973 was enacted to finance the Emergency Act of 1971.

The tax rate was increased under the 1976 amendments (PL 94-566) to 3.4 percent, with 0.7 percent apportioned to the Federal account. The act provided that the tax rate will revert to 3.2 percent after all

advances to the Federal extended unemployment compensation account have been repaid. The 1970 amendments increased the tax base to \$4,200 effective January 1972. The base was further increased to \$6,000, effective January 1978, by the 1976 amendments.

These were the most significant financing changes, but other amendments also affected either Federal or State funds. The 1970 and particularly the 1976 amendments covered employers eligible for the reimbursement option of financing benefit costs. These employers (nonprofit organizations and government entities) are not subject to the FUTA, so they do not contribute to financing the administrative cost of the program. Until the 1976 amendments, they also did not contribute to the Federal share of extended benefits paid their workers; however, Public Law 94-566 eliminated any Federal sharing of extended benefit costs based on services for State and local governments.

Public Law 94-45, enacted in 1975, provided relief to States that had borrowed money from the loan fund by deferring for a 3-year period the time when automatic Federal tax increases would apply in order to recover outstanding balances. Public Law 95-19, enacted in 1977, extended the deferral of the Federal tax increases for 2 additional years.

Conclusion

The overall impact of Federal legislation has been to strengthen the Federal-State system of unemployment insurance. The most successful Federal amendments have been in expanding coverage. Only two significant categories of workers, agricultural workers on small farms and most household workers, now lack protection against wage loss, and it is likely that efforts will be made to close these gaps. It is also likely that the three other most often amended areas of the program (extended benefits, Federal standards, financing) will continue to receive congressional attention.

Most significant is that several years of Federal amendments have not altered in any fundamental way the original structure of the program or basic division of Federal-State responsibilities.

2.2 Description of the Present Program

Statutory framework

This nation's system of unemployment insurance (UI) is a unique Federal-State partnership. It is grounded in Federal law but executed through State law and by State employees. UI is an insurance system, created to provide adequate benefits to tide workers over tem-

porary periods of unemployment and to provide sufficient revenues to finance these benefits and related costs. Benefits are payable as a matter of right to workers who have enough qualifying wages and work to meet their State's minimum conditions, who are free from disqualification on the basis of their separation from their last job, and who are ready, willing, and able to work.

The UI provisions of the Social Security Act and the

Federal Unemployment Tax Act (FUTA) establish the framework of the system. The FUTA currently provides for a payroll tax of 3.4 percent on the first \$6,000 in wages paid by an employer who, in the current or last year, had at least one employee for 20 weeks or a quarterly payroll of at least \$1,500. Subject also to the Federal tax are agricultural employers of 10 or more workers in 20 weeks or with quarterly payrolls of \$20,000 or more, as well as employers who pay at least \$1,000 a quarter for service performed by household workers.

If a State UI law meets requirements spelled out in the Social Security Act and the FUTA, as interpreted by the Department of Labor (DOL), employers subject to the State law receive a credit of 2.7 percent against the 3.4 percent Federal tax, and the State receives Federal grants to cover costs of administering the program. (See list of the FUTA and Social Security Act requirements for tax credit and administrative grants in Appendix 13.5.)

The balance of the tax, 0.7 percent collected by the Federal Government, pays all the administrative costs, both Federal and State, associated with the UI program. This money also provides 50 percent of the cost of extended benefits paid under the Federal-State Extended Unemployment Compensation Act of 1970 and is used to maintain a loan fund from which individual States may borrow.

The terms "wages," "employer," and "employment" are defined in the FUTA. Similar definitions appear in every State law. If certain wages or employers or jobs are subject to the Federal law, but not to a State law, there can be no credit against the Federal tax for such excluded services or wages. For example, if a State excluded services performed by construction workers, the employer of such workers would be relieved of any State tax, but would be subject to the full 3.4 percent Federal tax. The employees, not being covered under State law, would not be eligible for benefits if they became unemployed. Accordingly, it is to the advantage of employers, workers, and the State to establish State law coverage at least as extensive as under the Federal law. With minor exceptions, coverage in all States is at least as broad as coverage under Federal law.

Three specified categories of employment (exempt under the FUTA) must be covered under State law as a condition for tax credit for *any* employers in the State: certain nonprofit organizations employing four or more workers, most services performed by employees of State governments, and most services performed by employees of local governments. Currently, 97 percent of jobs are protected by UI.

If a State law does not meet the FUTA requirements for tax credit, all employers in the State subject to the FUTA would lose tax credit and would be liable for the full Federal tax of 3.4 percent. In most States they would also continue to be liable for the State tax.

Nonconformity with the FUTA would also mean elimination of administrative grants. No State has yet been denied tax credit. If a State law does not meet the requirements of the Social Security Act, the result is denial of administrative grants. The experience rating requirements of Federal law are contained in section 3303, FUTA. If these are violated, employers would be denied only a portion of the credit otherwise available. They would receive credit against the Federal tax for taxes they actually paid to the State, but not for the difference, if any, between what they paid and 2.7 percent.

Aside from Federal requirements for tax credit or administrative grants, States have full autonomy in establishing substantive provisions for their UI programs. The State law establishes the minimum amount of work necessary to qualify for benefits, the weekly benefit amount, the number of weeks benefits are payable, the circumstances under which benefits may be denied, the length of such denial, the tax structure to fund the program, and the method of allocating benefit costs among employers.

Qualifying requirements

Under all State laws workers' benefits rights depend upon their work experience during a recent 12-month period called a base period. When the unemployed worker first files a claim, the individual's base period is established. At that time the worker also establishes a benefit year, a future 12-month period usually beginning from the date of the claim. The claimant's benefit entitlement is available only during the benefit year. If the claimant does not draw some or all of the weeks of benefits available (e.g., the worker becomes re-employed, as is usually the case) during the benefit year, they cease to be available after it ends. If benefits are all used before the end of the benefit year, the claimant must wait until that benefit year expires before being able to file again. If the unemployed worker files again, a new base period and a new benefit year may be established if the individual has had sufficient work in the most recent base period.

The qualifying requirement is intended to assure that only workers with reasonably firm attachment to the labor force qualify for benefits. Accordingly, all States require a specified amount of wages or a specified minimum number of weeks of work (or both) during the claimant's base period to qualify for benefits. In some States, the qualifying requirement is established as a specified flat amount of base period wages. It ranges from \$600 to \$1,400. Other States require a minimum number of weeks of work during the base period and define a week of work usually in terms of wages. Other States establish the qualifying requirement as a multiple of the weekly benefit amount. Thus, if the weekly benefit is computed as one-half the indi-

vidual's normal weekly wage, a qualifying requirement of 40 times the weekly benefit would be roughly equivalent to 20 weeks of work. Some States express the qualifying requirement as a multiple of high-quarter wages (the base period quarter when wages were highest) from $1\frac{1}{4}$ to $1\frac{1}{10}$. A requirement of $1\frac{1}{4}$ times high-quarter wages represents the equivalent of between 16 and 17 weeks of work for claimants who worked all 13 weeks of their high quarter. Most States require between 14 and 20 weeks of work or the equivalent as the minimum qualifying requirement.

Waiting period

All but a dozen States provide that no benefits will be paid for the first week of an individual's unemployment that begins after a claim is first filed. Claimants do not receive credit for a waiting period for any week of unemployment occurring prior to when they file a claim even though many individuals delay filing for some time after they are separated from work. Another nine States compensate the claimants for the waiting week if their period of unemployment exceeds a specified number of weeks (ranging from 3 to 9).

Weekly benefit amount

Under all State laws, the amount of benefits payable for a week of total unemployment varies with the worker's past wages within specified minimum and maximum limits. The claimants' weekly benefit amounts are tied directly to their normal weekly wages since the generally accepted purpose of the benefit amount is to replace a portion (usually 50 percent) of wages lost through involuntary unemployment. In 40 States the weekly benefit amount is computed as a fraction (usually from $\frac{1}{22}$ to $\frac{1}{26}$) of high-quarter wages. Since there are usually 13 weeks in a quarter, a $\frac{1}{26}$ fraction will yield a 50 percent wage replacement, provided the claimant worked full time all 13 weeks. Nine States determine the claimant's average weekly wage during the base period and compute the weekly benefit as a percentage of that wage. In four States, the weekly benefit amount is computed as a percentage of the claimant's annual wages. In those States, the weekly benefit bears no reliable relationship to the claimant's normal weekly wage. Thirteen States augment the weekly benefit amount by dependents' allowances, with the maximum allowances ranging from \$8 to \$74.

Benefits are provided not only for weeks of total unemployment but also for weeks during which the claimant has some work. Most States disregard a small amount of a claimant's part-time earnings and reduce the claimant's weekly benefit amount \$1 for each dollar of earnings in excess of the disregarded amount. Usually, after the claimants' earnings equal their weekly benefit amount, they are no longer considered unemployed or eligible for benefits.

Every State law provides a ceiling on the amount of weekly benefits payable to any claimant. The adequacy of the State's benefit structure depends considerably on the level of the maximum. In 35 States the maximum weekly amount of benefits is established by law as a specified percentage (ranging from 50 to 70) of the statewide average weekly wage in covered employment during a preceding 12-month period. These "flexible" maximum provisions are relatively new. Their advantage is that as wage levels increase the maximum is increased automatically. In the other States the maximum is a flat dollar figure that can be changed only by legislation. If the maximum is too low, large numbers of claimants will be prevented by the ceiling from receiving a benefit equal to half their lost wages. For example, if the maximum equals 50 percent of the statewide average weekly wage, only claimants whose regular weekly wage equals or is below the statewide average wage will be eligible for a weekly benefit equal to as much as half their regular wage.

Duration

All States provide a ceiling on the total amount of benefits any claimant may receive during a benefit year—expressed most commonly as 26 times the weekly benefit amount. This, of course, sets the length of time benefits are payable. In nine States the maximum duration is greater than 26 weeks, and in one it is less (20). Twenty-six weeks is generally accepted as an adequate potential duration for regular benefits. Not all claimants, however, qualify for 26 weeks.

In 10 States all claimants who meet the qualifying requirement are entitled to the same maximum potential number of weeks of benefits. Uniform duration in these States reflects the principle that all insured workers are entitled to full protection. Most States, however, vary benefit duration in relation to the claimant's work experience and wages earned during the base period. A few States compute duration in relation to the number of weeks of work credited during the claimant's base period. The ratio ranges from one-half (i.e., one-half week of duration for each base period week of work, or 26 weeks of benefits for 52 weeks of work) to eight-tenths. In most States, duration is computed as a fraction (ranging from one-fourth to three-fifths) of base period wages, up to the maximum. To arrive at the number of weeks of entitlement, the prescribed fraction of base period wages is divided by the claimant's weekly benefit amount. A fraction as low as one-fourth means that a large percentage of claimants, particularly those at lower wage levels, must work full time throughout the base period in order to qualify for 26 weeks of benefits. Claimants with higher earnings will need fewer weeks of work to qualify for 26 weeks of benefits.

Extended benefits. During periods of heavy unemployment either within a State or nationwide, for those who

exhaust regular benefits, duration is increased automatically under the permanent extended benefit program. Extended benefits increase by one-half the claimant's regular benefit entitlement up to a maximum of 39 weeks. Once an extended benefit period is triggered on, it must stay on at least 13 weeks. An individual may not draw extended benefits beyond the end of an extended benefit period.

Five special extended benefit programs, including the current permanent program, have been enacted during the last 22 years. The most recent and most significant is the Federal Supplemental Benefit (FSB) program enacted December 31, 1974 (PL 93-572). It provided a third tier of benefits for claimants who exhausted both regular benefits and extended benefits but were still unemployed during recession conditions. Generally, the maximum amount of FSB payable was 13 weeks, with 26 weeks payable at one point to all eligible individuals and later in those States where the insured unemployment rate was 6 percent or more. Those benefits were first paid January 1, 1975. The program expired 3 years later.

Eligibility conditions

All States require claimants to be able to work and to be available for suitable work as conditions for receiving benefits. Most States require that the claimant register for work with the employment service, and 37 States explicitly require that the claimant be actively seeking work.

A claimant may not refuse, without good cause, an offer or referral to suitable work without being disqualified from benefits. Most States define "suitable work" by certain criteria: the degree of risk the job poses to a claimant's health, safety, and morals; the worker's physical fitness, prior training, experience, and earnings; the distance of the job from the worker's home; and the prospects for securing local work in the claimant's customary occupation. All States also consider the length of the claimant's unemployment when evaluating the suitability of a job offer. As the length of unemployment grows, claimants are expected to lower their sights in terms of the kinds of jobs they will accept.

Federal law requirements prescribing certain circumstances under which benefits must be paid or denied apply to all States. No claimant may be denied benefits for refusing new work if the job is vacant because of a labor dispute; if the hours, wages, or working conditions are below those prevailing for similar work in the locality; or if, as a condition for being hired, the claimant must join a company union or refrain from joining a bona fide labor organization. Benefits may not be denied solely on the grounds of pregnancy. Individuals may not be denied benefits on the grounds of unavailability or work refusal if they are taking training with

the approval of the State agency. Individuals may not be denied benefits solely because they file a claim and live in another State or Canada. On the other hand, benefits must be denied aliens not legally qualified to work in this country. Benefits must be denied professional athletes during the off-season if the individuals have reasonable assurance of reemployment. Benefits must be denied individuals who have not worked since the beginning of their last benefit year. Benefits must be denied certain employees of educational institutions during the period between school terms if they have a reasonable assurance of employment with a school for the next term. Federal law also requires that all individuals whose claims for benefits are denied must be given an opportunity for a fair hearing before an impartial tribunal. All States provide such opportunity for both employers and claimants; most provide two levels of administrative appeals.

Disqualifications

The major causes for disqualification from benefits include: voluntary separation from work, discharge for misconduct, refusal of suitable work, and unemployment caused by a labor dispute. Disqualifications for these causes are different from disqualifications for inability to work or unavailability for work. In the latter situations, the period benefits are denied lasts only as long as the claimant remains unable to or unavailable for work. When the conditions causing unavailability are removed (e.g., day care is found for a child, a doctor authorizes a patient's return to the labor force, and so on), the claimant then becomes eligible for benefits.

Disqualifications involving separation from work or work refusal issues vary considerably among the States. They may include one or a combination of the following: a postponement of benefits for some prescribed period, a cancellation of benefit rights, or a reduction of benefits. Many States disqualify workers for the duration of the unemployment and longer by requiring a specified amount of work or wages to requalify.

Over the years disqualifications have become increasingly severe and the circumstances for which a claimant may be disqualified have increased substantially. The only Federal law limit on the severity of disqualifications is section 3304(a)(10) of the FUTA. This prohibits cancellation of a claimant's wage credits or total reduction of benefit rights except for discharge for misconduct connected with the work, fraud in connection with a claim, or receipt of disqualifying income. Except for causes previously mentioned, a State is thus barred from cancelling wage credits or from totally reducing the claimant's benefit entitlement. Thus, a State must permit the claimants at least 1 week of benefits (some States provide only 1 week) after they serve the disqualification period, meet any requalifying

requirement, and then become unemployed, this time through no fault of their own. In most States, the disqualification is based on the circumstances of separation from the most recent employment. In some States the disqualification is applicable to all separations from work during the base period. Thus, a voluntary quit from an employer early in a base period may result in a disqualification over a year later. In most States, good cause for leaving work is limited to good cause in connection with the employer or the work; it does not include good personal cause such as illness or leaving work to accompany a spouse to a new location.

All States have special disqualifications covering fraudulent misrepresentation to obtain or increase benefits. In addition to administrative penalties, all States provide for fines and imprisonment. All State laws also contain provisions for the recovery of benefits paid to individuals who later are found to be unentitled to them. If the overpayment was not the claimant's fault, some States authorize the agency to deduct the amount from any future benefits the individual may claim. Some States permit the agency to waive recovery if the overpayment was not the fault of the individual and its recovery would be against equity and good conscience and would defeat the purposes of the program.

All States provide for the reduction of benefits by the amount of certain types of income the claimant receives, including wages in lieu of notice or dismissal payments, worker's compensation payments, and retirement pay. Section 3304(a)(15) of the FUTA requires all States to reduce claimants' weekly benefits by the weekly amount they receive of "a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual."

Financing

Except for Alabama, Alaska, and New Jersey, which levy some UI taxes on employees as well as employers, the system is financed by State and Federal payroll taxes on employers.

Federal taxes finance the administrative costs of the program, pay the Federal one-half share of extended benefits, and provide a fund from which States may borrow when their funds become depleted. State taxes finance the full cost of regular benefits and the State's share of extended benefits. The Federal taxable wage base is \$6,000. The base in all States is at least \$6,000 and higher in 17 States, ranging from \$6,500 to \$11,200. Federal law requirements apply to State funds. States must immediately deposit all UI contributions they collect in the Unemployment Trust Fund in the U.S. Treasury. A State may withdraw moneys to its credit in the Fund only (with minor exceptions) for paying benefits.

Most States have a number of tax rate schedules, usually containing several different rates. The particular schedule in effect usually depends upon the condition of the fund, with the schedule containing the highest rates applicable when the State fund (i.e., the State's account in the Unemployment Trust Fund) is at relatively low levels. Fund conditions, which provide the key to determining which rate schedule will be in place, are measured differently among the States. In some States, the measure is a flat dollar amount. Most commonly, fund conditions are measured in terms of a percentage of payrolls. For example, when the Maryland fund level reaches 8.5 percent or more of last year's payrolls, the schedule with the lowest rates is applicable (ranging from 0.1 to 2.9 percent). When the fund level drops below an amount equal to 8.5 percent of payrolls, the least favorable schedule becomes effective (ranging from 3.1 to 4.6 percent).

The severity of unemployment in a State is the most significant factor in the level of the State fund. During the 1974-76 recession, 23 State funds became depleted, forcing those States to borrow \$4.6 billion from the Federal loan fund. In 1980, 15 States continue to owe more than \$4.3 billion. Replenishment of a State fund depends upon how realistically tax rates are set in light of current fund conditions, anticipated benefit expenditures, and the tax base.

In 1980, the estimated average tax rate for all States is 2.4 percent of taxable wages (ranging from 0.5 percent in Texas to 4.2 percent in Rhode Island). The national estimated employee tax rate, as a percentage of total wages, is 1 percent (ranging from 0.2 percent in Texas to 3 percent in Puerto Rico).

The rates in each tax schedule apply to different employers depending upon their experience as measured under each State's (except Puerto Rico and the Virgin Islands) experience rating system. Federal law requires that no reduced rate (usually a rate below 2.7 percent) may be assigned to an employer except on the basis of the employer's experience with unemployment. States have adopted different systems of measuring experience; 32 States use the reserve ratio system. The system is basically cost accounting, with the amount of benefits charged to an employer subtracted from the amount of contributions the employer has paid into the fund. The balance is divided by the employer's payroll to determine the size of the balance in relation to the employer's potential liability for benefits and to provide a basis for comparing one employer's relative experience to another's (the benefit-contribution balance in relation to payroll). The higher the employer's reserve ratio, the lower the rate. The next most common system, the benefit ratio system, relates benefits directly to payrolls. Unlike the reserve ratio system, which uses all benefits charged to an employer, the benefit ratio system usually uses only benefits paid during the last 3 years.

Benefits are charged to an employer when wage credits earned from that employer are used to determine a claimant's benefit entitlement, and the claimant is paid the benefits. In 30 States if an individual has had more than one employer during the base period, the benefits charged each employer are proportional to the base period wages each employer paid the claimant. Other States charge employers in inverse chronological order with the claimant's last employer charged first. Others charge only the last employer.

Not all benefits are charged. State laws provide a variety of circumstances under which employers may be relieved of benefit charges. The most common non-charging is for benefits paid claimants after they serve a disqualification period and then become eligible for benefits. Benefits are not "effectively" charged when they are charged to the account of an employer who is already paying the maximum rate. Benefits charged to employers who have gone out of business are also ineffectively charged. Many States provide for additional taxes, usually at a low flat rate for all employers, to ensure that the pooled costs arising from noncharged and ineffectively charged benefits are properly financed.

The provisions in Federal law concerning experience

rating provide that States may assign new employers a rate (but not below 1 percent) based on any reasonable experience until they are subject long enough (from 1 to 3 years, depending on the State) to have a rate based on experience. The Federal requirements have also been interpreted as limiting the States on the situations under which benefits may be noncharged; requiring that all employers be measured by the same system; requiring that employers with the poorest experience receive the highest rates; and limiting the factors that a State may use to measure experience.

Federal law also requires States to offer nonprofit organizations and public entities the reimbursement method of financing benefit costs, under which, instead of paying taxes, employers reimburse the fund for the actual cost only of benefits paid that are based on work performed for them. Employers that elect this method are liable for benefits charged to their accounts, under the same charging methods applicable to contribution-paying employers. Reimbursing employers may be relieved of certain charges, if the State so provides, but the cost of such noncharged benefits must be borne by the fund and ultimately by contribution-paying employers.

3.0 Coverage and Exclusions

3.1 Coverage of Agricultural and Household Workers; Definitions of Independent Contractor and Employee

In 1976, the Congress extended coverage to some 9 million workers previously outside the system, including 8.3 million State and local government employees, 130,000 household workers, and 500,000 farm workers. The effect of Public Law 94-566 was to provide unemployment insurance (UI) protection (effective January 1, 1978) to about 97 percent of all wage and salary workers.

Background on agricultural labor

Agricultural labor is now covered if performed for a "person" who:

- (1) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of \$20,000 or more for such labor; or (2) during the calendar year or the preceding calendar year, employed 10 or more individuals for 20 days, each such day being in a different calendar week for services in such labor.

Forty-seven States followed the criteria of coverage in the Federal Act. The following six jurisdictions provided more comprehensive protection:

- California—one employee or more at any time and wages in excess of \$100 in a calendar quarter.
- District of Columbia—no exclusions of any kind.
- Minnesota—four or more employees in each of 20 different weeks, or wages of \$20,000 or more in a calendar quarter.
- Puerto Rico—one or more workers at any time.
- Rhode Island—one or more workers at any time.
- Virgin Islands—one or more workers at any time.

Work force. In 1977 an estimated 2.7 million individuals performed some farmwork for wages or salaries. Annual earnings of all hired farmworkers averaged \$3,265, half the 1977 poverty-level income for a family of four. By contrast, annual earnings of all workers covered under Old Age Survivors and Disability Insurance (OASDI) in 1976 were more than twice as high, \$8,532. Nearly 60 percent of farmworkers' income came from an average of 3 months of hired farm labor, and the rest came from almost 2 months of nonfarm work.

About 47 percent of the total workdays of hired farmwork was carried by some 400,000 year-round workers who earned an average of \$6,563. These individuals tended to be white males and to confine their employment to agriculture. About half lived on farms.

Over one million workers, on the other hand, were only casually attached to agriculture. They averaged

only 9 days of hired farmwork and earned only about \$160 in agricultural wages, together with about \$2,000 from nonagricultural sources. Despite their large number, this group of workers accounted for less than 5 percent of the total workdays of hired farmwork. Almost half of these workers were students, and the remainder were primarily housekeepers and nonagricultural workers performing casual farm labor.

A third category included 1.3 million workers who worked seasonally in agriculture. They averaged about 96 days of hired farmwork and accounted for about 48 percent of the total workdays of hired farmwork. They earned \$1,974 in farm earnings and \$3,184 in earnings from all sources, on the average.

According to Philip Booth's "Coverage of Agricultural Workers," most hired farmworkers are not migrants; in 1977, only 7 percent (191,000) of all hired workers crossed county and State lines from their usual residence to perform farmwork.¹ Nearly 80 percent of migrants were men, 40 percent were heads of households, and 55 percent were under age 25; 58 percent were white, 31 percent Hispanic and the rest blacks and others. Migrant workers who worked only in agriculture had about the same number of days of work as nonmigrants. They earned more than most hired farmworkers: migrants averaged \$23 per day, nonmigrants \$20. This was due to the fact that migrants had greater experience and consequently were more selective than local workers in choosing jobs; their earnings, more often at piece rates, were higher than the hourly rates of many local workers.

Some 8,100 labor contractors registered with the Department of Labor's (DOL's) Employment Standards Administration in 1978. Their registration applications accounted for over 510,000 crew members, including both interstate and intrastate migratory workers. (The DOL registration lists count family heads and all family members, whether the latter are employed or not, as crew members; the U.S. Census count of 191,000 migratory farmworkers in 1977 does not include unemployed members of workers' families.)

Crews make up a substantial portion of all seasonally hired workers, as many as one-third to one-fourth in some States. Crew leaders head some of the largest employing units in the agricultural sector.

The functions of crew leaders may include all or most of the following functions: recruitment, transportation, supervision, assignment of tasks, setting of working hours and rates of pay, and hiring and firing. Whether or not they are acting as the employer, they are required by law to record and report employment and earnings data, moneys withheld from workers' pay, and payment of payroll taxes. They are expected to provide the farm operator and crew members with such information.

Section 3306 of Public Law 94-566 contains special rules defining the employer, who is liable for payment

of the Federal unemployment tax in cases in which a crew of agricultural workers is furnished by a crew leader to perform services for a farm operator. The following lists show the rules that apply in determining if crew members are to be treated as employees of farm operators or as employees of the crew leader.

The *farm operator* is the employer if:

1. The individual is an employee of the farm operator under common-law rules of master and servant; or
2. The worker is furnished by the crew leader but is not treated as an employee of the crew leader. For example, the crew leader is acting on behalf of the farm operator rather than as an employer; or
3. The crew leader has entered into a written agreement with the farm operator under which the crew leader is designated as an employee of the farm operator.

The *crew leader* is the employer if:

1. The crew leader holds valid certification of registration under the Farm Labor Contractor Registration Act of 1963; or
2. Substantially all crew members operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment provided by the crew leader; or
3. The individual is not an employee of any other person under common-law rules of master and servant.

Questions concerning UI coverage of farmworkers

Cost. Cost has been a key issue whenever extension of coverage to farmworkers has been considered at either the Federal or the State level. The benefit costs of the limited agricultural coverage effected by Public Law 94-566 are not yet known, nor is the rate that employers of farmworkers can be expected to pay when the tax rate begins to reflect the employers' experience. This factor, plus fluctuations in seasonal employment and in overall levels of unemployment, makes it difficult to predict costs.

As Booth's report indicates, prior studies (Research Project of 1959-63, revised to take account of PL 94-566) show that the seasonal character of agricultural production means that costs in most States are higher than average. Farm employers with highly seasonal operations—such as fruit, vegetable, and tobacco farming—pay substantial contributions, but still less than the benefits received by their former workers. However, agricultural costs are no greater than for comparable seasonal industries, such as contract construction, food processing, apparel, and resort industries.

One study considers the possibility of extending coverage to smaller agricultural employers.² Because their

workers are less likely to claim benefits, agricultural coverage as a whole would then not produce a severe drain on any State's fund in the intermediate future; only New Jersey and Connecticut, which have particularly low reserve balances in their State funds, would be adversely affected in the short run.

Another study shows that using a coverage criterion of four or more workers in 20 weeks or a quarterly payroll of \$5,000 or more for agricultural coverage would avoid any but minor differences between statewide cost rates with and without farm labor coverage.³

Crew leader or farm operator as employer. In Florida and California, crew leaders are most commonly treated as employers of crew members for UI purposes. Experienced crew leaders of large crews carry out their obligations to the UI agency as well as farm operators. However, failure of other crew leaders and unregistered contractors to meet these obligations consistently has led some observers to recommend that farm operators be treated as employers in all cases except those in which they have entered into a written agreement with crew leaders designating the crew leader as employer. They argue that compliance would then be more complete since farm operators can usually be more easily located than crew leaders.

In cases where it clearly makes sense for the crew leader to assume the responsibilities of employer for UI purposes, this can be established by contract. This arrangement would remove ambiguities in the current rules about who is responsible for complying with UI requirements.

Practicality and desirability of extending agricultural coverage. Some opponents of extending coverage to workers on small farms argue that protection against unemployment is not needed by year-round farmworkers, since they are not unemployed; that UI offers no advantage to casual and seasonal workers, since they do not work long enough to acquire benefit rights; and that UI would not help migrant workers, since they do not usually work long enough in a single State to meet the qualifying requirements for benefits.

None of these arguments is persuasive. The fact that individuals have year-round jobs does not eliminate the threat of unemployment due to organizational shifts, budget cuts, crop failure, market changes, developments in technology, and other causes. The fact that most casual or seasonal workers may not have enough farmwork to qualify for benefits is not a valid reason to exclude farmworkers. According to Booth, it is actually the casual (and short-term seasonal) workers who are most disadvantaged by the current exclusion of most farm labor from UI coverage: many work outside the farm, but their covered earnings from non-farm work are frequently too small to bring them more than minimum benefits, if they qualify at all. If their

farm wages were counted, many who do not now meet minimum requirements would qualify, and many others would qualify for a higher weekly benefit amount and more weeks of benefits. The argument that migrants should be excluded simply because they do not earn enough in a single State to qualify ignores the fact that all States now participate in an interstate combined wage plan that allows any claimant to combine, for benefit purposes, wage credits earned in more than one State.

Others who oppose extending coverage to workers on small farms argue that it will contribute to the decline of the small farm and the farm labor force. The added cost of UI, they say, will accelerate a trend toward mechanization of agriculture. It is also argued that, once farmworkers are covered by UI, they will be disinclined thereafter to seek or accept farmwork, with its rigors and its relatively low pay, and will begin to rely instead on benefits and nonfarm labor.

Proponents of extending coverage argue that UI will actually have a stabilizing influence on the availability of farm labor. As Booth points out, it is likely that farmworkers will look on UI as workers in industry and commerce do: as an independent income during unemployment that allows them to reject job offers that are unsuitable—most State laws consider that suitable work must have wages and working conditions equivalent to those of a claimant's prior customary work—and wait for suitable work. Without UI, the lack of income can force workers either to accept substandard farm employment or to seek nonfarm work.

In addition, agriculture increasingly calls for skills that are similar to those in demand off the farm, and thus competes with industry for the same kinds of workers. Therefore, it must offer the same protective measures as labor does; providing UI protection to farmworkers will reduce the competitive attraction of nonfarm work. As farmwork becomes even more like nonfarm jobs, UI coverage may well be considered an important factor in slowing down, rather than accelerating, the trend of workers to leave agriculture.

Administrative difficulties. Most of the difficulties encountered in administering farm labor coverage arise in relation to migrant workers and the problems of identifying eligible employers and getting benefits paid promptly. These problems have been reduced as experience has been acquired in dealing with migrant workers. The Employment Service has had an important role in the administration of various legislation and court orders concerning migrant workers.

Background on alien contract labor

Public Law 94-566 excluded from Federal Unemployment Tax Act (FUTA) coverage until January 1, 1980, agricultural services performed by aliens admitted to the United States for temporary agricultural and log-

ging employment; such temporary admission is authorized under Section 214(c) and 101(a)(15)(H)(2) of the Immigration and Nationality Act. Under the law, an employer wishing to use foreign labor (so-called H-2 workers) must first offer U.S. workers the same work through the employment service. Foreign workers may be admitted only if U.S. workers are not available for the job. Also, some growers claim that they are not able to recruit domestic help. Florida sugar cane growers, for example, maintain that the terrain of the plantations is too wet to permit the same use of machinery that is possible in California, Louisiana, and Hawaii. About 18,283 agricultural jobs were certified for the admission of foreign workers in 1979.

Public Law 96-84 extended for 2 years the exclusion of H-2 workers. It also provided for counting the services of these alien workers toward the numerical and payroll criteria used to determine if the employing unit is a subject employer. Thus, a farm with five domestic and five H-2 workers is now subject because the H-2 workers are counted for this purpose.

The H-2 workers are not eligible for benefits in any State. When they become unemployed, they must return to their country. Accordingly, even if their employer is subject, as is the case in about 20 States that do not follow the FUTA exclusion, they would not meet most States' availability-for-work requirements.

The exemption of wages earned by H-2 workers from UI and social security taxes reduced their employers' taxes in 1979 by 9.5 percent, with the social security exemption accounting for the larger proportion of the relief. On the other hand, employers using H-2 workers incur expenses (e.g., transportation) that other employers do not share.

The principal question is whether the exemption should continue beyond 1981. Those who favor the exemption point out that temporarily admitted aliens are ineligible for benefits. They argue that if no benefits are payable the payroll tax is not justified.

Those who oppose the exemption argue that employers exempted from social security and unemployment taxes have a competitive advantage over employers using domestic labor. They argue that apple growers in New York, Virginia, and West Virginia who now use H-2 labor could just as easily use domestic workers, as is done in neighboring Pennsylvania and Maryland. They argue that the exemption creates an incentive for employers to find that the local supply of labor is insufficient or otherwise unsatisfactory.

Background on household workers

Prior to the 1976 amendments (PL 94-566), Section 3306(c)(2) of the FUTA excluded from the definition of employment "domestic service in a private home, local college club, or local chapter of a college

fraternity or sorority." The 1976 amendments limited this exemption by providing that the exclusion applies only if the employing unit pays cash remuneration for such service of less than \$1,000 in any calendar quarter in the current or preceding calendar year. The employer is subject to the FUTA tax if this amount is paid to a single worker or several.

In determining whether an employer has paid at least the minimum to be subject, only cash remuneration is considered. Even though the cash value of such perquisites as living quarters, meals, and other benefits are considered "wages" for other purposes, they are not counted in determining if an employer has paid at least \$1,000 for domestic service. However, once it is determined that an employer is subject, all "wages" paid by the subject employer become taxable, not only the cash remuneration.

As with farmworkers, coverage of household workers was accomplished by making them subject to the FUTA. State coverage of these workers is not a matter of conformity with Federal law. However, unless each State extends coverage to the same employers that are subject to the FUTA, these employers will pay the Federal tax and receive no credit against it for taxes they pay under a State UI law.

Some States went beyond the limited FUTA coverage of household workers; in Arkansas, the District of Columbia, New York, and the Virgin Islands employers are subject if they have quarterly payrolls for household service equal to at least \$500. Also in Arkansas, employers with three or more household workers are subject, regardless of quarterly payroll. In Hawaii employers are subject if they pay \$225 or more to an individual for household service in a quarter or pay at least \$1,000 for household services per quarter, regardless of the number of employees.

Most of the estimated 1.4 million to 2 million household workers have more than one employer. Few individual employers pay as much as \$1,000 in a quarter for household services. Accordingly, it is estimated that only about 130,000 household workers, or less than 10 percent, currently have enough covered employment to qualify for benefits.

Questions concerning the coverage of household workers

Cost. The DOL estimates that current unemployment benefit costs of \$5 million attributable to household worker coverage would be more than doubled (\$11.5 million) if coverage were extended to employers paying at least \$500 (instead of \$1,000) a quarter for household service and more than tripled (\$17.7 million) if all household workers were covered.

Administration. Coverage of household workers is somewhat more difficult to administer because many

who will employ such workers are not normally employers and so are not familiar with the tax, reporting, and withholding responsibilities of employers subject to the social security and UI programs. Identifying the employer and ensuring the accurate reporting of wages are difficult in these cases, particularly when transactions are on an informal cash basis. Many of these workers are not well informed about their potential UI entitlement. A second potential administrative problem may be in determining the status of certain categories of household workers as either employees or independent contractors. For example, certain types of licensed practical nurses have been classified as self-employed by the Internal Revenue Service, while others must be considered as employees of the company that provides such services for their clients.

Many of these problems would be multiplied if coverage were extended to most household workers. However, States (e.g., New York) that have long covered household service on a broader base than under the current FUTA provisions do not report unusually difficult problems. As in the case of agricultural labor, it would seem that the most serious administrative problems will be resolved or minimized as experience is gained with these workers and their employers.

Background on definitions of independent contractor and employee

For social security tax, FUTA tax, and income tax purposes, the common-law test of master and servant is applied in determining whether an employment relationship exists. Some of the criteria of the test are difficult to apply in determining whether a given worker should be considered an employee or an independent contractor. The distinction is important. Employers are not required to withhold wages of independent contractors or pay social security or unemployment taxes on such wages. Persons who are independent contractors, that is, self-employed, are liable for a higher social security tax rate than employees and are not covered under UI.

IRS audits conducted in 1978 revealed that individuals whom the Internal Revenue Service (IRS) considered employees were treated instead as independent contractors by many businesses. The IRS proceeded to assess the businesses back taxes, even though in many instances the businesses had acted in good faith. Pending consideration of a more objective test of employer-employee relationships, the Congress enacted interim legislation (PL 95-600) to provide temporary relief from additional and back taxes to those businesses that had acted in good faith in treating employees as independent contractors. The legislation expired December 31, 1979.

On October 31, 1979, the House voted to extend the period of relief for an additional year. S. 1979, introduced by Senator Dole, provided for a similar extension. Three other bills were introduced to resolve the issue: H.R. 3245, introduced by Mr. Gephardt on March 27, 1979; S. 736, introduced by Senator Dole on March 22, 1979; and H.R. 5460, introduced by Mr. Rostenkowski on September 28, 1979.

H.R. 3245 and S. 736 (identical bills) would have determined when an individual is an independent contractor by assessing the degree of the individual's control of the hours worked and the scheduling of hours; the individual's principal place of business; the individual's investment in assets used in performing services; the individual's being subject to income fluctuations based on sales rather than hours worked; and the nature and content of the contract under which the services are performed. Failure to meet all the new criteria would not necessarily mean that the individual is an employee but only that the issue must then be decided by applying current common-law tests.

H.R. 5460, introduced by Mr. Rostenkowski (and cosponsored by Representatives Ullman, Vanik, Corman, Gibbons, Pickle, Rangel, Stark, Lederer, Fowler, Guarini), provided similar but not identical criteria in determining independent contractor status. H.R. 5460 requires that a return be filed by any recipient of services who paid \$600 or more to an independent contractor or who sold \$3,000 or more in consumer products to an individual for resale in the home on a buy-sell basis or a deposit-commission basis. More important, the bill requires anyone making an independent contractor payment to withhold 10 percent. The withholding applies only to independent contractors who perform services for fewer than five persons during the calendar year. The bill would be effective January 1, 1981.

Questions concerning definitions of independent contractor and employee

All three bills would shift significant numbers of workers from employee status to independent contractor status. It is anticipated that, in addition to those the bill clearly intends to reclassify, other workers would lose employee status as the result of manipulation of the proposed criteria by employers interested in avoiding social security and FUTA taxes.

The industries potentially affected are barber and beauty shops, consulting services, eating and drinking, entertainment, home improvement, insurance, logging and timber, medical and health services, real estate, taxicabs, trucking, and warehousing—industries with a total of 15,958,300 workers in 1978. Even if the status of only 10 percent of the workers in these industries were changed, the number affected would be over 1.5 million.

It appears that the U.S. Treasury supports the Rostenkowski bill (H.R. 5460) principally because of the requirement it contains for withholding taxes from payments to independent contractors. It is estimated that the loss of social security tax revenue incurred by switches from employee to independent contractor status would be more than offset by revenue increases resulting from this unprecedented requirement for withholding.

The most serious implications are for UI. Removal from FUTA coverage of 1.5 million workers, for example, would result in a Federal revenue loss of \$63 million and would cause further delays in the reduction of outstanding debts. Since the States would eventually follow the Federal pattern, there would be corresponding losses in State revenues. Most important would be the removal from UI protection of significant numbers of workers who are now covered.

Findings

Agricultural labor. A variety of problems associated with UI coverage of farmworkers would be compounded if such coverage is broadened to include work performed for small farms. Some are financing problems, such as the placement of still another burden of benefit costs on many farmers who are already operating on a marginal basis. Unfortunately, a clear picture of the costs of current farmworker coverage has not yet emerged. Studies suggest that costs of extending coverage will not be extensive, or at least will be no greater than costs for comparable seasonal industries. Other problems are administrative, including delay in payments, particularly for migrant workers, and difficulties encountered in obtaining wage data and separating information from employing units and State agencies.

These are difficult problems, but the farmworkers' situation is even more difficult. These workers are at the bottom of the economic structure. They are faced with trying to make a living in an occupation with fewer and fewer jobs, one characterized by hard physical labor, low pay, and seasonal layoffs. Their exclusion from coverage is not only discriminatory, it denies the program's protection to a segment of the work force that needs it most. California, in extending coverage to practically all farmworkers, has demonstrated that the administrative and financing problems are manageable.

The current rules establishing whether the farmer or the crew leader is the employer for UI purposes are confusing and have created some awkward and unrealistic situations. It seems more consistent with actual practice to consider the farm operator the employer unless the farm operator and the crew leader agree in writing that the crew leader will assume responsibility to be the employer. This would clearly

fix responsibility for complying with UI requirements and remove questions that now arise because the current rules are not clear in some situations.

Aliens temporarily admitted to perform agricultural labor. The availability of foreign workers cannot avoid having some deleterious impact on American workers. Although there may be situations in which domestic workers are unwilling to do specific jobs at the wages offered, the best remedy would seem to be not to recruit foreign workers but rather to attract American workers either by intensified recruiting efforts or by making pay or other conditions more attractive. Exemption from UI coverage of work performed by H-2 workers gives employers who hire these workers an advantage over other employers. This advantage is not justified. The latest exclusion of these workers provided that they would be counted for purposes of determining if an employer were subject to the FUTA (10 workers in 20 weeks or \$20,000 quarterly payroll). Any future legislation concerning these workers should at least continue this provision.

Household workers. As in the case of agricultural workers, the advantages to household workers of extending UI to cover most domestic service appear to outweigh the special problems associated with such coverage. The experience of New York and other States suggests that the administrative problems should not be insurmountable. Continued exclusion of these workers perpetuates an inequity, one that is the greater because UI protection is now available to almost every other category of worker.

Definitions of independent contractor and employee. Legislation that would switch substantial numbers of workers from employee to independent contractor status would resolve some confusion now generated by the master-servant test. In the process, however, it would remove these workers from the protection of UI, thereby reversing the trend, almost unbroken for the last 45 years, toward universal coverage. The denial of coverage and the loss of both Federal and State revenue seem to be too substantial a price to pay for the advantages of the legislation.

Recommendations

Employers of Agricultural Workers

General coverage. The Commission recommends that services performed by workers in agriculture be included under the provisions of the FUTA relating to all other workers in general.

Adopted by unanimous vote.

Definition of "employer": farm operator or crew

leader? The Commission recommends that the present FUTA definition of "employer" of agricultural workers be changed to provide that the farm operator shall be considered the employer unless there is a signed contract between the farm operator and a crew leader in which they agree that the crew leader assumes the responsibility to be the employer.

Adopted by vote of 9 to 3 on show of hands.

[See section 12.0, "Commissioners' Supplemental Statements."]

Alien contract farmworkers. The Commission recommends that the present FUTA exclusion from coverage of services performed by certain types of alien contract farmworkers be terminated.

Adopted by recorded vote of 7 yeas (Commissioners Daniels, Morris, Oakar, Sanchez, Seidman, Sullivan, Cohen), 5 nays (Commissioners Bivins, Coleman, Cooper, Crosier, Hill).

[See section 12.0, "Commissioners' Supplemental Statements."]

Employers of household workers. The Commission recommends that the present FUTA coverage provisions defining employment with respect to services performed by household workers be broadened to adopt the social security provision requiring coverage for employers with a quarterly payroll of at least \$50.

Adopted by recorded vote of 10 yeas, 1 nay (Commissioner Bivins), 1 abstaining (Commissioner Cooper).

Independent contractor and employee. Any of three pending bills (H.R. 5460, S. 1979, S. 736) would shift significant numbers of workers from employee status to independent contractor status. The Commission anticipates that others might lose employee status under broadened criteria that these bills would use to define employer-employee status.

The Commission also recognizes that unexpected retroactive charges have been placed on employers as a result of more stringent enforcement of present provisions of Federal law by the IRS.

The Commission opposes any legislative change in the FUTA that would make comprehensive changes in the definition of the employer-employee relationship and result in exclusion of presently covered workers. The Commission believes also that any retroactive burden on employers caused by changes in IRS enforcement policies should be prevented by appropriate IRS regulations.

Footnotes

1. Philip Booth, "Coverage of Agricultural Workers," *Unemployment Compensation: Studies and Research* (Washington, D.C., National Commission on Unemployment Compensation, 1980).

2. J. G. Elterich, "Estimating the Cost of Extending Jobless Insurance to Farm Workers," *Monthly Labor Review*, May 1978.

3. Saul J. Blaustein and others, *Strengthening Unemployment Insurance: Program Improvement* (Kalamazoo, Mich., W. E. Upjohn Institute for Employment Research, 1975).

3.2 Federally Mandated Restrictions: Alien Workers, Athletes, School Employees, Retirees

Background

Before 1970 neither the Social Security Act nor the Federal Unemployment Tax Act (FUTA) contained any provision explicitly requiring States to grant or deny unemployment insurance (UI) benefits to specified categories of workers.

School employees. The Employment Security Amendments of 1970 (PL 91-373) required States, as a condition for tax credit, to extend coverage to employees of State and other nonprofit colleges and universities. For the first time, FUTA also directed that benefits be denied under State law to certain newly covered workers under specified circumstances: college and university employees serving in an instructional, research, or principally administrative capacity were to be denied benefits based on such service during the period between school terms if they had contracts for both terms.

The Unemployment Compensation Amendments of 1976 (PL 94-566) required States to extend coverage to primary and secondary school employees. The 1976 Act also included the same requirements denying benefits to elementary and high school teachers and other school professionals as the 1970 Act had applied to college professors. In addition, the 1976 Act also gave States the option to extend the between-terms denial to nonprofessional employees of schools below the college level. Most States (44) adopted the option.

Subsequent legislation permitted States two additional options: to extend the denial not only during periods between school terms but also during established vacation or holiday periods (PL 95-19) (33 States) and to apply the denial to employees of educational service agencies (PL 95-171) (4 States).

State discretion was restricted not only by the required between-terms denial provisions, but also by another Federal provision. An "equal treatment" provision requires that—*except* for the between-terms-

denial provisions—benefits based on any service for a State, local government, or nonprofit organization must be paid under the same conditions as benefits payable on the basis of any *other* service. This "equal treatment" requirement thus bars a State from establishing special qualifying requirements, a separate benefit structure, or separate eligibility conditions applicable only to government or nonprofit employees.

No explanation appears in the legislative history of the 1970 or 1976 Acts of the reasons for the "equal treatment" requirement. Presumably, the Congress believed that, unless such a safeguard were adopted, the objective of covering school employees would be undermined by States enacting special benefit formulas, qualifying requirements, or other restrictions aimed at limiting the benefit costs of public employees.

The rationale for the between-terms-denial requirement is clear and appears in the Senate report on PL 91-373:

There is, however, one distinctive characteristic of the contractual employment relationship between the instructor, research, or administrative employee and the institution which led the Committee to include a special provision in the bill. It is common for faculty and other professional employees of a college or university to be employed pursuant to an annual contract and an annual salary, but for a work period of less than 12 months. The annual salaries are intended to cover the entire year, including the summer periods, a semester break, a sabbatical period or similar nonwork periods during which the employment relationship continues.

The House Bill permitted the States to prescribe the extent to which compensation would be paid during the summer vacation period. The Committee felt that Federal law should preclude payment in such situations.

Few provisions in the comprehensive 1976 amendments have generated as much controversy as the "between-terms-denial" and "equal treatment" requirements. School employees and their representatives generally consider the between-terms-denial provisions as discriminatory, unreasonable, and unnecessary benefit restrictions. Educational institutions and their representatives generally favor not only keeping the denial requirements but also extending the option to deny benefits to now-exempt nonprofessional employ-

ees of colleges and universities between terms and to limit benefits payable to substitute teachers during school terms.

In considering a number of legislative options, some Commissioners recommended eliminating all special denial provisions but retaining the "equal treatment" requirement. Under this option, States would be prohibited from enacting any provisions that applied only to school employees. No State could enact a between-school-terms-denial provision. States determined to limit benefits payable to school employees between terms would probably need to turn to seasonality provisions, which would restrict benefits payable to *any* individual who had a regularly recurring off period. Those who opposed this option did not support retaining the denial requirements, but argued that if they are eliminated, the States should be free to handle issues posed by school employees as they deem appropriate.

Accordingly, those Commissioners supported another option that would eliminate both the between-terms-denial provisions *and* the "equal treatment" requirements. This would give the States full discretion in determining the extent, if any, to which benefits would be denied during school breaks or other periods. Opponents of this option argued that the "equal treatment" requirement is needed to prevent States from unreasonably restricting benefits payable to public employees, particularly school employees.

A third option, representing a compromise between the first two, received support from a majority of the Commissioners. This would eliminate the special denial provisions and modify the "equal treatment" requirement to allow States full discretion in handling the payment or denial of benefits to school employees, but only *during school breaks*. Other than during school breaks, States would continue to be barred from enacting special provisions affecting only public employees or employees of nonprofit organizations. Those opposed to this option believed it necessary to retain the protection to school employees offered by the current "equal treatment" requirement.

A fourth option, simply to retain the current Federal law provisions without change, received little support. The current provisions have entangled the Federal agency deeply in details of school administration to the irritation and frustration of all parties concerned, without commensurate benefit.

Illegal aliens. The House Ways and Means Committee version of the Unemployment Compensation Amendments of 1976 contained no provision relating to aliens when it was reported out December 16, 1975. On July 20, 1976, the bill came to the House floor under a modified closed vote permitting consideration of several possible amendments. By a discussion vote (without formal role call) of 136 to 22, the House, sitting as Committee of the Whole, adopted an amendment

by Congressman Sisk of California that required all State laws, beginning January 1978, to provide:

Compensation shall not be payable on the basis of services performed by an alien who was not lawfully admitted to the United States.

This language was later changed by PL 95-19 to read:

Compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

The provision was so modified in order to ensure that Canadian and Mexican citizens who regularly commute to the United States to work but who are not admitted for permanent residence would not be denied benefits. The new language also requires the individuals to have been legally working here at the time they earned wage credits.

In the Senate Finance Committee, concern was expressed by Senator Haskell that the provision relating to aliens might lead to harassment of minority ethnic groups, whether or not they were citizens or otherwise eligible for benefits. That concern was reflected in the following two amendments introduced by Senator Cranston.

Any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence.

According to Senator Cranston, the intent of these paragraphs was simply to have the same basic questions about citizenship or status asked routinely of all claimants and verified by the employer in the normal claims process. "It is not fair to ask untrained unemployment claims workers to attempt to interpret the Immigration and Naturalization Act." The law states that "unless a preponderance of the evidence is developed indicating that the individual is not lawfully admitted for permanent residence in the United States, the claim will be paid."

The "preponderance of evidence" requirement was further supported as a safeguard against the "unin-

tended effect of discriminating against American citizens and persons legally in this country and eligible for work, simply because of their ethnic, racial, or linguistic characteristics." (*Congressional Record*, September 29, 1976.)

In the House floor discussion of the standard (*Congressional Record*, July 20, 1976) no facts were presented showing how many illegal aliens were collecting benefits. No estimates were offered. Neither was it made clear how the amendment, which contained no specific penalties, would prevent benefits being paid to an illegal alien. The discussion shows that the amendment represented a reaction to alleged abuses of the UI system described in a "60 Minutes" program, and it represented a reaction also to a recent California agency decision to stop asking claimants if they are citizens or aliens. Congressman Sisk said that, although illegal aliens are not lawfully eligible for benefits in any State (because they cannot be available for work), they are nevertheless now drawing benefits. In the course of the debate on how the amendment would correct this abuse, Congressman Sisk advised that:

really when we get down to it, on the basis that a person might swear to anything in order to get some money if he wants to do it, this statement really becomes a sense-of-Congress statement that we do not believe illegal aliens should draw unemployment compensation.

It is not clear how effective the sense-of-Congress has been in deterring illegal aliens from filing for or receiving benefits.

By 1978, almost all States had enacted provisions in their UI laws conforming with section 3304(a)(14) using, in most cases, the exact language of that section. In offering States advice as to how to implement the requirement, the Department of Labor (DOL) recommended that claim forms contain the following questions:

"Are you a citizen of the United States?"

"If 'no,' when you were working in the U.S., were you issued an Alien Registration Card, Form J-151, commonly called a 'green card'?"

"If 'no,' when you were working in the U.S., what document or form number were you issued?"

If the answer to the first question is "yes," no further inquiry is to be made. Neither the DOL nor the States keep records showing how many, if any, individuals are denied benefits on the basis of the requirements of section 3304(a)(14).

Professional athletes. Section 3304(a)(13) of FUTA provides:

Compensation shall not be payable to any individual on the basis of any services, substantially all of which con-

sist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) and there is a reasonable assurance that such individual will perform such service in the later of such seasons (or similar periods).

The provision has been interpreted by the DOL as applying only to professional athletes. The term "participant" does not include ancillary personnel involved with the team, such as managers, coaches, trainers, referees, and groundskeepers. However, even with that limitation, the following factors make the provision somewhat difficult to administer.

1. A determination must be made that "substantially all" the individual's services during the base period were in sports or athletic events. (According to the DOL, 90 percent constitutes substantially all.)

2. A determination must be made of the beginning and ending of a "sport season" and of the length of the period between successive seasons. These vary from sport to sport and for particular individuals within the same sport.

3. It must be determined if the individuals who performed services as professional athletes in the season just ended have "a reasonable assurance" that they will do so in the next season.

4. Still another determination must be made, particularly in the case of golf and tennis "professionals," as to whether the individual performed services while self-employed or as an employee.

In the House floor discussion of the proposed Federal standard prohibiting benefits to professional athletes during the off-season (*Congressional Record*, July 20, 1976) no facts were presented and no estimates given on the number of such individuals collecting benefits. No information was introduced showing how many State laws permit benefits to professional athletes between seasons or the circumstances under which such benefits are paid. As with the illegal alien standard, the record shows that the Federal standard seems to be a reaction, in part, to abuses of the UI program alleged in a "60 Minutes" broadcast that included an interview with "a professional golfer who collects unemployment benefits." In addition, according to Congressman Sisk, who introduced the proposed standard,

... it is a matter of record that regulations of some States make professional athletes eligible for unemployment compensation. It was reported last March, for example, that the president of the Milwaukee Brewers confirmed that some members of the team have been drawing jobless payments for a number of years.

The Congressman added that, in his view, the program "is not intended to simply support a person's income"

but rather to provide assistance during periods of unemployment. The implication appears to be that professional athletes who participated and were paid during the last season and also have reasonable assurance of paid participation during the succeeding season are not unemployed during the off-season.

Receipt of retirement income. The 1976 amendments added a new section, 3304(a)(15), to FUTA, recognizing, as a condition for employers to receive credit against the Federal tax, that each State law provide that

the amount of compensation payable to an individual for any week which begins after September 30, 1979 [later amended to March 31, 1980], and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pensions, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week.

As passed by the House of Representatives, H.R. 10210 (which became the 1976 amendments, PL 94-560) contained no pension reduction provision. The present language, added on the floor of the Senate, is actually less restrictive than the provision originally recommended by the Senate Finance Committee. Instead of deducting the amount of individuals' pensions from their weekly benefit amount, that provision would have required the denial of *any* benefits to any individual receiving retirement pay, regardless of the amount of such pension. In other words, an individual receiving even \$1 in retirement pay would be disqualified completely from benefits.

When the bill came to the Senate floor, the less restrictive language was substituted, and the National Commission on Unemployment Compensation was charged with:

evaluation of the feasibility and desirability of restricting the eligibility for receipt of unemployment compensation to persons eligible to receive a pension or retired pay, annuity, or similar periodic payment.

The Report of the Conference Committee on H.R. 10210 (Report No. 94-1745) explained,

The conference agreement follows the Senate amendment, except that the requirement would not take effect until 1979, thereby permitting the National Commission on Unemployment Compensation an opportunity for a thorough study of this issue and the Congress to act in light of its findings and recommendations.

When the House of Representatives passed H.R. 12232, extending the due dates for the reports of the Commission, a similar extension of the pension provision was included. The effective dates of the provision on pen-

sion deduction were changed by the House from March 31, 1980, to May 31, 1981. However, this extension was deleted by the Senate because of a possible conflict with requirements of the Budget Act.

In its initial 1976 advice to States on implementing the requirements of PL 94-566 (Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976—PL 94-566), the DOL cited the language of new section 3304(a)(15) but did not offer suggested draft language as it had done on most other provisions. It noted that the Commission's report, then due January 1, 1979, may result in the standard being amended before it becomes effective.

In later advice (Supplement 1 Draft Legislation, December 7, 1976) the DOL concluded that no State will be denied certification for not having enacted a pension reduction provision in 1978. However, the DOL did recommend that States whose laws did not contain some kind of pension deduction provision enact a limited provision under which

- benefits would be reduced by 50 percent of the prorated weekly retirement pay received from base period employment only if the claimant's base period employer contributed at least half the cost of the pension;
- benefits would be reduced by 100 percent of the retirement pay if the base period employer paid the entire cost of the pension; and
- benefits would be reduced by 100 percent of *any* retirement pay if section 3304(a)(15) became effective without change.

The Department expressed the hope that, if Congress finds that all States have taken action in this area, it may be persuaded to delete the standard in 3304(a)(15). However, as hope for this faded, the DOL increasingly urged all States to enact a 3304(a)(15) type of provision at least as an option, to become effective if the Federal provision became effective (as it did, April 1, 1980).

Considerations. Section 3304(a)(15) raises two major issues. Should retirement pay be deducted from UI? Is this an appropriate subject for a Federal standard? The following represents the major arguments.

1. Some who contend that retirement pay should be deducted from UI argue that the two are duplicate payments for the same situation—loss of wages because of unemployment. Opponents argue that they are not duplicate payments since they are aimed at different contingencies: UI is paid on the basis of recent work and the benefit amount is tied to recent wages. It is compensation for current wage loss due to lack of work. In contrast, retirement payments are based on

age, years of service, or both. They are paid for past services, and the benefit amount is tied to past services. They are *not* paid for unemployment due to lack of work, and they are not even paid for current wage loss since they are payable in many cases even if the recipient is currently working and has no wage loss. The two types of benefits are substantially different in qualifying requirements, basic objectives, and eligibility conditions.

2. Others who recommend the deduction argue that receipt of retirement income is evidence of withdrawal from the labor force. All States consider voluntary retirement to be a quit without good cause, subject to disqualification. However, most States do not disqualify individuals for voluntarily quitting if they have been forced to retire under mandatory conditions. Those who oppose deducting retirement income from benefits argue that, although it may be reasonable to presume that someone who has retired from a job has left the work force, the presumption should be rebuttable, not conclusive. They argue that work performed subsequent to retirement should effectively rebut the presumption. In any event, they contend that the appropriate way of determining if a retiree has left the labor force is to apply the availability requirement, which should include an evaluation of how genuine are an individual's efforts to find work.

3. Presumably, at least an implicit consideration in the arguments of some favoring deduction is that those receiving retirement income already have some protection and are less in need of benefits than others with no income. Even if benefits are reduced by the weekly amount of their retirement pay, the claimants end up with no less than if they were on UI alone.

Those who oppose this reasoning contend that it is a fundamental concept of UI that benefits be payable as a matter of right to eligible individuals regardless of their income or assets other than wages. Reduction of benefits by retirement income also discriminates in favor of those claimants with income from rents, interest, or other nonwage sources since they are not subject to the same reductions in benefits as those receiving retirement income.

4. Finally, it is argued that an employer should not be required to carry the double burden of both UI and retirement benefits. This double burden, however, falls only on base period employers, since they are usually the only employers chargeable with benefits. Those States whose benefit reduction provisions reflect this principle deduct only that amount of retirement income that is financed by a chargeable base period employer. In contrast, under 3304(a)(15), even though the pension-paying employer may appear long before the claimant's base period and is not charged with benefits, the claimant will always be subject to benefit reduction based on that pension.

It is clear from the States' experience that a consensus does not exist as to the extent to which retirement income should be deducted from benefits. Those who support a Federal standard argue that only a Federal requirement will achieve uniformity and produce the maximum savings that can accrue from deduction.

Opponents of a standard argue that the very lack of agreement as to the desirability of deduction, or how sweeping such a deduction should be, is a strong reason for not enacting a standard. They argue that where there are sharp and deep differences, the matter is best left to the States unless uniformity is absolutely essential.

In its 1935 Report to the President, the Committee on Economic Security emphasized the desirability of permitting considerable variation so that experience will reveal the most desirable provisions. "This, we believe, can at this time best be secured under a cooperative Federal-State system, which permits variations in State laws but insures uniformity in respects in which uniformity is absolutely essential." To opponents of the standard, including some who support the idea of reducing benefits by retirement pay, it is clearly *not* absolutely essential to the Federal-State system of UI that all States be compelled to treat retirement pay as deductible income.

Findings

School employees. Two discriminatory provisions, enacted first in 1970, were perpetuated and extended in the 1976 amendments and later legislation; they required denial of benefits to school employees during school breaks and they required equal treatment of public and nonprofit employees along with other workers. The first imposes a special disqualification on a category of workers, and the second imposes a special protection.

The required denial between terms reflects congressional apprehension that the States would otherwise pay benefits during the summer indiscriminately to teachers and other professionals who do not really desire jobs during that period. There seems to be little basis for that apprehension. The evidence suggests that States will act to prevent benefit payments to school employees during school breaks. For example, States were given the options to apply blanket denials between terms (similar to those provisions that apply to teachers) to nonprofessional employees of schools and to extend such denials to holiday or vacation periods within terms. Of 53 jurisdictions, 44 adopted the first option of denying benefits to nonprofessional school employees; and 33 adopted the second, extending denials to holidays or vacation periods. Neither does it follow that even without an automatic blanket denial school employees will receive benefits. Relatively few of those off from work during school breaks or vacation

periods would meet the availability for work and work search requirements of State laws. In any event, two factors would seem to dictate that, regardless of Federal law, most States would find ways to deny school employees benefits during school breaks: the first is the prevailing conviction that most school employees are not involuntarily unemployed during the summer, and the second is the demonstrated strong legislative influence of school boards and other school employers.

The FUTA provisions requiring benefit denial between terms to professionals employed by schools are not appropriate Federal standards. There is no compelling need for a Federal requirement singling out this category of workers for special treatment. Moreover, the between-terms requirement has involved the Federal government in a wide range of detailed issues. It represents a continuing source of friction between Federal and State partners.

To the extent that the equal treatment requirement would prevent the States from dealing with the between-terms issue as they see fit, that requirement should be changed. Application of the equal treatment requirement to periods *other* than school breaks should be retained to offset any possibility that special or discriminatory treatment of public employees by any State will extend to periods or circumstances beyond school breaks.

Illegal aliens. The FUTA provisions prohibiting payment of benefits to illegal aliens are ineffective, unnecessary, and inappropriate as Federal standards. It is unlikely that the requirement that all claimants identify their citizenship status will deter any determined illegal alien from filing for UI. Neither is it likely that any such individual's employer will come forward with information revealing the individual's true status. There is no record that a single individual has been denied benefits by reason of the standard. On the other hand, the provision has added to the administrative burden of State agencies and slowed down the payment of benefits to noncitizens until the legality of their status has been established.

The Federal standard is also unnecessary. Aliens not legally in the United States or at least not legally permitted to work under the terms of their entry are not eligible for benefits under any State law. Such individuals are not available for work, a condition for benefits in every State. The penalty (ineligibility for benefits) is the same as under the Federal standard.

The Federal standard is also inappropriate. In light of existing State provisions and availability requirements described above, there is no serious gap in this area that Federal legislation alone can fill.

Professional athletes. Professional athletes who claim benefits between seasons of their sport and who limit their availability for work to that sport would not meet

most States' test of availability. In many States the athletes also would not be considered unemployed during the off-season, particularly if they are under a 12-month contract.

On the other hand, if athletes are genuinely available during the off-season for work for which there is a substantial market for their services, they may be eligible for benefits in some States. These are essentially the same conditions that are applicable to *all* categories of workers. Very few States have found it necessary anymore to single out seasonal workers for special consideration. Very few States now have operable seasonality provisions because of the difficulty of administering them fairly and simply. States have found that realistic qualifying requirements and application of the availability test are enough to ensure that benefits are paid only to individuals genuinely available for work.

In any event, there is clearly no compelling reason for a Federal standard requiring uniform treatment of professional athletes. The standard is not only unnecessary and discriminatory, but also difficult to administer.

Receipt of retirement income. There is no general agreement among commentators on UI as to whether retirement income and UI can reasonably be considered to compensate the same wage loss (or to duplicate wage loss compensation). There is no agreement that making retirement income deductible introduces an income test, inconsistent with the principle of benefits as a matter of right to eligible individuals. Finally, there is no agreement on what can reasonably be presumed as to the continued labor force attachment of individuals who are receiving retirement pay.

In light of this, understandably, there is no consensus among the States as to whether retirement income should be deducted from benefits, and, if so, whether such deduction should be limited in any way. Several States treat as deductible income only pensions received from base period employers. Others exempt military pensions, and still others deduct only that portion of retirement pay financed by the employer.

A Federal standard is wholly inappropriate, given the fundamental disagreements among States as to the desirability of deducting retirement pay from UI and even greater differences concerning the extent to which deductions should apply. Not only is a Federal standard in this area presumptuous and unnecessary, but the standard imposed on the States since April 1, 1980, is particularly onerous. It represents a more sweeping and severe disqualifying income penalty than *any* State has enacted throughout the entire history of the Federal-State UI system.

Recommendations

School employees. The Commission recommends that

Federal law be amended to remove all requirements for denial of benefits to employees of educational institutions and to limit the "equal treatment" requirement applicable to public and nonprofit employees to permit States to handle between-terms issues as they wish to do under State law.

The Commission recommendation would give States discretion in handling the issue of benefit payment or denial to school employees but only with respect to the period when schools are not in session. States could elect to deny benefits, as is now required or permitted, or establish whatever guidelines they choose for the treatment of school personnel during such periods. Aside from the period between school terms, however, States would be barred from special provisions affecting only school or governmental or nonprofit employees. In other words, the "equal treatment" requirement would continue to apply with the exception relating to school employees during school breaks.

*Adopted by recorded vote of 8 yeas
(Commissioners Bivins, Coleman,
Cooper, Crosier, Hill, Oakar, Sanchez,
Cohen), 4 nays (Commissioners Dan-
iels, Morris, Seidman, Sullivan).*

[See section 12.0, "Commissioners' Supplemental Statements."]

Illegal aliens. The Commission recommends repeal of section 3304(a)(14) of FUTA, which requires the State, as a condition for certification for tax credit, to deny benefits to certain uncertified aliens.

Professional athletes. The Commission recommends repeal of section 3304(a)(13) of FUTA, which requires the States, as a condition for certification for tax credit, to deny benefits during the off-season to professional athletes under contract.

Receipt of retirement income. The Commission recommends repeal of the pension reduction requirement in section 3304(a)(15) of FUTA.

The Commission consistently recommended that the pension deduction requirement, in effect since April 1, 1980, be repealed before it became effective. Failing such repeal, the Commission recommended that the severity of the present provision be ameliorated and its effective date postponed to permit State legislators time to implement it. Differing provisions have been approved by both houses of Congress, but no conference to resolve the differences has as yet been held.

At this point about a half dozen State UI laws do not meet the requirement for certification for 1980 tax offset credit by the Secretary of Labor. In many of these States, legislatures are not now in session and will not meet again until 1981. A finding of nonconformity by the Secretary of Labor in November 1980, which the Secretary is required to do under present law, could have calamitous economic consequences in the affected States.

The Commission recommends that the Congress enact legislation providing that the Secretary defer a finding on State conformity under this requirement for 1980, in the case of any State which has not yet acted on this subject, until 30 days after the adjustment of the next regular session of the legislature in such State.

4.0 Benefits in the Regular Federal-State Program

4.1 Previous Work Qualifying Requirement

Background and issues

The Commission has reviewed the major policy questions that have surfaced as to who should receive benefits and how much for how long. These questions can be most conveniently divided into previous work qualifying requirements, weekly benefit amount, maximum weekly benefit amount, duration of benefits, disqualification reasons, and disqualification penalties. This chapter deals only with the previous work requirement.

How can labor force attachment best be measured? Since unemployment compensation (UC) benefits are limited to those with "demonstrated attachment to the workforce," all States use some measurement of recent previous work as one of the criteria for "demonstrated attachment." It is possible to be in the labor force, of course, and looking for a job without having worked before (new entrant) or having worked long ago (re-entrant). But the practice in UC has been to require a recent work record as evidence of both past attachment and probable continuing attachment. Continuing attachment is also tested by availability requirements.

The four major kinds of measurement of previous "attachment to work" used in State law are:

- Time at work
- Multiples of weekly benefit amounts
- Multiples of high-quarter amounts
- Flat earnings minimums

"Time at work" is probably the most widely accepted concept for measuring work attachment. In 14 States, it is measured by weeks of work, and in Washington State it is measured by hours of work. There is still the problem of defining what constitutes a "week of work." Most States do so in terms of certain amounts of earnings, but the Washington experience with hours suggests that it can be done in terms of hours worked.

"Multiple of high-quarter earnings" is used as the measure of attachment in 16 States as a proxy for time worked, largely because employers report their earnings on a quarterly basis. This measure requires that claimants, in order to be eligible to receive benefits, must earn some multiple (e.g., 1.25 times) of their high-quarter earnings during the base period. The high quarter is that calendar quarter in which the claimant's earnings were highest.

The "multiple of high quarter" test is an unsatisfactory substitute for weeks of work, particularly for claimants with short-time employment. The requirement assumes that all individuals work the same number of weeks in their high quarter, whereas the statistics show this is not the case. As a result, some can qualify with fewer total weeks than others who cannot qualify at all.

An example will help make this clear. Assume two individuals each earning \$100 a week work in a State with a requirement of $1\frac{1}{4}$ times the high-quarter earnings. One works 10 weeks in all, 8 of them in the high quarter. This claimant would meet the qualifying requirement, with \$800 in the high quarter and total wages of \$1,000 ($1\frac{1}{4} \times \$800 = \$1,000$). The other claimant works 14 weeks, with 12 in the high quarter. This worker would not meet the qualifying requirement even though the individual worked more weeks than the first worker. The reason is that the second worker's total wages (\$1,400) are not $1\frac{1}{4}$ times the high-quarter wages (\$1,200); this worker would have needed \$1,500 in total wages to qualify, or the equivalent of 15 weeks of work.

Another proxy measure of time worked is "multiple of the weekly benefit amount," used in 16 States. This type of qualifying requirement is also based on the claimant's high-quarter earnings. The weekly benefit amount for a claimant is calculated upon the high-quarter wages. Then, to be eligible for benefits, the claimant must have earned some multiple (e.g., 40 times) of this weekly benefit amount during the entire base period.

There is strong evidence indicating that this criterion has a powerful bias (compared to the weeks of work or high-quarter earnings requirements) in favor of claimants with high weekly wages. Highly paid workers can earn enough to qualify for the maximum weekly benefit in a shorter period of time worked than lower-paid workers.

An example will show the unfairness of this test. In a State which requires an amount of earnings equal to 40 times the weekly benefit amount in the base period in order to qualify for benefits, claimant A earns \$300 per week and claimant B earns \$100 per week. The maximum weekly benefit amount in the State is \$100. Claimant A is eligible for this maximum weekly benefit amount and claimant B is to receive the weekly benefit amount of \$50.

	Claimant A	Claimant B
Earnings per week	\$ 300	\$ 100
WBA	100	50
$40 \times \text{WBA}$	4,000	2,000
Number of weeks of work to qualify for benefits	$13\frac{1}{3}$	20

Therefore, claimant A need only work $13\frac{1}{3}$ weeks to qualify for benefits while claimant B needs 20 weeks of work in the base period.

A "flat dollar amount of earnings" in the base period is used exclusively as a measure of attachment in two States, but it is sometimes used along with other measures. This method is the weakest in approximating time at work. Some States counteract this weakness some-

what by requiring wages in at least 2 quarters. There is here a strong bias in favor of high-wage earners because workers with different pay scales must work different lengths of time to qualify. A claimant, for example, earning \$100 per week must work twice as many weeks as a claimant earning \$200 per week to obtain the required amount of base period earnings needed to qualify for benefits.

Another problem with this type of measure is that it soon becomes too inclusive because of increasing wage levels. This can be resolved by "indexing," or making frequent adjustments corresponding to movement in wage levels.

What degree of attachment is desired? Present State laws use different measures. They also use the measures with varying intensity. There is a wide spectrum of requirements as to how long one should work in order to be eligible. In California, it takes only a few days of work for a highly paid employee to qualify because of the low flat earnings requirement. In other States it takes between 5 and 6 months of work to qualify (a 20-week work requirement). The result is that there are highly different probabilities in different States for an unemployed worker to achieve insured status. The proportion of covered employees who can become insured ranges from 95 percent to less than 70 percent among different States. Is there a norm, and, if so, what is it?

The variation in insurability rates is due to different wage qualifying provisions, but also to different State economies. This means that even if there were a norm—for example, 80 percent insurability—it would take different provisions to achieve it in different States. The Department of Labor (DOL) recommendation for the minimum degree of labor force attachment to qualify for benefits is a range: 14 to 20 weeks of work or its equivalent in covered earnings, depending on what a State finds most appropriate.

At present, most States' qualifying requirements fall within this recommended range. A few States, especially some of those that require the claimant to have a flat dollar amount of base period earnings to qualify, seem to have relatively more liberal qualifying requirements than what is recommended. The relatively liberal requirements (e.g., California and West Virginia) result in paying benefits to many unemployed workers who would not qualify if required to have a minimum of 14 weeks of work. A few States exceed the recommended requirements because of "pyramiding," that is, using different kinds of requirements conjointly.

Although there is a wide agreement on the 14 to 20 weeks (or their equivalent) requirement as appropriate for UC, it is difficult to say why more or less would not be equally appropriate. There is almost necessarily a high degree of subjective judgment in determining what amount of previous work should qualify.

Another option is available to skirt the problem of arbitrarily setting a minimum amount of work to determine whether the claimant qualifies. This approach would abolish the "cliff effect" of being uninsured with, for example, 19 weeks of work and being insured with 20 weeks. This discontinuity can be removed by assigning duration weeks directly proportional to base year weeks worked and starting the schedule at or near zero. For example, if benefits weeks were two-thirds of base period weeks, then the first 3 weeks of base period work would entitle the claimant to 2 weeks of benefits. This schedule could go up to where 39 weeks or more of work would entitle one to a maximum potential benefit of 26 weeks. The ratio can be set as desired, but there is never any need to decide who is on which side of a qualifying threshold.

There would be administrative problems with this option because of the costs and inconvenience of making determinations for as few as 2 or 3 weeks. Also, the claimants receiving relatively short potential durations may be those who need the longer durations the most.

Should there be an alternative base year? All of the qualifying requirements are necessarily definitions based on judgment of "substantial previous attachment." Even the concept of a base year as the frame for measurement is an artificial distinction necessary in order to permit the application of objective measures.

In order to avoid some of the subjectivity inherent in these tests, it has been suggested that an alternate base year or base period is appropriate; like the base year, it would be a relatively recent period, perhaps the last 2 years or the year prior to the base year.

New York State has such a provision—the previous base year prior to the regular year. If the claimant does not meet the work period requirement for the first base year, a stiffer requirement can be applied to the previous year.

New York reports that there have been very few occasions to use the alternate. And there are record-keeping problems associated with its use.

Findings

The Commission finds that the time-at-work criterion is sound and its use should be encouraged. However, some members of the Commission are concerned about such industries as entertainment, performing arts, and moviemaking, where there may be but relatively little compensated work time.

The Commission prefers to leave it to the States' discretion to determine at exactly what levels of base period work the insured status should begin.

There is great variability in the number of weeks of work the States require for workers to qualify for 26 weeks of benefits, ranging from 14 to 52 weeks of employment. Relating the duration entitlement to base

period earnings abolishes uniform duration, a decision the Commission thinks should continue to be left to the States. But the range in the relationship of benefit weeks to base period weeks worked is now too broad. The Commission thinks there should be some limits to this range.

Recommendations

The Commission makes the following recommendations for action by the States:

1. For purposes of measuring base period attachment, the Commission recommends that, where there is to be a single requirement, it be in the form of a weeks-of-work test or an equivalent in terms of a multiple of high-quarter wages. Where a State desires to provide an alternative in the form of a flat dollar earnings requirement, this amount should be adjusted periodically with changes in wage levels.

Adopted by recorded vote of 7 yeas (Commissioners Coleman, Crosier, Daniels, Morris, Seidman, Cohen, Sullivan), 4 nays (Commissioners Bivins, Cooper, Hill, Sanchez).

2. While the Commission members are not all agreed as to a single relationship between base year weeks and benefit weeks, a large majority of the Commission holds the view that any requirement of more than 39 weeks for 26 weeks of benefits is clearly excessive and that it is desirable that States which have not already done so move, gradually if necessary, to requirements substantially below 39 weeks for 26 benefit weeks. In addition, the Commission is agreed that, to be eligible for the maximum duration of benefits, the minimum requirement should be not less than 14 weeks.

[See section 12.0, "Commissioners' Supplemental Statements."]

4.2 Weekly Benefit Amount

Background

One of the most controversial issues in unemployment insurance (UI) is the level of the weekly benefit amount (WBA). In the United States the principle of a wage-determined benefit is well established, unlike some nations that provide flat benefit amounts. The American model has always varied benefit amounts on the basis of the jobless worker's previous earnings. The question, however, is what should be the relation of benefit amount to wage loss?

Wide agreement exists that the WBA should be no more than some fraction of prior weekly pay in order to encourage individuals to return to work. At the same time, the appropriate benefit amount should be sufficient to help workers and their families maintain their basic standards of living between jobs. With these considerations in mind, the Commission reviewed several policy questions.

What is meant by an "adequate benefit"? Since the beginning of the program, people generally have understood that the appropriate WBA should equal half of a worker's normal pay, or more under particular conditions. This is based on the principle that individuals looking for a job should not face substantial alteration in their lifestyle, such as having a mortgage foreclosed or defaulting on a car loan. The proportion of wages spent for necessary items is greater for workers with low earnings than for better-paid workers. While all but

three States use formulas designed to yield a specified proportion of earnings, between the minimum and maximum ends of the benefit spectrum, a few States supplement the basic WBA with allowances for individuals with dependents (13 States) or lower wages (10 States).

Formulas used to relate the benefits to earnings are of three kinds, which differ primarily in the periods used to compute average weekly earnings. One type averages all weeks worked in the base year. Another type averages earnings for the 13 weeks in the base-year quarter when the individual's earnings were highest. The third type, the annual wage formula, averages earnings over the whole year.¹

While the objective has been to protect workers from at least half their wage loss, in actuality, the failure of most States over the last 40 years to increase their statewide maximum benefit in direct proportion to rising wages has circumvented this goal. In no States do the great majority of beneficiaries receive at least half their weekly wage loss; and in seven States fewer than 50 percent of claimants receive half of their lost earnings (see Table 1).

Not surprisingly, empirical studies show that benefits are most adequate for single workers who are not household heads, least adequate for household heads (or primary wage earners), and especially inadequate for single earners with large families.² The problem is most acute among individuals drawing the maximum benefit amount, suggesting that low maximum benefit amounts rather than individual benefit formulas are the cause of inadequacy. At the other extreme, the lowest-paid

TABLE 1. Estimates of proportion of claimants receiving at least 50 percent weekly wage replacement under State laws, 1979

Alabama	44.8	Montana	62.1
Alaska	INA*	Nebraska	51.0
Arizona	53.1	Nevada	55.2
Arkansas	64.4	New Hampshire	INA*
California	48.0	New Jersey	52.8
Colorado	65.1	New Mexico	56.5
Connecticut	60.1	New York	54.3
Delaware	67.8	North Carolina	71.2
District of Columbia	67.2	North Dakota	67.6
Florida	45.8	Ohio	55.1
Georgia	50.9	Oklahoma	63.7
Hawaii	68.8	Oregon	INA*
Idaho	65.6	Pennsylvania	72.7
Illinois	63.6	Puerto Rico	INA*
Indiana	34.1	Rhode Island	62.1
Iowa	67.2	South Carolina	67.5
Kansas	64.5	South Dakota	65.4
Kentucky	59.3	Tennessee	57.2
Louisiana	70.6	Texas	51.0
Maine	55.9	Utah	70.1
Maryland	49.6	Vermont	62.9
Massachusetts	61.1	Virginia	60.6
Michigan	41.9	Washington	63.7
Minnesota	64.2	West Virginia	INA*
Mississippi	53.2	Wisconsin	68.5
Missouri	45.8	Wyoming	60.9

* Information not available.

workers receive grossly inadequate benefits, as their wages are already so low that any reduction is especially injurious, a problem beyond the capacity of UI.

A 1972 New York study found that all workers who had been unemployed for 5 months had reduced spending power; 40 percent had withdrawn savings or cashed bonds; over 25 percent had postponed paying bills, gone into debt, or gotten financial help from friends or relatives.³ Generally, the proportion of UI beneficiaries who are forced to go on public assistance after exhausting benefits is small, but 5 to 10 percent do.

While a wage-related program cannot provide adequate treatment for everyone, deficiencies can be corrected through weighted schedules (for those with lower incomes), higher maximums, and dependents' allowances. The most important of these is the benefit maximum.

What is an appropriate maximum benefit amount? The purpose of the maximum benefit is to put a ceiling on the dollar amount paid to any individual. In the absence of a maximum WBA, a few highly paid workers would receive a disproportionate amount of the available benefit payments.

The level of the maximum is important because claimants with higher wages than those required for the maximum WBA receive a progressively smaller proportion of their wage loss. If, for example, benefits are computed as 50 percent of the worker's earnings and

the maximum is set at \$100, only those workers whose weekly wages were \$200 or less will receive a 50 percent wage replacement when they become unemployed. A worker whose wages exceed \$200 will receive only the \$100 maximum. A worker whose weekly wages are \$300 will receive only a one-third replacement.

The early State laws set their statewide maximums high enough so that only a small minority of claimants were affected by them. In this way, the great majority could receive half their wage loss under the individual benefit formula. But as wage levels rose, the maximums were not increased proportionately, and an increasing number of workers qualified for the maximum and were thereby prevented from receiving a 50 percent wage replacement.

Although considerable improvement has occurred in the statewide maximums relative to statewide average weekly wages in recent years, they still do not bear the relationship established in original State laws. Maximums originally were much higher relative to average wages than they are today. No maximum today exceeds 70 percent of average wages. In 1939, some 20 States had maximums between 70 and 100 percent of average wages.

The rise in wage levels since World War II and the lag in legislative adjustments of the maximums are jointly responsible. The use of flexible maximums (indexed to average weekly wages) may prevent this kind of lag in the future once they are pegged at the desired level.

Several Presidents have recognized the problem and have recommended Federal benefit standards. President Eisenhower declared in 1954 that States should provide maximum WBA's high enough to permit the "great majority" of beneficiaries to replace at least ½ of "regular earnings." But only Democratic Congressmen submitted bills pertaining to Federal standards and no serious congressional consideration was given to this matter until 1959, when the House Ways and Means Committee held hearings on the UI program. In that year a bill was proposed by Congressman Karstens of Missouri providing for Federal minimum benefit standards, but it failed by a single vote.

The Kennedy and Johnson administrations proposed minimum standards for individual and statutory maximum WBA's, as well as standards for potential duration of benefits. Bills submitted to the House and Senate stipulated that the minimum WBA was to be at least 50 percent of average weekly earnings exclusive of dependents' allowances. The maximum weekly benefit was to gradually increase from 50 percent of a statewide average weekly wage in July 1967 to 66.6 percent in July 1971. An attempt to legislate benefit standards failed in 1966.

In a July 1969 message to the Congress President Nixon proposed that all State UI programs guarantee

that 80 percent of insured workers receive a benefit of $\frac{1}{2}$ of their previous wages if unemployed. Subsequently in 1973 the administration more specifically defined the aforementioned goals and proposed that they could be attained by raising each State's maximum benefit amount "to at least two-thirds of the average wage for that State's covered workers."⁴ This proposal was introduced in June 1973 by Congressmen Wilbur D. Mills and Gerald R. Ford as part of the Job Security Assistance Act of 1973.⁵

During the 1960's and 1970's, the selection of 66 $\frac{2}{3}$ percent of wages as the level necessary to achieve the goal of a 50 percent wage replacement for 80 percent of insured workers was based on calculations made in the 1960's using Social Security data.⁶ Data now available to the Commission suggest that this was an underestimate.⁷ Maximums higher than two-thirds of wages would be needed to meet the desired objective of a 50 percent wage replacement for the great majority. Furthermore, the levels required to accomplish this objective vary considerably from State to State (see Table 2).

Estimates presented to the Commission show that, even if all States were to set their maximums at two-thirds of statewide average weekly wages, only one would then provide 80 percent of covered workers with a 50 percent wage replacement. To achieve the 80 percent objective, maximums would have to vary from 67 percent to 76 percent of average weekly wages (see Table 2).

Are dependents' allowances desirable? Adding weekly allowances for claimants' dependents is an approach followed by 13 States for supplementing the benefits of unemployed workers with families. Dependents' allowances may be expressed as a flat amount per dependent, as a percentage of the weekly benefit for each of a specified number of dependents, or as part of benefit schedules which provide a maximum benefit amount that varies according to the number of dependents.

Should gross or net earnings be used as the determinant of benefit levels? States have used gross earnings as the basis for determining benefit levels since the inception of the UI program. At the time, income taxes were much lower and taxes were not deducted from paychecks. However, the dramatic jump in withholding taxes has caused gross and net wages to diverge substantially. Some argue that relating benefits to gross earnings understates the more meaningful relationship of benefits to net pay.

From another viewpoint, laid-off workers forfeit many fringe benefits, including pension accumulation, health insurance, and other perquisites of monetary value. If net earnings rather than gross earnings are used to determine benefit levels, such fringe benefits should also be considered.

Some practical problems emerge in using either of these factors in benefit determination. The use of net wages to calculate benefits poses serious administrative difficulties because of the discretionary features in withholding taxes, under which taxpayers are free to make claims for any number of dependents. Their net tax is only reconciled once at the end of the year. The inclusion of fringe benefits in the calculation of weekly or quarterly earnings compounds the problem, as their particular value fluctuates among claimants. Even more problems would occur if benefits were determined in relation to take-home pay. In addition to the problems posed by trying to neutralize discretionary withholding, there would also be the question of how to take account of nonwage remuneration. It is widely believed, however, that the take-home-pay replacement rate is pivotal in the consideration of work incentives.

What is the effect of the WBA on work incentives?

Some estimates of WBA effects on work incentives have been made that are consistent in their findings. The Commission did not contract for further work in this area because the best data base has not yet become available.⁸

If replacement rates are too close to take-home pay, then there can be a presumption of disincentive. National surveys of replacement rates show that 10 to 15 percent of claimants may have, under the present benefits levels, a net wage replacement rate of over 80 percent. Presumably these are most frequent among low-wage-earners and heads of large families in States that pay dependents' allowances.

Because individuals are different and face different obligations, there undoubtedly are some even with replacement rates below 80 percent who feel some work disincentive on receipt of UI. Many of the studies on the disincentive effect of UI on claimants appear to be inconclusive. However, some estimates suggest that a 10 percent increase in replacement rates is accompanied overall by an increase in duration spells of from half a week to a week.⁹ If this is true, it may indicate either a disincentive to return to work or an opportunity for more intensive job search efforts and ultimately better matching of workers and jobs.¹⁰

What would be the cost of higher WBA's? In general the answer to this question lies in how far the State is from the desired maximum and what the shape of the distribution of wages is. So it varies considerably from State to State.

Assuming a 7.5 percent unemployment rate, the relative increase in cost in 1980 of setting benefit ceilings to at least 55 percent of average wages would be about 15 percent overall, ranging from 9 percent

TABLE 2. Existing and proposed maximum weekly benefit amounts

State	Max. WBA Jan. 1, 1980 (excludes dependents' allowances)	Average weekly wage 1979	Max. WBA as percent of 1979 wages	Max. WBA set at 66.7 pct of 1979 wages	Maximum WBA levels needed to provide 80 pct of covered workers with a weekly benefit of half their wage loss	
					Amount	Percent of 1979 wages
Alabama	(\$) 90	223	40	(\$) 149	(\$) 159	71
Alaska	90	409	22	273	*	*
Arizona	95	238	39	159	175	73
Arkansas	136	204	66	136	146	71
California	120	267	44	178	200	74
Colorado	150	245	61	164	182	74
Connecticut	134	262	51	175	186	70
Delaware	150	266	56	177	190	71
District of Columbia	181	282	64	188	191	67
Florida	95	222	42	148	157	70
Georgia	90	224	40	150	156	69
Hawaii	144	230	62	154	165	71
Idaho	132	222	59	148	162	72
Illinois	133	277	48	185	201	72
Indiana	74	258	28	172	191	74
Iowa	131	232	56	155	173	74
Kansas	136	227	59	152	165	72
Kentucky	120	236	50	157	171	72
Louisiana	149	247	60	165	184	74
Maine	96	200	48	134	147	73
Maryland	120	234	51	156	166	70
Massachusetts	131	241	54	161	175	72
Michigan	97	312	31	208	*	*
Minnesota	162	245	66	164	185	75
Mississippi	90	197	45	132	141	71
Missouri	105	241	43	161	180	74
Montana	131	215	60	143	159	73
Nebraska	106	214	49	142	157	73
Nevada	123	248	49	166	175	70
New Hampshire	114	217	52	144	157	72
New Jersey	123	267	46	178	191	71
New Mexico	98	222	44	148	158	71
New York	125	274	45	183	195	71
North Carolina	130	210	61	140	146	69
North Dakota	143	213	67	142	159	74
Ohio	128	270	47	180	190	70
Oklahoma	156	232	67	155	167	71
Oregon	138	254	54	169	188	74
Pennsylvania	162	253	64	169	181	71
Puerto Rico	84	150	56	100	*	*
Rhode Island	120	218	55	146	154	70
South Carolina	114	207	55	138	147	71
South Dakota	119	192	61	128	145	75
Tennessee	110	218	50	146	152	69
Texas	105	249	42	166	182	73
Utah	150	230	65	153	175	76
Vermont	125	208	60	139	151	72
Virginia	122	223	54	149	157	70
Washington	150	274	54	183	204	74
West Virginia	184	261	70	174	186	71
Wisconsin	160	245	65	163	181	73
Wyoming	(\$) 146	(\$) 265	55	(\$) 177	(\$) 204	76

* Information not available.

in some States to over 100 percent in Alaska. This estimate assumes that annual wage benefit formulas are abolished. This is based on the fact that annual wage formulas are inconsistent with a Federal standard calling for a specified replacement of weekly wages. The estimates of cost assume also that those States

with a maximum above 55 percent would not reduce their benefits.

If maximums were raised to 60 percent, the national average cost would rise by about 19 percent and at 66⅔ percent would rise by some 25 percent above current levels.

Findings

The Commission believes that one goal of the UI system is to ensure that benefits are directly tied to workers' recent prior earnings. This wage-related character of UI distinguishes it from public assistance, which includes tests of need. Substantial proportions of claimants in several States receive benefits equal to less than half of their prior earnings. The shortcomings in adequacy would be diminished considerably with improvements in the maximum benefit.

Accomplishing this objective would require a different maximum benefit amount in each State, but it is a reasonable target for each State to set a flexible statewide maximum of two-thirds of its average weekly rate.

A majority of States (36) already provide maximum weekly benefits that are indexed to State average wages. About half of the States provide for an indexed maximum of 55 percent or more of State average wages, including 12 States at two-thirds or more. It would therefore be consistent with State precedent and experience if all States were to provide a maximum weekly benefit amount indexed to State average wages.

Recommendations to the Congress

The Commission recommends that the Congress enact amendments to the Federal Unemployment Tax Act (FUTA) as follows:

For approval of its State UI Law, each State must:

1. State Maximum Weekly Benefit Amount. Each State must have a maximum weekly benefit amount which is not less than two-thirds (66⅔ percent) of the average total weekly wages in covered employment in the State in the preceding year.

This requirement should be phased in by intervals of two years for each incremental increase: 1982, 55 percent; 1984, 60 percent; and 1986, 66⅔ percent.

*Adopted by recorded vote of 7 years
(Commissioners Coleman, Daniels,
Morris, Oakar, Seidman, Sullivan,
Cohen), 5 nays (Commissioners Bivins,
Cooper, Crosier, Hill, Sanchez).*

[Commissioners Bivins, Cooper, Crosier, Hill, Sanchez: The Federal-State system has served our country well and will continue to serve well if the balance is not destroyed. The balance between Federal and State functions is necessary for a successful program. Conditions vary greatly from State to State. Benefit amounts and eligibility provisions should meet the needs of the locality served. To transfer these functions to the Federal Government will ultimately result in complete federalization.]

2. State Weekly Benefit Amount, Wage Replacement Rate. Each State must provide a weekly benefit amount (exclusive of any dependents' benefits) between the minimum and maximum weekly benefit which averages at least 50 percent of the individual's average weekly wages based on the high quarter or an appropriate equivalent basis as determined by the State.

*Adopted by recorded vote of 7 years
(Commissioners Coleman, Daniels,
Morris, Oakar, Seidman, Sullivan,
Cohen), 5 nays (Commissioners Bivins,
Cooper, Crosier, Hill, Sanchez).*

Recommendations to the States

1. Weekly Benefit Amount and Wage Replacement Rate.

a. Within State maximum, individual WBA should not be less than 50 percent of the average earnings from full-time weeks worked within the base period.

b. The Commission urges that States proceed, with due regard to the financing aspects, to move to a WBA of 60 percent for claimants below the State maximum.

*Adopted by recorded vote of 9 years,
2 nays (Commissioners Hill, Cooper).*

c. Maximum WBA in a State should be related to the average weekly wage for all covered workers in the State. All members believe that maximum should be 60 percent of the average weekly earnings level. A majority of the Commission believe it should be 66⅔ percent. Some believe it should be 75 percent.

d. Maximum WBA should be adjusted periodically by administrative action to ensure that a significant percentage of all claimants (75 to 80 percent) have a replacement of at least 50 percent of wage loss.

e. In so doing there should be no reduction in proportion of covered workers or claimants receiving a higher replacement rate below the maximum WBA.

2. Dependents' Allowances. The decision as to whether or not to include dependents' allowances in the UI benefit is one for State determination. In the judgment of the Commission the inclusion of dependents' allowances is consistent with a wage loss social insurance program.

If a State wishes to add dependents' allowances, the provisions for those allowances should be equitable, should not discriminate in the statutory language or administrative practice as to the sex of the spouse, and should not require scrutiny of the family finances of any claimant.

[See section 12.0, "Commissioners' Supplemental Statements."]

Footnotes

1. Alaska, New Hampshire, Oregon, and West Virginia use the earnings averaged over the entire year.

2. For a review of the literature on adequacy of benefits, see Paul L. Burgess and Jerry Kingston, *Adequacy of Unemployment Benefits: An Analysis of Weekly Benefits Relative to Preunemployment Expenditure Levels* (UIS/ETA Department of Labor, 1978).

3. *Family Support and Expenditure Survey of Unemployment Insurance Claimants in New York State, September 1972–February 1974* (New York State Department of Labor, 1977).

4. Message from the President of the United States, House Document No. 93–83, 91st Cong., 1st Session, April 12, 1973.

5. H.R. 8600.

6. The Unemployment Insurance Service made the calculation in 1965 using the Social Security wage distributions.

7. The Commission source is a computer model updating the Survey of Income and Education (SIE) for the wage distribution in each State. Accuracy has been checked for a few States against available data from the Continuous Wage Benefit History (CWBH) samples.

8. The conclusion of a 1977 panel on this subject (see *Industrial and Labor Relations Review*, July 1977) was that further meaningful work would have to await CWBH in a national data base.

9. See Daniel S. Hamermesh, *Jobless Pay and the Economy*, pp. 31–58, for a review of the literature.

10. These comments are limited to the effect of the WBA on work incentives. For an assessment of all the literature on both the labor supply and labor demand side of the question and what research on disincentives has yet to be done, see Allen L. Gustman, "Analyzing the Relation of Unemployment Insurance to Unemployment," mimeographed (Hanover, N.H., Dartmouth College, June 1980).

4.3 Duration of Regular Program and Waiting Period

Background

The duration of regular benefits provided by the State laws has changed considerably since 1939. At that time, actuaries doubted the system could afford any more than 16 weeks of potential benefits for a claimant. Benefits for a limited period tied to wage loss helped distinguish unemployment compensation (UC) from relief or welfare. During periods of unusual unemployment and severe business depression, UC was to provide only "the first line of defense." The State duration provisions still provide that first line of defense, but it is at a different position on the terrain, with some State maximums at 26 weeks and higher, and a national average potential benefit of about 24 weeks. Additional lines of defense, in the form of extended and supplemental benefits, have been added at Federal initiative and with Federal financing. These programs are discussed in chapter 5.1. Here the subject is the regular State duration policies.

Current provisions. At the present time, 11 jurisdictions provide uniform duration, that is, the same number of weeks to every claimant. One provides benefits for 30 weeks and another for 28 weeks. Eight States provide for 26 weeks; Puerto Rico provides for 20 weeks.

The "variable duration" States calculate a specific duration for each claimant. States with an average weekly wage formula specify the number of benefit

weeks as a fraction of the number of weeks worked in the base years, for example, 1/2, 3/5, 7/10, 3/4, and 4/5.

The rest of these States vary the duration of benefits for claimants depending on their earnings record in the base year. The total entitlement is limited to some fraction of base period earnings, as follows:

Entitlement as a fraction of base period wages

3/5	1 State
1/2	1 State
2/5	1 State
36 pct	1 State
1/3	18 States
3/10	1 State
27 pct	1 State
1/4	2 States

The way this works is that the weekly benefit amount (determined from average weeks worked on high quarter earnings) is divided into the designated ratio of total base period earnings to find the number of weeks of entitlement. The larger the fraction in the table above, the more potential weeks of duration for any given weekly benefit amount.¹ For example, workers who earned \$2,800 in their base year in a State that limits total benefit entitlement to one-fourth of earnings qualify for 14 weeks if their weekly benefit is \$50 (2,800 divided by 4 divided by 50 equals 14).

The variable duration formulas, where they are used, are limited by specified minimums and maximums that vary according to the State.

These variations in States' duration provisions are rather significant. For example, a worker with only 15 base period weeks of work might qualify for 30 weeks of benefits in Pennsylvania and none in Florida. A worker at half the U.S. average wage who has worked 39 weeks in the base year could qualify for 31 weeks in Wisconsin and 17 weeks in Indiana.

Effects on significant measures. It has been shown in many studies that the length of potential entitlement permitted by State policy is a crucial factor, along with the level of unemployment, in determining how many claimants will exhaust their benefits.² It is quite clear from the data that, as the rate of unemployment rises, the length of the individual spells of unemployment increases, and a higher proportion of the unemployed exhaust their benefits before becoming reemployed. In two similar States with the same rate of unemployment, the one with the longer average potential benefits will have the lower exhaustion rate.³ This suggests the usefulness of the exhaustion rate along with average potential benefit weeks as a tool for analyzing the adequacy of duration provisions.

Exhaustion of benefits is in most cases a serious matter for the workers concerned and the families involved. Major economic adjustments have to be made.

In theory it might be possible to allow workers to draw benefits as long as necessary, which would give a zero exhaustion rate. However, such a policy would require that claimants' current availability for work be effectively tested by the eligibility review process throughout their claims.

There is some evidence that this is not the case. In a seven-city study, unavailability, inability to work, or absence of search accounted for about two-thirds of all overpayments. Many of these overpayments were not detected by the agency offices. It has also been suggested by some studies that an additional 10 weeks of benefits lengthens the average spell of unemployment by 1 week. Therefore, a limit on duration of benefits is realistic.

Balancing the adequacy question and the work disincentive issue, the solution that most States have arrived at is an average potential duration of about 24 to 26 weeks. Nationwide this causes 20 to 25 percent of claimants in good times to exhaust their regular benefits. The accepted objective of regular duration is that the great majority, 75 to 80 percent, receive benefits long enough to find employment before their benefits expire.

The main concern is with the relatively low potential duration (and high exhaustion rates) in States that consistently show average potential duration around 20 weeks or less.⁴ These are States that either give less than 2 weeks of benefits for each 3 weeks of work or have a limit on total entitlement of less than one-third of base period earnings; or where the ratio of base

period to high-quarter earnings is less than 3 to 1 for 26 weeks of benefits.

The waiting week. All but 12 States have a "waiting period," ordinarily 1 week, just after the applicant applies, which is not compensated.⁵ It was originally conceived to save benefit costs and to allow time for processing the claim. Electronic data processing has eliminated the administrative reason, but lower benefit cost is still a reason.⁶

There is some possibility that the waiting week has a minor deterrent effect on voluntary quits. Retroactive payment of the waiting week is a built-in incentive to stay unemployed long enough to receive the extra week's benefit. The waiting week serves the role of a "deductible" in casualty insurance, which may encourage prudence but certainly reduces costs.

On the other hand, there is evidence that between 10 and 20 percent of those fully unemployed delay filing their initial claims, which is a kind of self-imposed waiting period on top of the required waiting period. Even more certain is the fact that the waiting week reduces the overall wage replacement rate of the short-term unemployed.

In all States, benefits are paid for the waiting period once the claim is exhausted. That is, the waiting period in itself does not diminish the potential duration of benefits. The additional cost of eliminating the waiting week could alternatively buy approximately 5 additional weeks of potential duration.

Findings

The Commission finds it desirable for a State to provide a structure of benefit duration that assures the great majority of its claimants in good times sufficient duration of benefits that they will find a job before using up their entitlement.

At lower rates of insured unemployment it would appear that, as a whole, State duration provisions accomplish their purpose of providing the great majority of claimants with benefits for the necessary time.

However, within the U.S. average experience, there are several States that clearly have inadequate duration provisions. These States have persisted for many years even in recession situations in a policy of slighting the long-term unemployed among their claimants.

On the question of the "waiting week," the Commission believes that in no case should the noncompensable period at the beginning be longer than 1 week.

Recommendations

The Commission recommends to the States:

1. that their basic State UC program should provide benefits for at least 26 weeks in a benefit year for those with a strong base year attachment (see chapter 4.1);

2. that the noncompensable period at the beginning of the claimant spell of unemployment should be no longer than 1 week.

[Commissioners Cooper, Hill: The imposition of a waiting period—for both total and partial unemployment—is a reasonable requirement for unemployment insurance programs. A waiting period, which some members oppose, is consistent with every actuarially sound insurance program, whether public or private. The imposition of a waiting period does not affect the maximum benefit entitlement of unemployed workers, but rather the distribution of benefits from the first week, when they are generally needed least, to the last week, when they are generally needed most.]

[Commissioners Daniels, Morris, Seidman: We oppose the imposition of a waiting period of any duration. Workers who meet eligibility requirements are entitled to unemployment benefits for the entire period of their unemployment until their benefit period is exhausted. A waiting period is simply a disguised benefit cut.]

While the Commission members are not all agreed as to the requirement for the maximum duration, a large majority hold the view that any requirement of more than 39 weeks worked in a base year to establish eligibility for 26 weeks of benefits is excessive. States which have not done so should move, gradually if necessary, to qualification requirements substantially below 39 weeks for 26 weeks of benefits. The Commission is agreed that, to be eligible for the maximum of 26 weeks of benefits, the minimum base year work should be not less than 14 weeks.

The Commission recommends to the Congress:

1. As an initial Federal requirement for approval of a State law, no State may require more than 39 weeks of work in the base year for a duration of 26 weeks of benefits.

Adopted by recorded vote of 7 yeas (Commissioners Coleman, Daniels, Morris, Oakar, Seidman, Sullivan, Cohen), 5 nays (Commissioners Bivins, Cooper, Crosier, Hill, Sanchez).

4.4 Disqualifications and Continuing Eligibility

Background on issues and options

Since unemployment insurance (UI) is designed for

2. The Congress should move gradually to qualification requirements of less than 39 weeks for a duration of 26 weeks of benefits.

Footnotes

1. In addition a few States have weighted schedules of duration based on the ratio of base period earnings to high-quarter earnings.

2. See Merrill Murray, *The Duration of Unemployment Benefits* (Kalamazoo, The Upjohn Institute for Employment Research, 1974) and Joseph Hight, "Insured Unemployment Rates, Extended Benefits, and Unemployment Insurance Exhaustion," *Proceedings of the Industrial Relations Research Association 28th Annual Meetings*, December 25–30, 1975, pp. 242–249.

3. The interrelations of potential duration, exhaustion, and the insured unemployment rate are analyzed in Walter Corson and Walter Nicholson, "Extending Benefits During Recessions: Lessons From the FSB Experience," *Unemployment Compensation: Studies and Research* (Washington, D.C., NCUC, 1980).

They argue that a 1 percent increase in the unemployment rate tends to be associated with a 4.4 percent increase in the exhaustion rates. Their analysis is in terms of national data.

4. The low States are Florida, Georgia, Idaho, Indiana, and Texas.

5. Some State laws on waiting week requirements make exceptions where unemployment is due to "specific conditions":

- two States waive the waiting period requirement when unemployment results directly from a disaster in which the Governor has declared a State of emergency;
- one State waives the waiting period requirement where a particular layoff was "by no fault of their own";
- one State views the waiting period only in terms of total unemployment and doesn't require one for partial unemployment;
- nine States have waiting periods that are compensable after a certain period (i.e., 3 to 12 weeks).

6. The Department of Labor estimates a saving of \$202 million if a waiting week is initiated in the 12 States that do not have one and if the retroactively compensable arrangements are eliminated in another nine States.

those who are involuntarily unemployed, penalties are applied to those whose voluntary action causes unemployment. These are disqualifying acts and involve such activities as voluntarily leaving employment without good cause, being discharged due to misconduct, refusing a suitable work offer, or participating in a work-

stopping labor dispute. For these actions the UI benefits of the claimant are postponed for a specified number of weeks or for the duration of the worker's unemployment period, all on the grounds that the employees have contributed to their unemployment.

These actions can be distinguished from other questions of work motivation, such as being able and available for work and making an appropriate search for work. These requirements are treated as "continuing eligibility" questions, and benefits are postponed for the length of time the inability or unavailability persists.

Disqualifications and continuing eligibility questions involve many millions of people annually. Nationally, between January and December 1979, there were 195 million claimant contacts; of these more than 4 million claims resulted in a benefit denial or postponement, the largest number being for quitting a job without just cause.

	<i>Millions</i>
Total claimant contacts, 1979	194.48
Total initial claims, 1979	20.16
Voluntary quits	1.32
Discharge for misconduct	.62
Unable to or unavailable for work	1.31
Refusing suitable work	.08
Other	.95

The Commission studied (1) a variety of controversial issues involving the definition and application of disqualification rules; (2) the types and interpretation of continuing eligibility requirements; and (3) the appropriateness of various approaches to the sanctions and penalties used.

How should "good cause" for voluntarily leaving a job or refusing suitable work be defined? There is a policy in most States that permits benefits to be paid where a separation for good cause is related to the work, for example, when the employee is allergic to a new chemical. But some States go further and also allow personal reasons to be included in good cause, such as having to live in a dry climate for health reasons, or quitting to be able to continue to live with one's spouse who has been transferred.

Because of experience rating, some employers object to any such personal compelling reasons being included in the definition on the grounds that the quit is not their fault. A number of States accommodate this objection by not charging the employer's account when personal reasons are involved, but instead "socializing" the cost to the whole fund.

The Commission took considerable testimony from women who were concerned about sexual harassment in the work place, which raised the question of whether this could be a "good cause" for voluntary quit.

Restricted "good cause" provisions may conflict with

accepted concepts and norms of personal and social rights and obligations.

Are all forms of misconduct disqualifying? For how long? State practice here varies considerably. Most States do not disqualify for mere inefficiency, inability, incapacity, ordinary negligence, or good faith errors of judgment or discretion. Those States which deny benefits for these reasons have a short penalty period. All States deny benefits for such misconduct as deliberate disregard of expected standards of conduct, carelessness or negligence of high degree or repetitiveness, wrongful intent or evil design, substantial disregard of the employee's duties and obligations to the employer, and criminal activity on the job.

In each State court interpretations have developed the meaning of the statutes. One controversial question is whether conduct can be disqualifying if it occurs away from the workplace.

Due to the wide range of behavior that can be included in misconduct, there are many differences among the States in the definition of misconduct and the penalties to be applied. Twenty States distinguish between ordinary misconduct and gross misconduct, applying different penalties to the latter, while the others do not make the distinction.

Nine States use a variable number of weeks for the penalty, which permits the agency to adjust the penalty to the level of misconduct. Distinguishing the degree of misconduct is administratively difficult because it adds another level of judgment. In addition to judging whether there was misconduct, the agency must estimate the extent of misconduct in order to figure the appropriate penalty. It can be argued that the responsibility of the UI system should be limited to determining whether the employee's action contributed to voluntary unemployment, and should exclude assessment of the seriousness of the offense and application of appropriate penalties.

Those who support the imposition of stiffer penalties probably do so because they believe it unjust to provide employer-financed benefits to an employee who has voluntarily disregarded employer interests.

How should "suitable work" be defined? This issue is a highly controversial one in the public mind, in part because of confusion with public welfare and assistance, where any job is regarded as an improvement over the "dole." But in UI, where the social insurance concept is that entitlement is an earned benefit for a temporary period, the "suitable work" requirement both recognizes the dignity of the worker and serves to encourage the maximum use of existing skills.

Federal law prohibits denial of benefits for refusing a job that is open because of a strike or because of a requirement to join or abstain from joining a union. It also provides that one can refuse a job without pen-

alty if "the wages, hours, or other conditions of the work are substantially less favorable to the individual than those prevailing for similar work in the locality."¹

This general language has been applied in most States on a case-by-case basis taking into account prevailing wages for similar work in the locality; the degree of risk to the claimant's health, safety, and morals; physical fitness for the work; prior training and experience; prospects for obtaining work; the length of unemployment; the effect acceptance of the job would have on occupational status and union standing; ability to get work at highest skill; and such other factors as would influence a prudent person in the claimant's circumstances.

Opposed to this view is one holding that the UI system cannot afford such a scope of individual differences. Accordingly, it is argued, claimants should be required to take any job or at least any job that pays more than the minimum wage or more than the claimant's benefits.² This approach, it is argued, would reduce the amount and length of spells of unemployment and save benefit dollars. This view considers the suitability of the individual for the job rather than the suitability of the job for the individual.

In actual practice some States now go quite far in requiring claimants to lower their sights as their unemployment lengthens; that is, the States use the flexibility inherent in the present suitable work concept, which includes length of unemployment as a criterion.

At the beginning of the spell of unemployment many workers have expectations of early recall. Both employer and employee stand to lose heavily if the individual is required, as a condition of compensation, to take a job offer tendered by a different employer. For this reason many States give the claimant considerable latitude during the first six weeks.

For how long should benefits be denied in a disqualification? Some States use penalties as long as or longer than the full spell of the unemployment; that is, they completely deny all benefits to the claimant. This is particularly the case with disqualification for voluntary quits without good cause. The full-spell denial is somewhat less frequently used as the penalty for cases of misconduct or refusal of suitable work, but still over half the States apply it in these instances also. The other States either prefer postponement of benefits for a fixed number of weeks (some use cancellation of weekly credits instead of postponement) or for a variable period within a range of weeks with the actual number of weeks to be decided at the time the disqualification is made.

A limited suspension period is based on the concept that the claimant is responsible initially for the unemployment experienced. After a period of time, continued unemployment is the result of labor market conditions and the claimant has become involuntarily

unemployed. According to this view, benefits should be denied for a period no longer than the average duration of a spell of unemployment during normal times, six to eight weeks. The principal difficulty with this concept is that the average is not necessarily applicable to every occupation, industry, and area or to any particular worker's skills and marketability.

The alternative (to which many States have moved) of disqualifying for the entire period of unemployment places primary emphasis on the fact that the claimant voluntarily became unemployed with no immediate job opportunity and that the claimant must accept the full consequences, even if it is a long-term unemployment resulting from an unanticipated recession. The objection to this is that the penalty may turn out to be more severe than the action deserves and that claimants may suffer uncompensated periods of different lengths for the same offense.

Should the potential weeks of duration be reduced by the length of a disqualification period, i.e., should the credit for such weeks be cancelled? If the disqualification is for six weeks and there is no forfeiture provision, claimants who expect to draw their full potential benefit will do so, having suffered no loss other than a delay.

At the other extreme, in many States the duration of benefits may be reduced by the number of penalty weeks. A claimant disqualified for a period equal to the potential duration of benefits (as is possible under some laws) obviously has no benefits for the remainder of the benefit year.

Existing Federal law—IRC, Sec. 3304(a)(10)—provides that "compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income."

This prohibition is against *total* reduction of benefit rights but there are States that have gone so far with their penalties as to reduce all benefit rights except one week, thereby fulfilling merely the letter of the Federal law.

Should the penalty for fraud be more severe than those for other types of disqualification? From the beginning, State UI laws have contained provisions for criminal penalties for fraudulent misrepresentation to obtain benefits. Since these provisions are not always adequate because of the difficulty of obtaining prosecutions, an administrative disqualification for fraud may be appropriate when criminal action is deemed inadvisable.

There is a substantial difference in philosophy between a disqualification for fraudulent misrepresentation and a disqualification for any other cause. The disqualification for fraudulent misrepresentation is intended to deny benefits to the claimant as punishment for a

fraudulent act. Since the disqualification is punitive in nature, its severity should be proportionate to the claimant's fraudulent behavior.

Should availability for only part-time employment automatically make one ineligible? Either by statute or regulation most States interpret the "available for work" requirement as meaning full-time work, regardless of the past work history of the claimant. This has been a point of contention by permanently employed part-time workers who have demonstrated past labor force attachment and wish to continue part-time work.

They argue that if they can satisfy the previous work qualifying requirement and are ready and willing to do work for which they are qualified and which exists in the labor market where they are seeking work, it is unfair to automatically disqualify them.

In support of this view, it can be said that permanent part-time employment has become important to the economy because it provides an economical way for employers to meet predictable variations in business. It also permits smaller businesses to scale personnel to their needs.

For working mothers, who make up the bulk of the part-time work force, their part-time employment is an essential part of family income. In many cases, the family could not get along, or certainly would have serious problems getting along, without the part-time earnings.

Compared to full-time work, part-time work is more likely to be in the low-wage industries. It offers less in the way of wage increases or promotional opportunities and is less likely to provide fringe benefits.

Should temporary illness automatically result in suspension of benefit payments on the grounds of unavailability? The policy in most States answers this in the affirmative on the grounds that such persons are out of the labor force and therefore not unemployed. Under these conditions, they would argue, payment is not consistent with UI objectives.

Other States have taken a less harsh view. They pay benefits to individuals who are temporarily unable to work, provided there is no suitable work available to them. The lapse in ability to work has no significant effect on the continuation of the spell of unemployment. However, simultaneous receipt of UI and statutory temporary disability or sickness benefits, where available, is prohibited.

What requirements should be placed on claimants to demonstrate their availability for work? This is a central question in UI. The law now prohibits one from refusing suitable work; some States also require an active search for work. There are so many ways of searching for employment, and the efficient ways differ by industry, occupation, and local practice. It is impos-

sible to prescribe a set of search behavior rules. Registration for work with the employment service agency is not in itself an adequate proof of search because of the limited number of jobs listed with the employment offices.

Some required job search patterns have turned out to be an unreasonable imposition on claimants and a nuisance for employers, particularly the requirement for a minimum number of employer contacts each week.

What is probably the most effective approach is to help the claimant develop an individualized and reasonable job search plan which takes into account the claimant's occupation, the claimant's special skills, and the local labor market. Several States are currently experimenting with this approach.³

Other innovations have been made at State initiative. In California occasional group meetings are held for job searchers in similar circumstances. These meetings serve as moral reinforcement and support as well as an opportunity for job seekers to share their experiences and information.

Findings

Disqualification and eligibility issues go to the heart of the nature of unemployment compensation as a system of social insurance as distinct from welfare. There are rights and there are responsibilities. There are equities that have to be balanced between employer and employee and social norms that have to be observed. Both employer and employee have an investment in the system.

Most of the legislative policy issues on disqualification and continuing eligibility can and should be addressed at the State level. Variation and experimentation should be encouraged since this area involves a balancing of equities in a changing economy.

However, in the area of cancellation of benefit rights (other than for fraud), the trend has been so strong that the Congress should intervene to correct what is widely regarded as a loophole in the Federal law.

On other matters there is a wide area for differences in State policy. However, there are a few topics on which the Commission urges several States to alter their current practices.

Recommendations

The Commission recommends to the Congress:

1. that the FUTA be amended to provide that State laws may not require any reduction of benefit rights except for fraud or receipt of disqualifying income;

*Adopted by recorded vote of 8 yeas
(Commissioners Bivins, Coleman, Daniels, Morris, Sanchez, Seidman, Sullivan,*

Cohen), 2 nays (*Commissioners Crosier, Hill*), 1 abstaining (*Commissioner Cooper*).

The Commission recommends to the States:

2. that there shall be no disqualification in the case of voluntary quit for "good cause," including sexual harassment and compelling family circumstances;

3. that any disqualification for "misconduct" should mean misconduct related to the claimant's employment, and the duration of the penalty should be variable depending on the severity of the action;

4. that the meaning and application of the "suitable work" provisions should be decided on a case-by-case basis under State laws;

5. that, when the claimant has a reasonable assurance of recall by a base period employer or occupation, the claimant should not be disqualified for refusing another job offer during the first six weeks of unemployment;

6. that disqualification penalties should not include a reemployment and earnings requirement;

Adopted by recorded vote of 5 yeas (Commissioners Daniels, Morris, Seidman, Sullivan, Cohen), 4 nays (Commissioners Bivins, Cooper, Crosier, Hill), 2 abstaining (Commissioners Coleman, Sanchez).

7. that the State law or regulations should set no specific limitation that would automatically disqualify an individual who had a recent record of steady part-time employment. State policy should not interpret job search or suitable work in such a manner as to automatically require availability for full-time work;

Adopted by voice vote with 1 nay (Commissioner Hill).

8. that individuals should continue to be eligible for benefits if they become temporarily ill or temporarily disabled after they have filed a claim, provided there is no suitable work offered to them and they are not receiving disability insurance payments for the same incapacity;

Adopted by recorded vote of 8 yeas, 3 nays (Commissioners Bivins, Cooper, Hill).

9. that, where appropriate and subject to available funding, provision should be made for a job-search plan designed to be carried out by UI interviewer and claimant and taking into account the conditions of the local

labor market and the claimant's skills and experience. The claimant should be encouraged to participate in such a plan but nonparticipation would not of itself constitute a basis for disqualification;

10. that State laws eliminate specific "actively seeking work" availability requirements. The Commission recommends instead that each claimant be required to demonstrate his or her availability for work by doing those things which a reasonably prudent person in his or her circumstances would do to find work. In other words, States should require job search efforts by the claimant that are appropriate in light of such relevant factors as the hiring practices of the claimant's industry, the local labor market conditions of the claimant's occupation, and the claimant's particular circumstances.

The test of availability should turn on the appropriateness of the claimant's job search efforts. Claimants do not meet the test if they fail to make such efforts to find suitable work as are reasonable in their circumstances or if they so restrict the work, working conditions, or locality of work as to in effect establish that no substantial market exists for their services.

If, for any reason, States elect to include specific registration or search for work provisions in their laws, such provisions should be clearly restricted to only those positions, employers, individuals, localities, or industries which would reasonably be expected to be administered properly and effectively by the States with a minimum of paperwork and interference with customary employer and employee responsibilities in a market economy.

Adopted by recorded vote of 8 yeas, 2 nays (Commissioners Cooper, Hill), 1 abstaining (Commissioner Bivins).

[See section 12.0, "Commissioners' Supplemental Statements."]

11. that State law provide in case of voluntary quit and refusal of suitable work that disqualification be for a variable period of weeks within a minimum and maximum fixed by statute and the specific disqualification be set by administrative discretion based on the circumstances in the individual case;

Adopted by recorded vote of 9 yeas, 2 abstaining (Commissioners Cooper, Hill).

12. that any disqualification should apply only to separation from most recent work.

Adopted by recorded vote of 9 yeas, 2 abstaining (Commissioners Cooper, Hill).

Footnotes

1. IRC Sec. 3304(a).

2. See, for example, the proposal, under consideration by the Senate Finance Committee, that in order to qualify for extended benefits the unemployed individual must be willing to accept any job which meets minimum standards of acceptability, which might be defined as "basic health and safety standards, compliance with the Federal minimum wage, and acceptability under existing Federal standards." *Staff Data and Materials Relating to the Unemployment Compensation Program* (U.S. Senate, Committee on Finance, Subcommittee on Unemployment and Related Programs, August 1979), pp. 28-29.

3. The UI Service began urging in 1977, as a way of increasing the effectiveness of search efforts, an eligibility review and reemployment assistance program. Claimants are classified as to their attachment to the labor market and their prospects for reemployment. This classification takes into account appropriate documents such as the new claims form, the report of separation, an eligibility review, and the condition of the current local labor market. Based on the classifica-

tion, one of the following actions is taken with respect to all claimants:

a. the claimants may be referred to the ES for placement or other service,

b. they may be scheduled for an in-depth eligibility interview,

c. they may be referred to the adjudication unit for factfinding, or

d. their records may be flagged for future review.

This early fine-screen processing saves the time of UI and ES Specialists by promptly identifying the services needed by individual claimants. It also assures that job-ready claimants receive maximum exposure to available jobs. Finally, it conserves benefit funds through early identification of those claimants unduly restricting their availability.

The underlying instrument that ties all the program parts together is a systematically updated, written record of all contacts with the claimant. This record, the "Eligibility Review Form," contains information relating to eligibility and availability furnished by and to the claimant, instructions and advice on reemployment that is given to the claimant, and the results of the claimant's job search efforts.

4.5 Partial Benefits and Worksharing

Background on partial benefits

To be eligible for benefits under State unemployment compensation (UC) laws, applicants must be unemployed. They need not be totally unemployed, but their current earnings must be less than the amount they had previously earned. If they work less than full time and earn less than they previously did, they may qualify for partial benefits. Partial benefits are reduced amounts of weekly benefits. Each State has a partial benefits schedule that establishes the benefit amount based on the amount of concurrent earnings.

The simplest of these schedules reduces benefits by \$1 for each dollar of earnings. (This is a 100 percent benefit reduction rate.) Benefits are completely phased out when earnings equal the weekly benefit amount. This means that a week of compensable unemployment is defined as a week of less than full-time work for which weekly earnings are less than the weekly benefit amount.

Two variations of this simple formula have developed; one disregards a small amount of earnings before applying the benefit reduction rate. (This is sometimes called a "disregard" and may be understood as a zero benefit reduction rate for the amount of benefits disregarded.) Twenty-eight States use a disregard that

varies in amount from \$5 to \$25, according to the State.

The second variation is in the benefit reduction rate itself. For example, instead of reducing benefits by a 100 percent rate, benefits are reduced at a rate of 80 cents or 67 cents per dollar of earnings. By losing less in benefits than one gains in earnings, one retains some incentive to work and obtain earnings even though on a reduced or part-time basis.

State partial benefit schedules differ both by the amount of earnings disregard applied to reduce the weekly benefit payable and by the extent the weekly benefit amount for total unemployment is reduced for each dollar of earnings.

At times partial benefits may account for as much as 20 percent of all benefits paid in some States. Therefore, it is important that the partial benefit schedules follow principles that provide incentives to find part-time jobs.

Disincentives to find part-time work can arise from several characteristics of some of the schedules now used. Some schedules still reduce the weekly benefit amount by 100 percent of all earnings above the disregard, leaving workers with no increase in total income for extra efforts expended until earnings exceed the WBA and disregard. Even more discouraging to work effort are those schedules under which (because of "notches" or discontinuities in the schedule) earnings

above specified levels can cause a reduction of the benefit amount greater than the amount of the additional dollars earned. For additional effort, workers' income from earnings and benefits combined decreases.

Smooth schedules (without discontinuities) and with less than 100 percent benefit reduction ratios are desirable, but definite limits constrain the design of the schedules. The earnings levels at which partial benefits completely phase out must not get too close to the worker's previous wage level. Otherwise, a new kind of problem occurs.

For example, if a schedule had a benefit reduction rate of only 50 cents for each dollar of earnings, benefits would not completely phase out until earnings were twice the weekly benefit amount. This may be the same amount as workers' previous earnings, and they could qualify for small benefits with any slight drop in their normal wage. One State avoids this situation by using a benefit reduction rate of 67 percent. At this rate the phasing out occurs when earnings reach $1\frac{1}{2}$ times the weekly benefit amount, or 75 percent of full-time wages.

Background on worksharing

Temporary sharing of a reduced amount of available work is a type of adjustment to recession conditions that is getting increasing attention in the United States. Such programs have been in effect in some European countries for many years. Canada is experimenting with worksharing plans.

The objectives of worksharing are to reduce job loss among those with low seniority or skill during periods of economic downturns, to help firms to retain their trained work force during short downturns, and to reduce hiring and retraining costs.

Some worksharing proposals provide for UC benefits. One such program, Shared Work Unemployment Compensation (SWC), has been enacted on a temporary and experimental basis in California and Arizona.

During periods of temporary economic decline, a firm could reduce the hours of work for all employees instead of completely laying off a smaller number. The workers would then be eligible to receive a prorated percentage of their potential UC benefit amount (instead of a scheduled partial payment as described earlier).

For example, workers reduced from 5 days a week to 3 days would receive a UC payment of two-fifths their normal unemployment benefit entitlement for a full week of unemployment. In addition, of course, workers have a full 3 days of wages.

Under SWC the payments are considerably higher than under partial benefit schedules. In the example just cited, the worker would probably not be entitled to partial benefits because even 3 days' wages are likely to be too high to permit the individual to qualify as partially unemployed under most formulas.

Advantages and disadvantages of shared work compensation. Proponents cite a number of advantages of worksharing for workers: spreading the burden of unemployment more equitably; reducing the amount of fringe benefit loss (particularly health insurance and pensions); and giving more job opportunities to new entrants, young workers, and minorities, who otherwise are the first laid off.

Others point to disadvantages. One of these is that senior workers who might otherwise be protected would suffer some reduction in income and fringe benefits. An important principle of organized labor has been seniority rights—"first hired, last fired." Many unions are opposed to weakening this principle and see potential exploitation of worksharing plans being accomplished through shorter weeks combined with speed-ups, or layoffs of newly hired workers, followed by worksharing for those who are left. This would undermine affirmative action accomplishments.

From the employer's viewpoint there may also be advantages and disadvantages. Advantages are that a greater proportion of the skilled work force is retained during downturns, hiring and training costs are reduced, and long-run productivity is enhanced. The disadvantages are that fringe benefit costs will be higher, work scheduling may be more difficult, and some senior employees may quit to find full-time work with employers not utilizing the program.

Some question whether the decrease in labor mobility would be desirable from the standpoint of the overall economy. Others suggest that society may gain if it assures people who are employed through affirmative action programs that they will participate in worksharing.

Whatever the merits of SWC, it would increase UC costs beyond those now attributable to partial unemployment benefits. On the other hand, SWC for more workers may not aggregate more in cost than full UC for fewer workers.

Findings and recommendations on partial benefits

All State laws provide partial benefits for claimants who work less than regular full-time hours (as defined in each State law). Most State laws completely disregard small amounts of earnings, then reduce benefits \$1 for each dollar of earnings up to the weekly benefit amount. Beyond the disregard, there is no incentive to workers to increase earnings because the combined benefit and wage income is not increased by additional earnings. Moreover, some States abruptly discontinue benefits when earnings equal the weekly benefit amount with the result that an additional dollar of earnings brings a complete termination of benefits and a sharp decrease in total income.

The Commission believes that there should be substantial encouragement to accept as much part-time employment as possible.

The Commission recommends that the reduction of benefits by part-time earnings should not be \$1 for \$1, or 100 percent, but rather a percentage of earnings, such as 80 percent, 75 percent, or 66⅔ percent.

The Commission also recommends that benefits phase out gradually as earnings are increased so that the work incentive continues throughout.

Findings and recommendations on worksharing

The Commission has given consideration to proposals to amend State UC laws to permit payment of partial benefits in cases where individuals work 3 or 4 days a

week as part of worksharing plans. California and Arizona have enacted provisions in their State laws to permit experimentation with and evaluation of such worksharing plans.

The Commission has not taken a position on such plans. States are currently free to include such arrangements in their State laws on a pilot or permanent basis and to evaluate them. The Commission recommends continued study and evaluation of various partial benefit provisions, including worksharing proposals. It urges States, the Department of Labor, and research organizations to participate in such studies and evaluations and to invite employers, labor, and public response to them.

4.6 Taxing Benefits

Background

Unemployment insurance (UI) historically has been exempt from Federal and State income taxes. This tax status was determined by an Internal Revenue Service ruling in 1941.¹ Despite this, in 1979 several factors combined to make part of UI subject to taxation. These elements included long-term changes in the sources and structures of personal income, research findings suggesting that unemployment duration is positively associated with the proportion of wages replaced by UI, and efforts to increase Federal income tax revenues. Currently, UI is subject to Federal income tax under the following conditions: one-half of UI received as a part of annual adjusted gross income in excess of \$20,000 for families with one wage earner, and in excess of \$25,000 for families with two wage earners.

Sources of the controversy. The wage replacement goal of 50 percent of gross earnings for UI was determined in a setting when most families depended on wage earnings from a single worker, had little access to other Federal or State income transfer programs, and paid little or no income taxes. Under these conditions unemployment of the wage earner had predictable and serious impacts on the family's standard of living. Treating UI as tax-free income when virtually all income from wages was already tax-free is understandable. It is simple, it is consistent, and the income replacement rate is predictable.

The sources and composition of family income have changed in three important ways since 1935, when the UI system was established. First, the proportion of families with two wage earners has risen substantially. Second, government income maintenance transfer payments have become a much more significant percentage

of total family income, rising from 4.5 percent in 1933 to 13.1 percent in 1979.² Finally, whereas most families paid no income taxes during the 1930's, the vast majority of families now do so. Personal income taxes rose from 3 percent of personal income in 1933 to 15.6 percent in 1979.³

As a result of these changes, the impact of a spell of unemployment on a family's standard of living is much less certain than it was when the system was first instituted. Even though total family income will decline in all instances when one or more members become unemployed, the amount or percentage by which it will fall is now highly variable, depending on the number of adult wage earners in the family, the family's marginal tax bracket, and the extent of access to government transfers other than UI. Thus, very often for two workers with identical weekly wages and equal spells of involuntary unemployment, the impact on family income is substantially different. The high proportion of dual-wage-earner families has drawn much attention in this regard.

The frequent appearance of high-income families among those receiving UI, combined with the possibility of unemployment occurring among a low-income member of the family, results in wide disparities in the proportion of family income that is replaced by UI. Studies using simulation techniques to estimate the impact of different family situations with regard to levels and composition of income demonstrate that in many instances low-income families experience a greater percentage of net income loss than do families who have identical unemployment experiences but have higher income levels.

This tendency was described in a recent study by Wayne Vroman of The Urban Institute.⁴ The wage replacement percentage was 50 percent for an illustrative low-income family with an unemployed low-wage worker; 42 percent for a high-income family with an

unemployed high-wage worker; and 83 percent for a high-income family with an unemployed low-wage worker. This high replacement rate occurs because the high-income family is in a high marginal tax bracket, and if a low-wage earner becomes unemployed, tax-free UI replaces most of the previously taxed earned income. Low-income families, being in lower marginal tax brackets, have lower proportions of their net earnings replaced by UI. Differences in income tax rates between low- and high-income families cause low-income families to suffer more than high-income families.

This anomaly of very high replacement rates of net incomes may not have been intended or foreseen when the UI program was created. It has been argued that high wage replacement rates (e.g., over 80 percent) result in significant disincentives for workers to seek and/or accept work. If this view is correct, unemployment rates and duration are raised above what they otherwise would have been were UI replacing a lower proportion of net wages.⁵

High replacement of net income by UI is criticized not only because of the possible extension of unemployment duration associated with it, but also because a number of analyses have highlighted the income distribution of families receiving UI versus all families. These analyses all reach similar (and misleading) conclusions that the average annual incomes of families receiving UI are only slightly below those of other families.⁶ Ehrenberg, Hutchens, and Smith found that in 1970, for example, the median income of families receiving UI was only 2 percent below the median income of all families.⁷

In terms of proportions of annual income represented by UI, the research has found that, even though UI represents a greater proportion of family income at very low income levels, the majority of UI income is received by nonpoor families. Higher-income families that receive UI tend to be families having varied income flows, that is, having workers who are subject to short-term layoffs, who are employed in seasonal industries and occupations, and who have irregular patterns of labor force participation. These irregular earnings, when combined with income from other family members, often generate high household incomes. In fact, the bulk of those families' incomes frequently is generated by family members other than those experiencing any unemployment or comes from sources not subject to unemployment (e.g., property).

In addition to the inequities and disincentives to seek work stemming from the sometimes high replacement rates of net income, the nontaxing of UI income reduces the flow of revenue to the Federal Government below what it otherwise would have been. It may not be coincidental that the possible taxation of UI has received more attention since the UI reserve funds have been included in the unified Federal budget. A study

published by the Executive Office of the President estimated that the current tax treatment of UI will generate between \$.25 and \$.45 billion in Federal income taxes in fiscal year 1980 and that making UI fully taxable would generate an additional \$2.5 billion annually.⁸

Is taxing UI a solution? Many persons have argued that the problems of inequity, disincentives to seek work, and income loss to the Treasury previously outlined are sufficient to justify the partial or full taxing of UI. Acceptance of these arguments would require a willingness to accept inequities that are created by taxing UI and to use adjustments in wage replacement rates to increase compliance with job search and work availability requirements.

The UI system was established as an insurance program. Its goal was (and is) to provide workers who become unemployed through no fault of their own with some continuity in income while they are seeking alternative employment. Receipt of this compensation is viewed as a matter of right to eligible workers and not subject to a needs test. In fact, benefit formulas were framed deliberately to ignore consideration of a recipient's income from other sources or current asset position. With minor compromises, the absence of a means test for UI has been one of the cornerstones of maintaining the insurance character of UI and of separating UI from welfare transfers. UI is the first line of defense against extreme hardship caused by unemployment. When a person is unemployed, the family's income stream is already reduced even if UI is being received. To subject this family's reduced income stream to income taxation adds to the unemployed person's sense of injury already caused by the loss of a job.

The potentially damaging impact of even a temporary break in a family's income stream is the main defect of the various studies showing that families receiving UI have median incomes near those of all families. Those studies were all based on annual income flows. In effect, they "smoothed out" the income flow and failed to consider adequately the difference between identical levels of annual incomes—one steady throughout the year and one with a substantial interruption during the year.

The current tax treatment of UI apparently assumes that families earning over \$20,000 annually do not have as great a need for income replacement as do families with lower annual incomes. This assumption is not necessarily correct. Families tend to adjust lifestyles to income flows and make financial commitments based on those flows. The purchase of a house and the assumption of a mortgage commitment is an example. A family that earns \$20,000 and has high fixed commitments will suffer just as much from a drop in income as will a lower-income family with commensurately lower long-term commitments.

The \$20,000 family will generally be in a higher marginal tax bracket than the family with a lower income. Subjecting its UI benefits to income taxes while maintaining the gross wage replacement rate at 50 percent reduces the effective replacement rate below 50 percent and places a heavier burden from unemployment on it than on a lower-income family in which the UI may not be subject to tax. This effect is accentuated if the family, in this example, has a single wage earner whose weekly wages are sufficiently high so as to prevent even the 50 percent gross wage replacement from being achieved. Such a family thus faces a double burden—reduced UI benefits due to the maximum benefit amount *and* due to income tax.

The current limited taxation of UI benefits and the proposals to fully tax these benefits are piecemeal approaches to “reforming” Federal income tax provisions. The tax-exempt status of most UI income may be regarded as a loophole that should be closed, but current tax law currently exempts a wide range of income associated with both labor and capital. In fact, a recent study published by the Congressional Budget Office identified some \$78.5 billion in potential tax revenues from nontaxed capital sources and only \$38.7 billion from labor income.⁹ Since income generated by labor is about three times as great as that from capital, income from capital is already receiving more than its share of “tax breaks.” Treating UI as (partially) taxable income simply tips the balance even further in favor of income from capital.

Subjecting UI to taxation also reduces the automatic countercyclical nature of the UI system. Given the income reductions associated with unemployment, virtually all income from UI will reenter the economy in the form of consumer expenditures. If UI income is taxed, the portion that goes to the Treasury as taxes may or may not reenter the economy, and if it does, it may go to spending units with lower marginal spending propensities than unemployed workers.

The recent studies discussing the range of the income flows to families receiving UI have had the beneficial effect of focusing attention on net income. Even though UI benefits are calculated on a gross wage replacement basis, it is net replacement that counts. Subjecting UI to income taxation reduces these benefits. If applied universally to all UI income, more pressure from workers for increased benefits is likely to occur. The end result could be effective net replacement rates that are close to current levels but that have a structure penalizing workers in higher marginal tax brackets.

Available information suggests that, apart from tax receipt consideration, proposals to tax UI are aimed largely at one group of UI recipients—families with high incomes and multiple wage earners, one of whom earns less than the other (or others). One intent behind these proposals is to increase the job search activities of these workers when they become unemployed.

An alternative approach for accomplishing this goal is to strengthen administration of existing job search and availability requirements. This would require making additional administrative resources available to the UI system.

Findings

1. The composition of family income has changed substantially since the UI system was established. A dominant change has been the increasing proportion of families having multiple wage earners.

2. The impact of unemployment on a family's income, and thus on its standard of living, is much less certain than it was 45 years ago. The result has been increased attention to the prolonged unemployment that allegedly is associated with receipt of UI in families having other sources of income.

3. The UI system has avoided the use of means testing for benefit eligibility and levels. It is an insurance program designed to aid involuntarily unemployed workers because of past labor force attachment. Those families with income streams high enough to subject part of their UI benefits to taxation are not treated equitably.

4. Introduction of taxation of UI further increases the tax advantages already given to income from capital relative to income generated by labor.

5. The estimated gains in Federal revenues associated with the taxation of UI—\$.25 billion to \$.45 billion under current treatment and an additional \$2.5 billion under full taxation—loom large in the context of UI. They are not sufficiently large relative to total Federal tax revenues to justify the inequities introduced by subjecting UI to discriminatory income taxation.

6. Improved compliance with job search and job availability requirements should be accomplished directly through administrative and enforcement means.

Recommendation

Many arguments have been advanced on both sides of the issue regarding the taxation of UI benefits. Given the failure of Congress to treat fully the taxation of all income from various sources, the Commission recommends repeal of current provisions under which a portion of UI income is taxed.

Footnotes

1. I.T. 3447, 1941–1 C.B., 141.
2. U.S. Executive Office of the President, *Economic Report of the President 1980* (Washington, D.C., 1980), pp. 226–227, Table B20.
3. Ibid., p. 228, Table B21.
4. Wayne Vroman, “Taxing Unemployment Com-

pensation" (Washington, D.C., The Urban Institute, 1980), p. 10, Table 2.

5. See, for example, Stephen Marston, "The Impact of Unemployment Insurance on Job Search," *Brookings Papers on Economic Activity*, vol. 1, 1975, pp. 13-60. Surveys of research relating to the impact of UI on duration of employment can be found in Gary Fields, "The Direct Labor Market Effects of the U.S. Employment Insurance System: A Review of Recent Evidence," *Industrial Relations*, vol. 16, February 1977, pp. 1-14, and Alan Gustman, "Analyzing the Relation of Unemployment Insurance to Unemployment," mimeographed (Hanover, N.H., Dartmouth College, June 1980).

6. Income tax models used to compare income profiles of UI recipient households with those of other households have been developed by the Brookings In-

stitution, the U.S. Treasury, the Congressional Budget Office, the Urban Institute, and Mathematica, Inc. The most comprehensive study was conducted by Ronald Ehrenberg, Robert Hutchens, and Robert Smith, "The Distribution of Unemployment Insurance Benefits and Costs," Technical Analysis Paper No. 58, U.S. Department of Labor, ASPER (Washington, D.C., 1978).

7. Ibid.

8. U.S. Executive Office of the President, *Special Analyses Budget of the United States Government Fiscal Year 1981* (Washington, D.C., 1980), pp. 207-238.

9. Congressional Budget Office, "Tax Expenditures: Current Issues and Five-Year Budget Projections Fiscal Year 1981-1985" (Washington, D.C., April 1980), p. 22, Table 4.

5.0 Longer-Term Unemployment

5.1 Extended and Supplementary Extended Benefits

Background

The dramatic increase in the number of unemployed workers exhausting benefits during recessionary periods has prompted the Congress on numerous occasions to provide additional benefit programs. The earliest such programs (1958 and 1961) were temporary and extended overall maximum benefit duration to 39 weeks—an increase of 13 weeks above the usual maximum regular benefit duration. After considerable legislative effort in the sixties, a permanent program of extended duration of 13 weeks was enacted in 1970.

Severe unemployment problems—extremely high insured unemployment rates (IUR's), duration rates, and exhaustion rates—continued to plague the economy from 1971 through 1977 and again influenced the Congress to enact ad hoc programs for benefit extensions. The programs (1971, 1974, and amendments) provided extensions of 13 and 26 weeks—overall duration maximums of 52 and 65 weeks, respectively.

All legislation, as well as current proposals, dealing with benefit extensions are discussed below in detail.

Temporary Unemployment Compensation (TUC) Act of 1958—PL 85-441. This Act represents the first time that benefits beyond the usual State duration were provided. The Act permitted States that signed an agreement with the Secretary of Labor to pay extended benefits (EB's) of one-half the regular duration (up to 13 additional weeks) to individuals who exhausted their benefits. This program of additional benefits began in June 1958 and ended in July 1959. While States were not required to join in this program, 17 States did participate.¹ Another 5 States independently enacted EB programs of their own.² There were no national or State trigger requirements under the TUC program. The program was financed through interest-free loans from the Federal Government to participating States. The loans were repaid by transfers from the participating States' accounts and/or by reducing the Federal Unemployment Tax Act (FUTA) credit offset. The 22 States paying EB's included roughly 70 percent of the workers covered by State UI programs. During the program's existence, just over 2 million workers received payments totaling approximately \$600 million. The majority were claimants who had received less than 26 weeks of benefits before exhausting their regular State benefits.

Temporary Extended Unemployment Compensation Act (TEUC) of 1961—PL 87-6. Following the 1958 TUC legislation, there was some consideration of enacting a permanent program that would automatically trigger on during recessions. However, the next Fed-

eral action taken in 1961 came in the form of another temporary program. The TEUC program provided benefits of one-half the claimant's regular duration (up to a maximum of 13 weeks and a combined maximum of 39 weeks) to workers who had exhausted regular benefits. This program was in effect from April 1961, through June 1962. State participation was mandatory, and there were no trigger requirements. Benefits were financed from the Federal Unemployment Trust Fund by a temporary additional FUTA tax of 0.4 percent (total Federal tax of 0.8 percent) in 1962 and 0.25 percent (total of 0.65 percent) in 1963. Since 6 States already had established their own EB programs and 9 States had lengthened their regular maximums to more than 26 weeks, this Act provided that these States be reimbursed for such benefits and that these benefits be counted toward the 13-week Federal benefit maximum.

Under this program, benefits totaling \$817 million were paid to approximately 2.8 million claimants. About \$46 million of the total represented reimbursement to States paying benefits (regular benefits or their own EB's) in excess of 26 weeks.

Extended Unemployment Compensation Act of 1970—PL 91-373. After the expiration of the TEUC Act, there were several attempts to enact a permanent program of EB duration during recessions. Administration and Interstate Conference of Employment Security Agencies (ICESA) proposals were introduced in 1963 and reintroduced in 1965 (administration bill—H.R. 8282; ICESA—H.R. 7476 and 7477). Hearings were held, but a bill (H.R. 15119) containing an EB program was not reported out of the Ways and Means Committee until May 1966. The House and Senate subsequently passed the bill, but the Senate version included an amendment. Agreement could not be reached in conference, and the bill was not enacted.

In 1969, the administration again proposed an EB plan, and finally, on August 10, 1970, a permanent program of extended duration was enacted as part of the Employment Security Amendments of 1970. Under this legislation, originally EB's were payable nationwide after January 1, 1972, whenever the seasonally adjusted IUR for the nation was 4.5 percent or more for 3 consecutive months. Payments continued until a national trigger ceased when the seasonally adjusted IUR for the nation was below 4.5 percent for 3 consecutive months. (This provision was changed by PL 94-566.)

A State was permitted to adopt such a program on or after October 10, 1970, and was required to do so no later than January 1972. (Only Connecticut, Massachusetts, Michigan, Rhode Island, and Washington had enacted legislation as of October 10; prior to January 1972, when the national trigger could become operative, 22 States had enacted appropriate legislation and had triggered on.) On a State-by-State basis, EB's

were and are now payable whenever the State's unadjusted IUR averaged 4.0 percent or more for 13 consecutive weeks and is at least 120 percent of the average IUR for the corresponding 13-week periods in the 2 preceding years. An EB period ends when the State does not meet both requirements. (PL 94-566 added an optional State trigger.)

Once triggered on either nationwide or in a State, the program must remain in effect for at least 13 weeks. Once the program ends under a State trigger, it cannot begin again for at least 13 weeks. The minimum off period under a national trigger was implicitly 13 weeks since 3 consecutive months with an IUR above 4.5 percent was required to effect a nationwide EB period.

Claimants who exhaust regular benefit rights during an EB period are eligible for up to 13 additional weeks of benefits or the equivalent of one-half of their maximum number of weeks of regular benefits in the State, if that is less. The overall duration of benefits (regular plus EB) is limited to 39 weeks.

The EB program is financed equally (50/50) from Federal and State unemployment insurance (UI) tax revenues. In 1970 and 1971, the Federal share was financed by revenues from a 0.1 percentage point increase (to 0.5 percent) in the FUTA tax. Thereafter, one-tenth of total Federal tax receipts was earmarked for EB's; the tax remained at 0.5 percent. These revenues are credited to the Extended Unemployment Compensation Account (EUCA) within the Federal Unemployment Trust Fund (also created by the 1970 amendments). A ceiling of \$750 million or 0.125 percent of total wages in covered employment, if larger, was established for the account. States that have their own EB programs or regular benefit duration in excess of 26 weeks but not exceeding 39 weeks are reimbursed for one-half of costs associated therewith if such benefits are paid during a national or State EB period as defined by the law.

Starting in October 1972, the Congress acted eight times to temporarily modify the trigger requirements of the permanent EB program, as follows:

1. October 27, 1972. PL 92-599 permitted States to suspend the 120 percent requirement for the off trigger, effective through June 30, 1973.

2. July 1, 1973. PL 93-53 permitted States to suspend the 120 percent requirement for on and off triggers, but the State IUR had to be at least 4.5 percent for on triggers, effective through December 31, 1973.

3. December 31, 1973. PL 93-233 permitted States to pay EB's on the basis of a 4 percent State IUR without regard to the 120 percent requirement, effective through March 31, 1974.

4. March 28, 1974. PL 93-256 extended above provision through June 30, 1974.

5. June 30, 1974. PL 93-329 extended above provision through July 31, 1974.

6. August 7, 1974. PL 93-368 extended above provision until April 30, 1975.

7. December 31, 1974. PL 93-572 extended above provision and permitted States to pay benefits on the basis of a national IUR of 4 percent or more, effective until December 31, 1976.

8. June 30, 1975. PL 94-45 extended above provision until March 31, 1977.

With the enactment of PL 94-566 on October 20, 1976, permanent changes were made in the EB triggering mechanisms. The national trigger was changed to a 4.5 percent IUR seasonally adjusted average, for the most recent 13-week period. This provision was made in order to use the same concept and data as those used for State triggers. In addition, advances made in techniques of seasonal adjustment made it possible to seasonally adjust weekly series rather than only monthly series as in 1970. Also, PL 94-566 assumed no minimum off period under a national trigger. With respect to the State trigger, States are now permitted to suspend or waive the 120 percent requirement if the State IUR equals or exceeds 5 percent. Only 14 States have not incorporated the 5 percent optional trigger; a footnote to Table 1 indicates those States that do not include this option. In addition, Table 1 provides the status of nation and States with respect to EB periods as of this writing. Table 2 shows EB expenditures and the number of first payments for the period 1970 through 1979.

Emergency Unemployment Compensation Act of 1971—PL 92-224. In 1970 and 1971, the continued high level of unemployment, accompanied by a high level of long-term unemployment, resulted in a large number of claimants exhausting their benefits provided by regular and extended UI programs. This situation prompted the Congress to enact the Emergency Unemployment Compensation Act, which created a new temporary tier of extended benefits, or temporary compensation (TC). During the emergency benefit period that lasted from January 1972 through September 1972, claimants were eligible for up to 13 more weeks of benefits or, if less, one-half of their regular benefit entitlement. The overall duration of combined benefits (regular benefits, EB's, and TC) was limited to 52 weeks. Compensation was payable in a State when the rate of unemployment for a period of 13 consecutive weeks was at least 6.5 percent. The rate was derived by adding the State's IUR computed under the EB program and an exhaustion rate obtained by dividing one-quarter of the State's exhaustions of regular benefits in the most recent 12 completed calendar months by the State's average monthly covered employment. In addition, for emergency benefits to be payable, a

TABLE 1. National and State EB trigger rates under PL 94-566, as of September 20, 1980

National indicator insured unemployment rate (seasonally adjusted) for 13-week period ending September 20, 1980, 4.94 percent

	EB indicators		Status of EB periods (beginning date)
	13-week IUR	Percent of prior 2 years	
AL ¹	6.30 pct	186	6-22-80
AK	6.87	81	1-19-75
AZ ¹	2.95	178	7-20-80
AR ¹	5.61	195	6-8-80
CA	3.98	109	7-20-80
CO	2.04	150	7-20-80
CT	3.09	130	7-20-80
DE ¹	4.15	168	7-20-80
DC	3.14	115	7-20-80
FL	2.41	108	7-20-80
GA	3.12	145	7-20-80
HI	3.07	110	7-20-80
ID	5.03	177	2-17-80
IL	5.75	178	6-29-80
IN	5.66	327	3-22-80
IA ¹	3.92	225	7-20-80
KS	3.10	185	7-20-80
KY ¹	6.90	235	6-1-80
LA	2.89	126	7-20-80
ME	4.71	122	3-16-80
MD	3.42	153	7-20-80
MA	3.52	105	7-20-80
MI ²	11.14	248	9-30-79
MN	3.08	229	7-20-80
MS	4.74	178	7-13-80
MO	5.32	195	6-1-80
MT ¹	4.91	172	6-15-80
NE ²	2.00	205	7-20-80
NV ¹	3.41	146	7-20-80
NH ¹	2.28	168	7-20-80
NJ	5.99	111	3-09-80
NM	2.81	127	7-20-80
NY	INA	INA	7-20-80
NC	3.26	201	7-20-80
ND ¹	2.53	168	7-20-80
OH	6.29	306	2-17-80
OK	2.05	166	7-20-80
OR	5.72	195	3-16-80
PA	5.91	150	2-24-80
PR	9.26	69	2-23-75
RI	5.97	108	3-9-80
SC	4.33	204	7-20-80
SD ^{1,2}	1.93	166	7-20-80
TN	5.33	194	6-29-80
TX	1.66	137	7-20-80
UT ¹	3.08	171	7-20-80
VT	4.60	146	7-20-80
VA	2.06	151	7-20-80
VI	3.78	104	7-20-80
WA	5.05	161	7-6-80
WV ¹	6.23	170	6-15-80
WI	5.24	251	3-23-80
WY ¹	1.16	211	7-20-80

¹ State does not have the 5 percent option in its law.

² Trigger indicator as of September 13, 1980.

NOTES: (1) There is a national "on" indicator for the week ending July 5, 1980. Extended benefits are payable in all States for unemployment beginning July 20, 1980. (2) EB indicators shown are in process of being corrected in accordance with the U.S. District Court Order dated August 26, 1980, and are subject to change.

Source: USDOL/ETA/UIS.

State or national trigger (1) must be on or (2) must have been on sometime during the prior 52-week period and the State trigger would be on except for an inability to meet the 120 percent requirement. Once triggered on in a State, the program remained in effect for 26 weeks. The Act provided for financing of the emergency benefits from the EUCA to which repayable advances to the extent necessary were made from general revenues. The advances were to be repaid only if and when there was a distribution of FUTA collections after all Federal accounts in the Unemployment Trust Fund were at the statutory ceiling.

Public Law 92-329 extended the payment of emergency benefits through March 31, 1973. This act also provided that emergency benefits payable after June 1972 be financed from the EUCA—not by repayable general revenue advances but by an 0.08 percentage point increase (to 0.58 percent) in FUTA for 1973.

Emergency Unemployment Compensation Act of 1974—PL 93-572. This Act, referred to as Federal Supplemental Benefits (FSB), created a new temporary program modeled after the Emergency Unemployment Compensation Act of 1971. This legislation supplemented existing unemployment compensation programs by providing additional weeks of benefits in a period of high unemployment to persons who exhausted their benefit rights under the regular State and Federal-State EB programs. Compensation was payable in a State having an agreement with the Secretary of Labor and experiencing the required unemployment levels for weeks of unemployment beginning in 1975. Eligible individuals were entitled to emergency benefits for up to one-half their regular entitlement but not more than 13 weeks; the maximum combined duration (regular benefits, EB's, and FSB) was 52 weeks. Once triggered on, the emergency benefit period remained in effect for at least 26 weeks. Benefits were payable from January 1975 through March 1977. With respect to

TABLE 2. Amount of EB paid and number of first payments for the United States, 1971 through 1979

Year	Total EB paid (in thousands of dollars)	Number of first payments (in thousands)
1971	664,160	1,419
1972	481,525	1,089
1973	142,757	244
1974	538,887	915
1975	2,493,616	4,012
1976	2,293,451	3,253
1977	1,763,843	2,656
1978	708,526	940
1979	249,421	290

Source: USDOL/ETA/UIS/DAS.

triggers, States were *permitted* to start an EB period and an emergency benefit period when (1) the IUR in the State was at least 4 percent or (2) the national IUR was at least 4 percent. States were *required* to start an EB period and an emergency benefit period when (1) the IUR in the State was 4 percent and 120 percent of the rate for the corresponding period in the preceding 2 years or (2) the national IUR was at least 4.5 percent. The benefits under this Act were financed by repayable advances from general revenues to the EUCA.

As part of the Tax Reduction Act of 1975 (PL 94-12), the Congress increased the maximum period for which Emergency Unemployment Compensation was payable from 13 weeks to 26 weeks for the period March 1975 through September 1975. (This 26-week provision was extended through December 1975, and other modifications were made by PL 94-45, as indicated below.)

Emergency Compensation and Special Unemployment Assistance Extension Act of 1975—PL 94-45. This Act included significant changes in the Emergency Unemployment Compensation Act of 1974. As stated above, it extended through December 1975 the period in which individuals could receive up to 26 weeks of emergency benefits. Maximum combined duration (regular benefits, EB's, and FSB) was 65 weeks. Beginning in January 1976 through March 1977, the IUR in individual States (in addition to the requirement that an EB period be in effect) determined whether emergency benefits were payable. There was no national trigger. When the IUR in a State was at least 5 percent but less than 6 percent, emergency benefits were payable for up to 13 weeks; when the IUR was at least 6 percent, benefits were payable for up to 26 weeks. Benefits continued to be financed by the EUCA.

Public Law 95-19 made further modifications in the FSB program. This legislation extended the program through January 1978 but reduced the maximum number of weeks of benefits from 26 to 13 beginning in May 1977, and it provided for general revenue financing of FSB beginning in April 1977. In addition, the law limited the payment of emergency benefits so that no such payment was made more than 2 years after the end of the benefit year for which the claimants exhausted regular benefits. PL 95-19 also added special Federal disqualifications for refusal of suitable work and failure to actively seek work, defined suitable work for the FSB program, and added special penalty and repayment provisions for fraudulent acts on the part of either claimant or employer. Costs for FSB and first payments are shown in Table 3.

TABLE 3. Amount of FSB paid and number of first payments for the United States from 1975 through 1978

Year	Total FSB paid (billions of dollars)	Number of first payments (millions)
1975	2.1	2.15
1976	2.8	2.11
1977	1.3	1.18
1978	0.015	0.003

SOURCE: USDOL/ETA/UIS/DAS.

Recent developments concerning the EB program

Initial Department of Labor (DOL) regulations directed the inclusion of EB and additional benefit weeks claimed (under the interpretation that individuals claiming such weeks represent "individuals filing claims") in the calculation of the State and national IUR trigger rates. However, revised regulations effective February 3, 1980, eliminated such weeks from the computation. Subsequently, a Federal District Court found the new regulation redefining the IUR inconsistent with the 1971 Extended Unemployment Compensation Act and therefore invalid. As basis for the finding, the court order stated that "the Supreme Court has frequently held in cases such as this one arising under the Internal Revenue Code: A long-standing administrative interpretation, applying to a substantially re-enacted statute [as is the case with the EB program], is deemed to have received congressional approval and has the effect of law." Thus, if the EB program is to be amended, the Congress, not the Secretary of Labor, must do the amending.

The anticipated high levels of unemployment in 1980 prompted the introduction to the Congress of two bills that would provide for additional benefits under specified levels of unemployment. H.R. 6540, introduced by Representative William Brodhead, provides for emergency benefits equal to one-half the claimant's entitlement (up to 13 weeks, with overall maximum duration including regular, extended, and emergency benefits of 52 weeks). The program is effective in a State when such State's IUR equals or exceeds 5 percent for the most recent 13 weeks. Once triggered on, the emergency benefit period must remain in effect for 13 weeks. The emergency benefits are financed from general revenues.

The other bill—H.R. 6690—was introduced by Representative Elwood Hillis. This proposal provides emergency benefits to exhaustees of regular and extended benefits equal to one-half their regular entitlement up to a maximum of 26 weeks for a combined maximum duration of 26 weeks. The program is activated when the labor market area IUR equals or

exceeds 10 percent for 4 consecutive weeks. Once triggered on, the emergency benefit period must remain in effect for at least 26 weeks; benefits are financed from general revenues.

Issues concerning extension of benefit duration

The Commission has studied numerous issues related to extended and supplementary benefits (the former refers to benefits from week 27 through 39, and the latter generally represents benefits beyond 39 weeks). Issues discussed below concern the objective of extensions during recessions, the appropriate length of extensions, workable triggering mechanisms, appropriate sources of financing, and the desirability of additional qualifying/eligibility requirements as conditions for extended or supplementary benefits.

Objective and means of increasing benefit duration during recessions. Actually the objective of providing additional weeks of benefits during economic downturns is the same objective as that for providing regular benefits—to assist workers during a period of temporary unemployment until most can become reemployed. Extending benefit duration beyond that of regular benefits recognizes that during recessions an average potential duration of roughly 24 or 25 weeks is not sufficient to provide protection to a great majority (80 percent) of all beneficiaries through their temporary unemployment. As shown in Table 4, during the late sixties, when unemployment was relatively low, exhaustion rates nationally ranged between 18 and 21.5 percent; average potential duration was roughly 24 weeks. In contrast, when unemployment rose in the early and mid-seventies, exhaustion rates climbed sharply to nearly 38 percent. These data show that an average potential duration of about 24 or 25 weeks nationally has been adequate during normal or low periods of unemployment in providing wage loss protection to the majority of beneficiaries until they are reemployed. Such potential duration is not sufficient when unemployment is high. It hardly can be disputed that the length of a temporary period of unemployment increases with severe deterioration in economic conditions.

There are two ways for duration provisions to account for changes in the unemployment situation over the business cycle. One alternative is to provide potential duration under regular State programs (available at all times) that is adequate to cover the longer duration needs of claimants during most periods of higher unemployment. While it can be argued that such a level of potential duration would be excessive for normal periods, relatively few claimants are likely to draw benefits that long under favorable economic conditions since more jobs would be available. Presently, 9 State laws have maximum duration in excess of 26 weeks.³

TABLE 4. Selected unemployment data for the United States from 1950 to 1978

Year	Exhaustion rate (percent) ¹	Average potential duration (weeks) ²	Rate of insured unemployment (percent) ³
1950	30.5	21.1	4.5
1951	20.4	21.4	2.7
1952	20.3	22.0	2.8
1953	20.8	22.1	2.7
1954	26.8	22.4	5.2
1955	26.1	22.7	3.4
1956	21.5	23.0	3.1
1957	22.7	23.4	3.6
1958	31.0	23.5	6.5
1959	29.6	23.6	4.2
1960	26.1	24.0	4.7
1961	30.4	23.9	5.7
1962	27.4	23.9	4.3
1963	25.3	24.1	4.2
1964	23.8	24.2	3.7
1965	21.5	24.1	2.9
1966	18.0	24.2	2.2
1967	19.3	24.5	2.4
1968	19.6	24.3	2.2
1969	19.8	24.4	2.1
1970	24.4	24.6	3.4
1971	30.5	24.5	4.1
1972	28.9	23.8	3.0
1973	27.6	24.3	2.5
1974	31.2	24.4	3.4
1975	37.8	24.3	6.1
1976	37.8	24.0	4.4
1977	33.4	24.1	3.7
1978	26.8	24.5	2.8

¹ Number of claimants exhausting benefits in a calendar year divided by first payments for 12 months ending September 30 for 1950 through 1959 and ending June 30 for 1960 and thereafter.

² The potential duration for each claimant (maximum amount of benefits divided by the weekly benefit amount) divided by the total number of claimants who established an entitlement during the year.

³ Average weekly number of insured employed divided by the sum of the average monthly taxable and reimbursable covered employment.

Source: USDOL/ETA/UIS/DAS.

The other alternative in providing protection to workers is to extend potential duration beyond the limits of the regular State programs during periods of high unemployment. This option takes the view that, since average actual durations of temporary unemployment increase with the unemployment rate, it is consistent with UI objectives to provide some additional weeks of benefits during such periods, thus a triggered program. Presently, four States provide such programs on a solely State-financed basis.⁴ The enactment in 1970 of a permanent 13-week program of EB's appears to have established the latter concept as the appropriate means of providing protection during adverse economic conditions. In further support of this concept is congressional action establishing similar ad hoc programs to provide benefits beyond 39 weeks under severe business downturns. Somewhere between the above approaches—longer State duration and a triggered ex-

tension—was a program proposed in 1963 and 1965 (H.R. 8282) by the administration. The program, Federal Unemployment Adjustment Benefits (FUAB), was designed to provide extended benefits for long-duration unemployment regardless of levels of unemployment. Thus FUAB was a nontriggered program, recognizing long-duration unemployment attributable to technological changes.

Another approach in this category—nontriggered extension—was recommended in “A Proposal for a New Job Security System with Three Tiers of Unemployment Insurance” by Saul J. Blaustein.⁵ The Job Security System is intended to deal with the income support and job search needs of the unemployed by integrating the services it provides in a comprehensive, consistent, and logical manner. The restructured UI scheme consists of three successive tiers, each providing compensation for up to 13 weeks of unemployment. Each tier has its own qualifying requirements and eligibility conditions. State and Federal UI payroll taxes continue to finance all UI payments, but the State-Federal mix varies for each tier. The application of job search services to UI claimants is adapted according to the type of unemployment involved, the needs of the individual, the circumstances of the labor market, and the duration of the individual’s unemployment. Unemployed persons who do not qualify for UI or who exhaust their UI benefit entitlement may receive weekly unemployment assistance (UA) payments provided they can meet the required income test; UA is financed entirely by Federal general revenues. Appropriate job search and related vocational adjustment services also apply to UA recipients.

An issue related to the means of extending benefit duration is whether such extended programs should be required for approval of State law or should be strictly voluntary. The present EB program requires States to pay EB’s under certain economic conditions but permits States to pay such benefits under alternative conditions (termed the 5 percent option and included in 39 State laws). With past experience as an indicator, it is questionable how many States would voluntarily participate in an EB program: 17 States participated in the TUC program, and only 8 States had enacted such legislation prior to the 1970 EB program.

Duration considerations. If the choice is made to extend potential duration during periods of high unemployment (a program triggered by some economic indicator), several other issues emerge. One of these concerns how much the extension(s) should add to potential duration. The approach in the EB and FSB programs has been to add to potential duration in proportion to the individual claimant’s regular benefit entitlement, up to a maximum. The proportionate increase is 50 percent under the present EB program,

up to a maximum of 39 weeks for regular plus extended benefit duration. The FSB program added another 50 percent or, at one time, 100 percent of regular benefit entitlement up to a combined maximum of 52 or 65 weeks. The objective of the proportionate extension is to avoid conflict with the regular duration policies of the States. As a result, the combined regular and extended benefit entitlement varies among individual claimants in the State more or less the same way as does the regular duration alone. The argument for the other approach—a uniform extension—is that during periods of high unemployment all claimants, regardless of their past employment experience and regular benefit duration, face a more difficult task in finding jobs and therefore should receive a uniform period of EB’s. The argument is similar to that for uniform regular benefits but confined to the extension that is financed differently from the way regular benefits are—another factor supporting uniform EB.

Another duration consideration is whether there should be (1) a single extension, as in the present EB programs, or (2) more than one extension, adding successively to potential duration as unemployment rises to increasingly higher levels, as in the FSB program from January 1976 through April 1977 (5 percent IUR—13-week extension; 6 percent IUR—26-week extension). There actually is no firm theoretical or empirical ground for saying that once unemployment reaches a certain level then a specific number of additional weeks of benefits is needed. The problem of matching a single extension to a level of unemployment might be lessened by providing several intermediate trigger points or setting up a continuum pairing employment rates and additional weeks of benefits (an extreme example would be 1 additional week for each 0.1 percentage point increase in IUR above 3.5 percent). However, this array of intermediate levels might be so administratively unwieldy as to be impractical.

The final duration consideration concerns the maximum number of weeks of benefits that should be available under any circumstances. Past extensions provided overall duration limits of 39, 52, and 65 weeks. The 39-week limit has become well established; higher limits raise questions about whether UI support has moved beyond the objective of protecting workers over periods of temporary unemployment. One thing is clear, however: the concept of temporary unemployment changes significantly over the business cycle, and some form of public policy (e.g., additional benefits, public service jobs, etc.) must respond to the change. The need for some response is underlined by the fact that UI exhaustees who want to work presently have no other place to turn.

Triggering mechanisms. Once the choice is made to extend benefits on the basis of some economic indicator, the fundamental question becomes which economic

indicator at what trigger points. In brief, the present EB program uses a 4.5 percent seasonally adjusted 13-week moving average national IUR or, for a State trigger, a 4 percent unadjusted 13-week moving average with the 120 percent requirement as discussed previously. In addition, States are permitted to pay EB's when their IUR is 5 percent. Except for the change in the national trigger to the 13-week average and adding the 5 percent State option, the trigger points are the same as originally enacted in 1970. It is recognized that the Congress acted eight times during the seventies to temporarily modify the triggers. Although there may be some problems (as there would be with all such indicators) in utilizing IUR's with arbitrary trigger points, the IUR approach appears to be the best at this time.

Another trigger consideration is the use of a national indicator as well as a State indicator in activating benefit extensions. An argument for a national trigger is that it has a favorable macroeconomic effect—attempting to restrict the impact of a nationwide business downturn. Another argument for a national trigger is that it meets the needs of the long-term unemployed in States with low individual IUR's. Countering these arguments is the obvious: additional benefits should not be payable in a State in which unemployment levels do not signal economic difficulties.

From time to time, proposals are advanced to operate the EB program on a local basis also, controlled by triggers based on local rates of insured unemployment. The reasoning is somewhat of an extension of the logic that supports operating EB on a State basis in addition to a national one. Local labor markets can experience depressed economic conditions for varying periods of time in the midst of generally favorable conditions elsewhere in the State and in the nation. Also, such areas may experience the effects of cyclical downturns earlier than most places or recover from them much later. To many persons, it appears unfair to prohibit the payment of EB's to long-term unemployed workers in such circumstances simply because workers generally are not affected elsewhere in the State or nation.

The major objection to area triggers is the problem of computing local trigger rates that will operate reasonably. Related to this problem is that of defining the local area. State borders are readily accepted for separate EB operations, especially since State UI laws underlie most of the specifics of the EB payments; the UI program from its inception has considered the State as the fundamental operational unit. To differentiate among local areas within the State, let alone define labor market areas that straddle State lines, poses very difficult administrative problems. Except perhaps for the larger labor market areas, the compilation of local insured unemployment rates may not be feasible, especially with regard to covered employment denominators. On a local basis, attempts to reconcile statisti-

cally the place of filing, the place of work, and the place of residence for claimants and all covered workers appear unlikely to succeed. Neighboring local areas in the same State treated differently because of slight differences in trigger rates of uncertain foundation may create political friction comparable to that which arises over the results of grant fund allocations based on questionable estimates of local unemployment.

There is always great resistance to special treatment for just one part of a State. This would be particularly true in a situation in which substantial cash benefits would be paid to certain unemployed workers and not to others with identical qualifications. A system that draws lines around parts of a State would be totally unacceptable to workers who share all other benefits and responsibilities within a State's borders and thus is difficult to justify.

For State triggers, lack of seasonal adjustment and the 120 percent requirement cause some problems. The required comparisons of the current State trigger rate to the average of the corresponding rates of the 2 prior years (the 120 percent requirement) offer some offset to the seasonal variations in weekly IUR's. The 120 percent requirement also is intended to prevent the continuous payment of EB's in a State that normally experiences an above-average level of unemployment all the time; the State trigger is in this way defined to operate in terms of the State's own experience. The EB program was conceived as additional UI protection during cyclical upswings in unemployment, not for permanent or more persistent periods of high unemployment.

On the other hand, soon after EB experience began to accumulate, it was noted that the 120 percent requirement operated in some States so as to terminate EB's, while the insured unemployment rate remained high simply because high unemployment levels continued for over a year, making the requirement increasingly difficult to satisfy. The Congress believed that EB termination in such circumstances was premature and in 1972 permitted States to disregard the 120 percent requirement for triggering off. The suspension of this requirement was temporary, but it was renewed and modified repeatedly in subsequent years.

In 1976 legislation, the Congress amended the State trigger requirements so as to permanently allow States the option of disregarding the 120 percent requirement if the current 13-week trigger rate is at least 5 percent. Before the 1976 amendments, some States that opted to forgo the 120 percent requirement, especially in the North, triggered on EB payments almost every winter despite the absence of recession conditions. The increase in the required rate from 4 to 5 percent under the 1976 option has made this result less likely. Yet, in early 1978, seasonal rises in insured unemployment activated the trigger in some States and nearly did so in others. Seasonal declines in trigger rates in the fall

of 1977 and after the end of the winter in 1978 probably helped bring about termination of EB payments sooner than would have occurred otherwise. The winter of 1978–79 gave further evidence of this seasonal effect with triggers starting EB payments in Idaho, Maine, Pennsylvania, and Rhode Island. Four other States moved over the 5 percent level in this period, but they have retained the 120 percent requirement and therefore did not pay EB's. No State was near meeting the 120 percent requirement.

Concerning the proposed and recently invalidated redefinition of the IUR for triggering purposes, there are numerous arguments for and against this action, which essentially results in the reduction in the length of the period for payment of EB's. Proponents of a redefinition note that a reduction in the length of EB periods reduces outlays from both State and Federal trust fund accounts. This in turn reduces payroll taxes that are considered inflationary. Also, without redefinition of the IUR, an EB period would be of such duration so as to carry it further into a recovery period, causing tax rates to remain at a higher level longer and possibly overlap into the next downturn. Opponents of a redefinition point out that it would cause some EB claimants to receive fewer weeks of benefits and other claimants to receive no such benefits. Also, proponents point out that a person receiving EB payments is unemployed, as is the individual receiving regular benefits. In addition, since the redefinition would shorten the length of an EB period and decrease outlays, the macro-economic impact of UI would be reduced and recovery from a recession could be impeded. As noted previously, a change in the calculation of the IUR for EB-triggering purposes requires congressional action.

Financing the extensions of benefits. Over time, benefit extensions have been financed by various means. The 1958 TUC program was financed entirely by State funds, and subsequent programs were financed totally by FUTA (TEUC, 1961; FSB, 1975 through March 1977), a combination of FUTA and State funds (EB, 1970), or entirely by general revenues (FSB, April 1977 through January 1978).

Even though the extraordinarily high EB costs of the mid-seventies caused serious financial drains on State and Federal accounts, the present EB financing arrangements (50/50 shared basis) appears to have gained general acceptance. This is not to say that other approaches should not be considered. For example, one alternative is to finance either all EB costs or the Federal share of such costs from general revenues. Supporters of this approach argue that is is inappropriate for employers to bear the full cost (through State and Federal UI payroll taxes) of EB's, since employers' responsibility diminishes as the duration of their former workers' unemployment lengthens. Further, unemployment of long duration may not be attributed to em-

ployer action but frequently to government policy or national and international economic conditions. (For reasons detailed in chapter 6.1, the Commission recommends that EB costs incurred under national triggers, 1975 through January 1978, and all FSB costs be financed from general revenues.) Those opposed to the introduction of general revenue financing argue that it could jeopardize the current balance of Federal-State responsibilities and the program's social insurance characteristics. Opponents argue also that using general revenues would be more inflationary than continuing to use payroll taxes.

Another alternative approach to financing benefit extensions is to use FUTA funds entirely, instead of having the State share come from State unemployment funds. The principal argument in favor of using FUTA funds is that long-term unemployment is generally due to national or international economic conditions and that therefore all employers should share any related benefit costs on an equal basis. However, there is some concern that, if only FUTA funds (or general revenues) are used, States and employers may not be motivated to monitor benefits claims adequately. In addition, financing solely by FUTA may lead to the imposition of additional Federal standards.

A third alternative is to require employee contributions. Arguments for and against their use in financing benefit extensions are virtually the same as those for the financing of regular duration benefits. These arguments are detailed in chapter 6.3.

Additional eligibility requirements. Under present law, extended benefits have been payable without any additional qualifying or eligibility requirements on the claimants beyond those that apply for regular benefits. However, FSB introduced new obligations for recipients by requiring them to be available for jobs substantially below levels of suitability that apply during receipt of regular benefits. In general, FSB rules required a closer scrutiny of the claimant's availability for work and job search activity.

Other kinds of added requirements have been suggested for benefits payable beyond the regular duration limits, including EB's. The latest was a September 1980 administration proposal for an FSB-type program available only to regular and EB exhaustees who had at least 32 weeks of work in their base period. Many of the claimants exhausting regular benefits qualified for EB's with limited prior employment experience—less than 26 weeks or even 20 weeks of work. Many drew fewer than 20 or 15 weeks of regular benefits. In 1975, for example, over half the exhaustees of regular benefits drew fewer than 20 weeks in about 10 States, implying limited base-period employment among this group.⁶ In other States with more liberal duration provisions, exhaustees are more likely to draw 26 weeks, but in several cases, such as California and

Hawaii, even some of these exhaustees qualified with limited base-period employment.

The argument favoring no additional requirements is that nothing has changed that should affect eligibility. The only change is that temporary unemployment becomes longer in high unemployment periods and duration should extend accordingly with no other requirements added.

Findings on extended benefit program

After thorough study of the present Federal-State EB program, the Commission believes that the program has clearly demonstrated its economic and social desirability. The Commission believes that the program should be retained, with some modifications made in the triggering mechanisms.

In view of the expected high levels of unemployment in the near future, the Commission believes that it is inappropriate to initiate any changes before 1981. In addition, States are usually allowed 2 years to make required changes in their laws in order to conform with Federal laws.

With respect to program triggers, the Commission recommends that State triggers be seasonally adjusted so as to eliminate the influence of seasonal factors on EB periods. Seasonal adjustment of State trigger rates will reduce the likelihood of EB periods triggering on and off based on recurring seasonal unemployment changes rather than cyclical considerations.

The Commission also is aware that the 120 percent requirement for State triggers has prevented some States from effecting EB periods at an appropriate time and has caused some States to trigger off prematurely. Further, in noting that the Congress has acted eight times to modify the 120 percent requirement, the Commission believes that this requirement should be eliminated. In 1976, the DOL recommended a State trigger identical to that of the Commission recommendation.

The Commission has reviewed arguments for deleting the national trigger. The Commission believes that the elimination of a national trigger would diminish the program's countercyclical effectiveness. Equally important, it would mean that the long-term unemployed in nontriggered States would not have wage-loss protection.

Primarily because of its unknown impact on the payment of EB's and unfavorable timing, the Commission was initially opposed to the DOL's proposal to change the computation or definition of the IUR for triggering purposes. However, the Commission is now evenly divided on whether such action is appropriate and desirable as a permanent statutory change.

Although the Commission originally was divided on the financing of EB payments under a national trigger, it now supports the present financing arrangements for

State and national triggers. The 50 percent sharing of costs maintains the program's Federal-State relationship and an appropriate division of responsibility.

The Commission considered arguments for imposing on claimants special eligibility requirements for EB payments. The Commission believes that special eligibility requirements are inappropriate. All States already take into account the length of individuals' unemployment in determining the suitability of job offers. As the period of unemployment lengthens, claimants are expected to lower their sights in terms of what they will accept. Accordingly, regular suitable work criteria accommodate somewhat automatically the EB program without the need for special requirements.

Findings on Supplementary Extended Benefit program

The Commission has extensively reviewed the question of providing benefits beyond 39 weeks. The Commission's recommendation for a program of supplemental extension is similar to the ad hoc emergency programs enacted by the Congress and effective in the early and mid-seventies. A Supplementary Extended Benefit (SEB) program would be a major addition to the protection of insured individuals in the labor force; it would also be a significant part of the Federal Government's countercyclical fiscal policy.

The SEB program should be a two-tiered program, with the maximum potential duration within each tier determined by the IUR. The two-tiered approach ensures that the length of extensions is related to the seriousness of the economic decline. The duration within each tier should be variable, with the claimant eligible for benefits equal to 50 percent of regular duration up to a 13-week maximum. The combined overall duration of regular benefits, EB's, and SEB's is 52 weeks under the first tier and 65 weeks under the second tier. To be eligible for SEB payments a claimant must have exhausted regular and extended benefits. The Commission opposed a motion to require 26 weeks of employment (or its equivalent) in the base period for second-tier eligibility.

The program should include a national trigger as well as a State trigger for the same reasons that the EB program has a national trigger. Since an SEB program is basically an extension of the EB program, the base for the triggers for each should be consistent—a seasonally adjusted, 13-week, moving average IUR. The Commission is evenly divided on the question of including EB and SEB weeks claimed in the computation of the IUR.

The Commission is opposed to using local labor market areas as a basis for triggering SEB payments on an areawide basis. In addition to major and costly administrative considerations, there are also serious questions related to equity among claimants.

The Commission believes that a program of supplementary benefits should be financed from Federal general revenues. Funding from FUTA revenues is not practical considering the present and likely future status of the trust fund. Attempts to fund a similar program (Federal Supplemental Benefits) caused a heavy burden of indebtedness on the UI system. Also, an SEB program would be implemented at the height of a recession when FUTA funds could least sustain an additional program. Further, since an SEB program primarily would be implemented as a part of Federal countercyclical fiscal policy, it is appropriate for it to be fully federally funded.

Inasmuch as the SEB program is the first permanent program of benefits beyond 39 weeks and should be enacted without an automatic termination date, the Commission believes that the Congress should undertake a thorough study of its impact after 2 years of operation. Finally, the Commission points out that an SEB program should not be viewed as the sole policy response to deal with serious recessionary problems; other options include tax reductions, public service employment, and public works projects. (See Tables 5 and 6 for EB and SEB program trigger levels under present law and Commission recommendations.)

TABLE 5. Program trigger levels for EB program

Area	Present law	Commission recommendation
National	4.5 percent IUR, seasonally adjusted, 13-week average	Same as present law
State Mandatory	4 percent IUR, unadjusted 13-week average and IUR 120 percent of average IUR for comparable period of previous 2 years	4 percent IUR, seasonally adjusted, 13-week average
Optional	5 percent IUR, unadjusted 13-week average	Not applicable

TABLE 6. Program trigger levels for SEB program

Area	Commission recommendation	
	First tier, 13 weeks	Second tier, 26 weeks
National	5 percent IUR, seasonally adjusted, 13-week average	5.5 percent IUR, seasonally adjusted, 13-week average
State	4.5 percent IUR, seasonally adjusted, 13-week average	5 percent IUR, seasonally adjusted, 13-week average

Recommendations on extended benefit program

The Commission recommends the following to the Congress:

1. The present program, with some necessary changes, should be retained.

Adopted by recorded vote of 10 yeas, 1 nay (Commissioner Bivins).

2. Changes with respect to the national and State triggers should not be made until after the 1980-81 period.

Adopted by recorded vote of 8 yeas, 3 nays (Commissioners Bivins, Cooper, Hill).

3. The State trigger should be a 4 percent insured unemployment rate (IUR), seasonally adjusted, 13-week average. The 120 percent requirement should be eliminated.

Adopted by recorded vote of 8 yeas (Commissioners Coleman, Crosier, Daniels, Morris, Oakar, Seidman, Sullivan, Cohen), 3 nays (Commissioners Bivins, Cooper, Hill), 1 abstaining (Commissioner Sanchez).

4. The national trigger should continue at a 4.5 percent IUR, seasonally adjusted, 13-week average.

Adopted by recorded vote of 7 yeas (Commissioners Coleman, Daniels, Morris, Oakar, Seidman, Sullivan, Cohen), 5 nays (Commissioners Bivins, Cooper, Crosier, Hill, Sanchez).

5. The present financing arrangements, 50 percent State trust fund account and 50 percent Federal Extended Unemployment Compensation Account, should continue for payments effected by both State and national triggers.

6. Eligibility requirements beyond those that apply for regular benefits should not be imposed on claimants.

Adopted by recorded vote of 10 yeas, 1 nay (Commissioner Bivins).

7. The suitable work provisions in State law (and the labor standards in the Federal and State laws) are appropriate and satisfactory to deal with determinations of the conditions relating to suitable work under any EB program. Generally, it is State practice to apply

suitable work provisions (on a case-by-case basis) based on consideration of such relevant facts as the claimant's physical fitness for the work, prior training and experience, prior earnings, prospects for obtaining local work, and prospects for obtaining work at the claimant's highest skills. Also considered are the degree of risk to the claimant's health, safety, and morals; the distance of the available work from the claimant's residence; the length of the claimant's unemployment; and such other factors as would influence a reasonably prudent person in the claimant's circumstances.

Recommendations on Supplementary Extended Benefit program

The Commission recommends the following to the Congress:

1. The Commission supports the basic principle of a program to provide benefits to individuals who have exhausted regular UI and Federal-State extended benefits (generally to begin at week 40 for individuals with regular UI duration of 26 weeks).

*Adopted by recorded vote of 8 yeas,
3 nays (Commissioners Bivins, Cooper,
Hill).*

[Commissioner Bivins: After 26 weeks of UI, some other program should be provided for the unemployed individual.]

2. The program should include a State trigger.

*Adopted by recorded vote of 8 yeas,
3 abstaining (Commissioners Bivins,
Cooper, Hill).*

3. The program should include a national trigger as well as a State trigger; benefits should be payable under either trigger.

*Adopted by vote of 6 to 4 on show of
hands.*

4. For a basic duration set at 50 percent of regular UI entitlement with overall duration including regular UI and extended benefits of up to a maximum of 52 weeks: the State trigger should be a 4.5 percent IUR, seasonally adjusted, 13-week average.

*Adopted by recorded vote of 7 yeas
(Commissioners Coleman, Crosier, Dan-
iels, Morris, Seidman, Sullivan, Cohen),
4 abstaining (Commissioners Bivins,
Cooper, Hill, Sanchez).*

The national trigger should be a 5 percent IUR, seasonally adjusted, 13-week average.

*Adopted by recorded vote of 6 yeas
(Commissioners Coleman, Daniels, Mor-
ris, Seidman, Sullivan, Cohen), 1 nay
(Commissioner Crosier), 4 abstaining
(Commissioners Bivins, Cooper, Hill,
Sanchez).*

5. For an additional duration set at 50 percent of regular UI entitlement with overall duration including regular UI and extended benefits of up to a maximum duration of 65 weeks: the State trigger should be a 5 percent IUR, seasonally adjusted, 13-week average, and the national trigger should be a 5.5 percent IUR, seasonally adjusted, 13-week average.

*Adopted by recorded vote of 4 yeas
(Commissioners Daniels, Morris, Seid-
man, Sullivan), 3 nays (Commissioners
Crosier, Sanchez, Cohen), 4 abstaining
(Commissioners Bivins, Coleman, Co-
oper, Hill).*

6. There should be no labor market area triggers.

7. The program should be financed from Federal general revenues.

*Adopted by recorded vote of 8 yeas,
3 abstaining (Commissioners Bivins,
Cooper, Hill).*

8. The program should be enacted without an automatic termination date and should include provision for review by the Congress after 2 years of operation.

*Adopted by recorded vote of 7 yeas
(Commissioners Coleman, Daniels, Mor-
ris, Oakar, Seidman, Sullivan, Cohen),
4 nays (Commissioners Bivins, Cooper,
Crosier, Hill), 1 abstaining (Commis-
sioner Sanchez).*

[See section 12.0, "Commissioners' Supplemental Statements."]

Footnotes

1. Alabama, Alaska, Arkansas, California, Delaware, District of Columbia, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, West Virginia.
2. Colorado, Connecticut, Illinois, Ohio, Wisconsin.
3. Alaska, 28 weeks; District of Columbia, 34;

Louisiana, 28; Massachusetts, 30; Pennsylvania, 30; Utah, 36; Washington, 30; West Virginia, 28; Wisconsin, 34.

4. California, Connecticut, Hawaii, Puerto Rico.

5. Saul J. Blaustein, "A Proposal for a New Job Security System With Three Tiers of Unemployment

Insurance," *Unemployment Compensation: Studies and Research* (Washington, D.C., National Commission on Unemployment Compensation, 1980).

6. *Unemployment Insurance: State Laws and Experience* (U.S. Department of Labor, Employment and Training Administration, 1978), p. 32.

5.2 UI Benefit Lifetime Reserve Program for Older Workers

Background

Labor force participation rates of older men and women have moved in opposite directions during the last three decades, with those of men falling and those of women rising (see Table 1). The forces behind those opposing trends are complex. The rising participation rates of women can be traced to such factors as economic necessity due to increasing costs of living and family breakups; increased desire to work to raise the family's standard of living; increased ability to work due to decreasing family size; and increased acceptability of women's pursuit of independent careers. Reduction in the labor force participation rates of men appears to be related to a combination of such volun-

tary factors as the greater availability of private pensions and the early retirement option granted under social security in 1962 and to involuntary factors relating to health limitation and labor market forces.

Reasons for labor force withdrawal. There is substantial disagreement over the relative importance of various factors in explaining the increasing tendency for males to withdraw from the labor force prior to age 65. The bulk of the evidence suggests that a mix of factors is involved. Among these is the fact that there are workers who become convinced that no job is available or who have health limitations, either of which may result in the worker's decision to leave the labor force temporarily or permanently. Added to this is the increasing availability of both public and private pension incomes that make retirement possible.

Studies by the Social Security Administration tend to emphasize the role of declining health. One study concluded that 57 percent of the men retiring in the late 1960's at the age of 62 did so because of health reasons.

Other studies emphasize the labor market experiences of older workers. In these studies age is characterized as acting as a proxy for such things as education, specific skills, and mobility. Older workers' relative labor force disadvantage appears to increase during downturns, and their withdrawal rate consequently is higher during these periods. Once out of the labor force, they tend to remain out. Thus they tend not to participate in the increased employment associated with a subsequent upturn.

Compulsory retirement, sometimes cited as a significant factor in labor force withdrawal, especially at age 65, may never have been very significant. The long-term longitudinal survey conducted by Ohio State University suggests that only 3 percent of the retirement can be accounted for by such provisions. With the minimum mandatory retirement age now at 70, mandatory provisions are seen as being even less important in the future.

In a number of studies, the combination of the availability and level of pension incomes and the presence of health problems was found to account for a major portion of retirement.

TABLE 1. Labor force participation rates for older persons by sex, for selected years from 1950 to January 1980

Age group and year	Percent of men	Percent of women
50 to 54 years		
1950	90.5	30.8
1950	92.0	45.9
1970	91.5	52.4
1980 (Jan.)	89.8	57.5
55 to 59 years		
1950	86.7	25.9
1960	87.7	39.7
1970	86.8	47.6
1980 (Jan.)	82.0	49.3
60 to 64 years		
1950	79.4	20.6
1960	77.8	29.4
1970	73.2	36.4
1980 (Jan.)	59.9	33.6
65 to 69 years		
1950	59.7	12.0
1960	44.0	16.5
1970	39.3	17.2
1980 (Jan.)	27.8	14.7

SOURCES: *Employment-Related Problems of Older Workers: A Research Strategy*, R&D Monograph 73, U.S. Department of Labor, 1979. January 1980 data from *Employment and Earnings*, February 1980, pp. 23-24, Table A-3.

On balance, the evidence appears to suggest that older workers simultaneously are being pushed and pulled from the labor force. The "push" factors—health and job displacement—have always been there, but the "pull" factors—greater availability and level of retirement income—are becoming stronger.

Unemployment experience of older workers. Labor force statistics give what appears to be (but is not) contradictory information regarding unemployment among older workers. On the one hand, the unemployment rates among older workers hover around 50 percent of the average rate. On the other hand, duration of unemployment and exhaustion of unemployment insurance (UI) figures suggest that older workers have significant problems.

In 1978, the average unemployment duration was 11.9 weeks; that for workers 45 and over was 19.8 weeks—two-thirds longer than the average. Among males 55 to 64, the average duration was 22.2 weeks; among females in this age group, it was 16.8 weeks (see Table 2).

In 1977, among workers 55 to 64 who became unemployed, 23.2 percent experienced unemployment durations exceeding 26 weeks, compared with 15.8 percent for the total labor force.

Studies of exhaustion of UI benefits uniformly find that exhaustees tend to be older than the UI beneficiary population as a whole. In a major study of Federal Supplemental Benefits (FSB), males and females 55 and above represented 23 percent and 21 percent of FSB exhaustees, respectively, and both groups comprised only 13 percent of extended benefit recipients.¹ The statistics thus indicate that, while the probability of becoming unemployed is lower for older than for younger workers, once older persons become unemployed, they have substantially more difficulty in finding new jobs. The result is the high frequency of extended duration of joblessness for these persons.

TABLE 2. Average duration of unemployment by age and sex, 1978

Age group	Number of weeks unemployed		
	Male	Female	Total
16-19	8.1	7.7	7.9
20-24	11.5	9.9	10.7
25-34	14.0	10.9	12.4
35-44	16.5	11.0	13.5
45-54	19.9	13.7	16.8
55-64	22.2	16.0	19.6
65 +	21.7	17.5	20.3

SOURCE: *Employment and Unemployment During 1978: An Analysis*, Special Labor Force Report #218, February 1979, Washington, D.C., p. A-18, Table 18.

Effects of layoffs. The study of FSB mentioned above traces workers for 1 year following exhaustion of those benefits. During that year, older workers found less employment, had higher unemployment rates, received less income, and had a higher tendency to withdraw from the labor force than younger workers. Older female workers had less success in finding work during this period than older males.

The National Longitudinal Survey of Ohio State University supplied some of the more significant findings regarding long-term effects of layoffs among mature workers. In a sample comprised of workers who had been with their employers at least 5 years and were subsequently permanently and involuntarily separated, these workers had more frequent unemployment spells even after finding new jobs, were more likely to be in a job with lower status, were less satisfied with life, and had significantly lower hourly earnings when compared with those who had not been so separated. Herbert Parnes writes: "The major long-term economic impact of displacement appears to be a substantial deterioration in earnings and occupational status. . . . Moreover, there is no evidence that this adverse impact softens with the passage of time."²

Policies in other countries. Unemployment rates of older workers could be reduced, and subsequent income raised, of course, if adequate pensions were made available and early retirement encouraged. The costs of funding early retirement, however, are very high. With the age distribution of the population changing in such a way as to increase the relative proportion of older persons, this cost would be even greater in the future. In point of fact, public policy has been swinging away from one in which early retirement was encouraged to one in which continued attachment to the labor force is encouraged.

In this regard, a number of other Western countries (e.g., West Germany, England, and France) have recognized the special labor force insurance problems of older workers and have devised UI programs and labor market policies that make possible and encourage the continued gainful employment of persons who wish to work up until at least age 65. Such programs in other countries have a number of common elements, including the following. First, it is common for both the required employment duration for qualification and the duration of benefits to increase with age. Second, central governments participate heavily in the financing of these programs. Third, special training, relocation, and placement programs are used in finding employment for older workers. Finally, subsidies to employers in a number of innovative forms are used to increase the attractiveness of hiring older workers. Any combination of these might be appropriate in any special program that might be devised in the United States.

Extended benefits in the UI system. If the employment-unemployment problems of older workers are to be addressed, the question is whether they should be addressed through a UI-related program or some other income transfer program. If the purpose of a special extended UI benefit program were simply to provide income for these persons, then a number of programs might be preferred to UI. But since the prime goal is to maintain or increase the labor force attachment of older workers, UI would appear to be an appropriate vehicle for aiding these persons.

One of the guiding principles of UI is that benefit duration should be a function of the relative probability of the duration of unemployment. As the unemployment rates rises and the average duration of unemployment lengthens, so should the duration of UI. This argument has been the basis for the various extended benefit programs available to all workers that are operated by trigger provisions. Application of this principle to older workers would seem to justify providing them longer potential benefit durations than the labor force as a whole, since their duration of unemployment is longer.

Findings

1. As workers age, they find it increasingly difficult to find new employment after having left a job either voluntarily or involuntarily. As a result, older workers who are unemployed are overrepresented as long-term UI beneficiaries and UI exhaustees. Partially as a result of this experience, they withdraw from the labor force—not because they want to retire, but because they have become discouraged workers. Unlike younger discouraged workers who reenter the labor market when they perceive increased employment opportunities, however, older persons tend to remain permanently out of the labor force. The result is an increased drain on both work-related and non-work-related income transfer programs and, to the extent total employment is reduced, a loss in national income.

2. The unemployment and labor force withdrawal experiences of older workers summarized above are sufficiently significant to warrant special attention. Experienced workers who have many years' attachment to the labor force are the backbone of the U.S. industrial system. Their experience is a valuable resource that should not be wasted or lost through extended unemployment and early retirement. In terms of human values, society owes a debt to these persons that is not satisfied by pushing them out of the labor force when their preference is to remain productive members of society.

3. The UI system is an appropriate mechanism for providing extended benefits to older workers who have a firm attachment to the labor force and wish to continue working.

4. A number of other countries have led the United States in devising special programs oriented around their UI systems to aid the older worker in finding employment. Their experience, which includes incentives to provide employment, might serve as a reference to the United States.

5. Special UI protection for older workers could have the following results:

a. Older workers who wish to remain attached to the labor force would bear less of the burden of the increasing labor force dislocation they experience as they age.

b. Demands on social security funds would be reduced.

c. The resulting reemployment of older workers would maintain their skills and increase national income.

6. Preliminary estimates suggest that annual costs of the Unemployment Benefit Lifetime Reserve Program will approximate \$40 million.

7. The Commission suggests that, during the accumulation period of the initial Lifetime Reserve Benefits, a study be conducted to estimate more closely the annual costs of the Unemployment Benefit Lifetime Reserve Program and the probable effects on social security benefits and receipts, labor force participation rates, income tax receipts, and future retirement income of potential recipients.

Recommendations

Special UI protection for older workers through an Unemployment Benefit Lifetime Reserve Program should be established to strengthen the labor force attachment of workers as they approach age 65. This program would have the following characteristics:

- *Qualification.* Unemployed persons must have an accumulation of at least 40 quarters of coverage under social security and 20 quarters of coverage within the 40 quarters immediately preceding age 60.

- *Eligibility.* (a) Unemployment Benefit Lifetime Reserve payments may be received by persons 60 through 64. (b) Unemployed persons must have established eligibility for UI during their current spell of unemployment and must have exhausted all UI benefits including extended UI benefits.

- *Duration.* Unemployment Benefit Lifetime Reserve payments cannot exceed a total of 52 weeks during the entire 5 years (ages 60 to 64) after exhaustion of regular UI and any other unemployment benefits that may be available.

- *Funding.* (a) Funding should be through a special "pooled" fund established within the State UI system and accumulated over a period of 10 years. (b) State UI agencies are responsible for adjusting contri-

bution rates to accumulate reserves for the Unemployment Benefit Lifetime Reserve Program.

The above recommendation adopted by recorded vote of 9 yeas, 3 nays (Commissioners Cooper, Crosier, Hill).

[See section 12.0, "Commissioners' Supplemental Statements."]

Footnotes

1. Walter Corson et al., *A Study of Federal Supplemental Benefits and Special Unemployment Assistance* (Princeton, N.J., Mathematica Policy Research, Inc., 1977).

2. Herbert S. Parnes et al., *From the Middle to the Later Years: Longitudinal Studies of the Preretirement and Postretirement Experiences of Men* (Columbus, Ohio, Center for Human Resource Research, Ohio State University, 1979), p. 87.

6.0 Financing Benefits

6.1 UI System Indebtedness From the 1970's

Background

The 1970's placed extraordinary demands on the Unemployment Compensation (UC) system. Benefit payments, which had averaged \$2.65 billion annually during the 1960's, averaged \$8.6 billion during the 1970's, hitting a high of \$16.5 billion in 1975. Even though the system responded to these demands by increasing contributions into the State and Federal reserve accounts from which benefits are paid, the increases were not large enough and did not occur quickly enough to sustain reserves. At the end of 1979, the trust funds of 15 States were \$3.8 billion in debt to the Federal Government. Aggregate total State reserve accounts were \$1.6 billion below their 1970 levels, and the Extended Unemployment Compensation Account (EUCA) was \$7.9 billion in debt to the Treasury. While data for 1980 are not available, it is estimated that the current recession will add to the aggregate deficit of the UC system.

The dramatic rise in the benefits paid by the UC system can be attributed to four principal factors:

- higher unemployment levels associated with labor force changes and general economic conditions;
- establishment of various Federal programs for paying benefits beyond 26 weeks;
- raises in the weekly benefit amounts; and
- extensions in the coverage of the system.

Higher unemployment rates. Variations in the unemployment rate influence UC costs in two ways. First, increases in insured unemployment will be reflected in higher initial claims for benefits. Second, variations in the unemployment rate will influence the average duration of unemployment. Even with constant maximum benefit durations, higher levels of unemployment will result in longer average benefit duration. The insured unemployment rate, which had remained below 3 percent during the second half of the 1960's, exceeded 3 percent during most of the last decade, peaking at 6.5 percent during the recession year 1975 (Table 1). The numbers of first payments of benefits reflect these generally rising unemployment levels. First payments averaged about 6 million a year through 1974, rose to 11.2 million in 1975, and remained in excess of 7 million through 1978.

Besides increasing the number of first payments, the generally higher unemployment levels lengthened the average duration over which regular UC benefits were paid. As seen in Table 1, UC was received for an average of 12.3 weeks in 1970—an average duration which turned out to be the shortest of the decade. Average duration for regular benefits hit 15.7 weeks in

TABLE 1. Covered unemployment, initial UC claims, and average duration of benefits

Year	Unemployment rate ¹	Initial claims (millions)	Average duration (weeks)
1970	2.3 pct	6.4	12.3
1971	2.7	6.6	14.4
1972	1.8	5.8	14.0
1973	1.7	5.3	13.4
1974	3.1	7.7	12.7
1975	6.5	11.2	15.7
1976	4.3	8.6	14.9
1977	3.7	8.0	14.2
1978	2.8	7.6	13.3

1. Insured unemployed as a percentage of covered employment.
SOURCE: *Handbook of Unemployment Insurance Financial Data 1938-1976*, U.S. Department of Labor, Employment and Training Administration, plus updates.

1975. The influence of greatly increased first payments and longer average duration between 1973 and 1975 combined to more than double the total number of weeks compensated from 71.2 million in 1973 to 175.3 million in 1975.

Increased maximum duration. The Congress passed three laws extending the duration of UC during the 1970's—one permanent and two temporary. The first extension, included in the Employment Security Amendments of 1970 (PL 91-373), is permanent. It provides for the payment of extended benefits (EB) over a period equal to one-half of the duration of regular benefits up to 39 weeks, with the cost shared equally by the States and the Federal Government. The Federal share of EB, plus the Federal obligations implied in the additional extensions discussed below, were to be paid out of the EUCA established for this purpose. It was funded initially by diverting 20 percent of the Federal Unemployment Tax (FUT) into it through March 1972 and 10 percent of the tax thereafter, plus any revenues remaining after allocations for administrative needs up to a maximum of \$750 million.

The second benefit duration extension was passed in 1971 as the Emergency Unemployment Compensation Act (PL 92-224, also known as the Magnuson Act). This Act, in effect between February 1972 and March 1973, added an additional 50 percent of the exhaustees' regular benefit duration up to a maximum of 13 additional weeks, to be paid by Federal funds out of FUT receipts provided for in the 1970 legislation plus a temporary 0.08 percentage point addition to the FUT for 1 year. Total possible UC duration was thus increased from 39 weeks to 52 weeks.

The final extension came from the Emergency Temporary Unemployment Compensation Act of 1974, which provided Federal Supplemental Benefits (FSB) for an additional 50 percent of a recipient's regular

TABLE 2. Costs of extended benefit programs, 1970–1979 (in billions)

Year	State		Federal		Total costs of extensions	Extensions as a percentage of reg. bens.
	Regular benefits	Extended benefits	Extended benefits	Fed. suppl. benefits		
1970	\$ 3.8	\$ —	\$ —	\$ —	\$ —	0.0
1971	5.0	0.3	0.3	—	0.6	12.0
1972	4.5	0.2	0.8 ¹	—	1.0	22.0
1973	4.0	0.1	0.7	—	0.2	5.0
1974	6.0	0.3	0.3	—	0.6	10.0
1975	11.8	1.3	1.3	2.1	4.7	39.8
1976	9.0	1.2	1.2	2.8	5.2	57.8
1977	8.3	0.9	0.9	1.3	3.1	37.3
1978	7.7	0.4	0.4	—	0.8	10.4
1979	9.3	0.1	0.1	—	0.2	2.2
Total	\$69.4	\$4.8	\$5.4	\$6.2	\$16.4	23.6 pct

1. Includes benefits paid under the Magnuson Act.

SOURCE: *Handbook of Unemployment Insurance Financial Data 1938–1976*, U.S. Department of Labor, Employment and Training Administration, plus updates.

benefits. In effect between 1975 and 1977, this Act added an additional potential 13 weeks of total duration and encompassed the extension provided in the Magnuson Act. Thus, between January 1975 and March 1977, some UC recipients were eligible for (and received) 65 weeks of compensation rather than the 26 weeks duration for which they would have been eligible had none of these Federal extensions been added.

As seen in Table 2, these three extensions in duration, combined with substantially higher unemployment levels, added dramatically to total benefit payments in the 1970's. Between 1970 and 1979, total regular UC benefits paid by States were \$69.4 billion. The States' share of EB was \$4.8 billion, and the Federal share of the three extensions was \$11.6 billion. All told, the extensions enacted by the Congress accounted for total benefit payments of \$16.4 billion, an amount equal to 23.6 percent of the aggregate of total regular benefits paid by the States. At their peak in 1975, the \$5.2 billion in payments under the Federally mandated extensions *exceeded the annual total payments of regular benefits between 1970 and 1973*.

Higher weekly benefit amounts. The weekly benefit amount (WBA) generally is set at one-half of an unemployed worker's previous earnings up to some maximum amount, determined either in absolute terms or in relation to average earnings in the State. Between 1970 and 1978, the average WBA rose 66 percent from \$50.31 a week to \$83.67 a week (Table 3). Since few changes in the formulas by which the WBA is calculated have been made by States in recent years, virtually all of the growth in average WBA during these 9 years has been due to higher covered earnings.

The average WBA as a percentage of average weekly wages remained fairly constant between 1970 and 1978, rising during 1975 and 1976 and falling to near-1970

levels in 1978. The "bulge" in 1975 and 1976 occurred because layoffs during a recession hit larger numbers of higher-paid workers than is usual.

Extensions in coverage. In 1970, covered employment in the UC system averaged 52.2 million, 70.6 percent of total civilian wage and salary employment. Through legislation passed in 1970 and 1976, about 20 million additional workers were brought under UC coverage. By 1978, the year the 1976 legislation became effective, UC coverage had been extended to 97 percent of total wage and salary employment (see Table 4).

Even though the extensions in coverage added nearly a third to the number of workers who would otherwise have been covered, it is doubtful that demands on benefits associated with this broadening in UC coverage increased by this amount. By far the largest groups of workers added to the system in the 1970's are those in State and local government and in nonprofit firms. The

TABLE 3. Weekly benefit amounts and wage replacement ratios, 1970–1978

Year	Average weekly benefit amount	Wage replacement ratio
1970	\$50.31	.357
1971	54.35	.365
1972	55.82	.361
1973	59.00	.361
1974	64.25	.365
1975	70.23	.371
1976	75.16	.371
1977	78.71	.364
1978	83.67	.364

SOURCE: *Handbook of Unemployment Insurance Financial Data 1938–1976*, U.S. Department of Labor, Employment and Training Administration, plus updates.

TABLE 4. Covered employment, 1970–1978

Year	Covered employment (millions)	Total wage and salary employment (millions)	Covered employment as a percentage of total
1970	52.2	70.6	73.9
1971	53.0	71.1	74.5
1972	61.2	73.6	83.4
1973	64.9	76.2	85.2
1974	66.9	77.7	86.1
1975	65.5	76.6	85.5
1976	68.0	—	—
1977	70.9	82.1	86.4
1978	83.2	85.7	97.1

SOURCES: "Manpower Training Report of the President," 1976, and *Financial Statistics, 1970–76*.

generally low unemployment experiences of these workers should more than counteract the possible greater exposure to unemployment of farm, agricultural processing, and (paid) household workers who also were brought into the UC system by these changes.

Costs relative to wages. Despite the unusually large increases in benefit payments which occurred during the 1970's, benefit costs as a percentage of covered wages remained below 3 percent in every year (Table 5).¹ In 1975, State unemployment insurance (UI) payments, including States' portion of EB, were 2.26 percent of wages in covered employment. Federal costs of the various EB programs were an additional 0.59 percent of such wages. Together, they comprised 2.85 percent of wages, a level not dramatically higher than the 2.7 percent which originally was thought to be sufficient to fund the system. Yet, as noted at the beginning of this chapter, the system as a whole ended the last decade with State reserves down \$1.6 billion and debts to the Treasury of \$11.7 billion.

Individual States certainly experienced substantially higher costs than suggested by the averages cited above, especially during the trough of the 1974–1975 recession. High unemployment and demands on the UC system were centered in the Northeast and Midwest States, and even though their average payroll taxes were 12 percent higher than those in the rest of the States between 1975 and 1977, they still have been unable to repay their loans. As of June 30, 1980, 12 of the 15 States having unpaid advances were located in the Northeast and Midwest. Their indebtedness amounts to over 98 percent of that outstanding as of that date.

State financial flows. Figure 1 tracks the flows of State UI contributions, costs, and debt levels over the period 1970–1979. As the figure shows, total costs of benefits (regular UC plus the States' share of EB) rose quite

precipitously in 1975, then fell to somewhat lower levels, while the growth in revenues (the State portion of the UI contribution, plus interest earned on reserves) lagged by a year.²

Because of the funding formulas used by States, this lag in revenue growth in response to increased demands is expected. Individual employer contribution rates, for example, are based on past experience. Those States with variable ranges of contributions based on overall reserve levels adjust these contribution rates only after the changes in reserves have occurred. Adjustments in the taxable wage base are made only periodically in most States. These and other factors in the financing provisions of UC acted to delay the response in UI receipts. Indeed, such a delay may be desirable in order to maintain a high degree of countercyclical impact of the UI system and to prevent too high a burden on individual employers from increasing UC contribution rates during the middle of a recession.³

UC revenues in the States did respond to the recession, rising from \$5.6 billion in 1975 to \$7.8 billion in 1976 and continuing to increase by about \$2 billion a year through 1979 to their present level of about \$13 billion. By 1977, revenues matched aggregate costs and exceeded them in 1978 and 1979. States used the 1978 surplus primarily to rebuild the levels of their own accounts.⁴ Not until 1979 did significant net repayments flow into the Federal Unemployment Account. The net repayments in that year (\$1.3 billion) reduced the States' debt to the Federal Unemployment Account to \$3.8 billion.

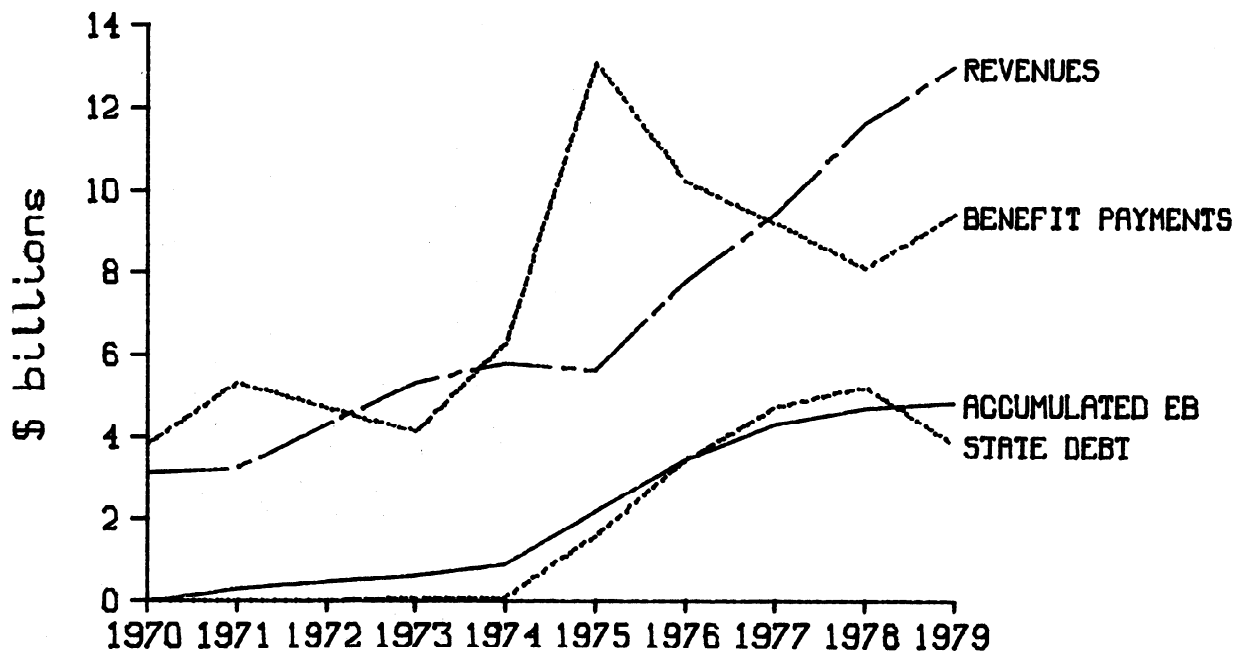
Figure 1 also shows how the States' share of EB accumulated during this period. While the national trigger was "on," these payments aggregated \$3.3 billion. By the end of 1979, the accumulated payments of EB by States exceeded their debt to the Federal Government. It appears that, in aggregate, the State funding

TABLE 5. Benefit payments as a percentage of wages in covered employment 1970–1978

Year	State portion	Federal portion	Total
1970	0.99 pct	—	0.99 pct
1971	1.32	0.07	1.39
1972	1.03	0.17	1.20
1973	0.80	0.02	0.82
1974	1.69	0.05	1.74
1975	2.26	0.59	2.85
1976	1.57	0.62	2.19
1977	1.45	0.13	1.58
1978	0.97	0.05	1.02
1970–1978	1.46	0.23	1.69

SOURCE: Calculated from *Handbook of Employment Insurance Financial Data 1938–1976*, U.S. Department of Labor, Employment and Training Administration, plus updates.

FIGURE 1. State UI financial flows, 1970–1979

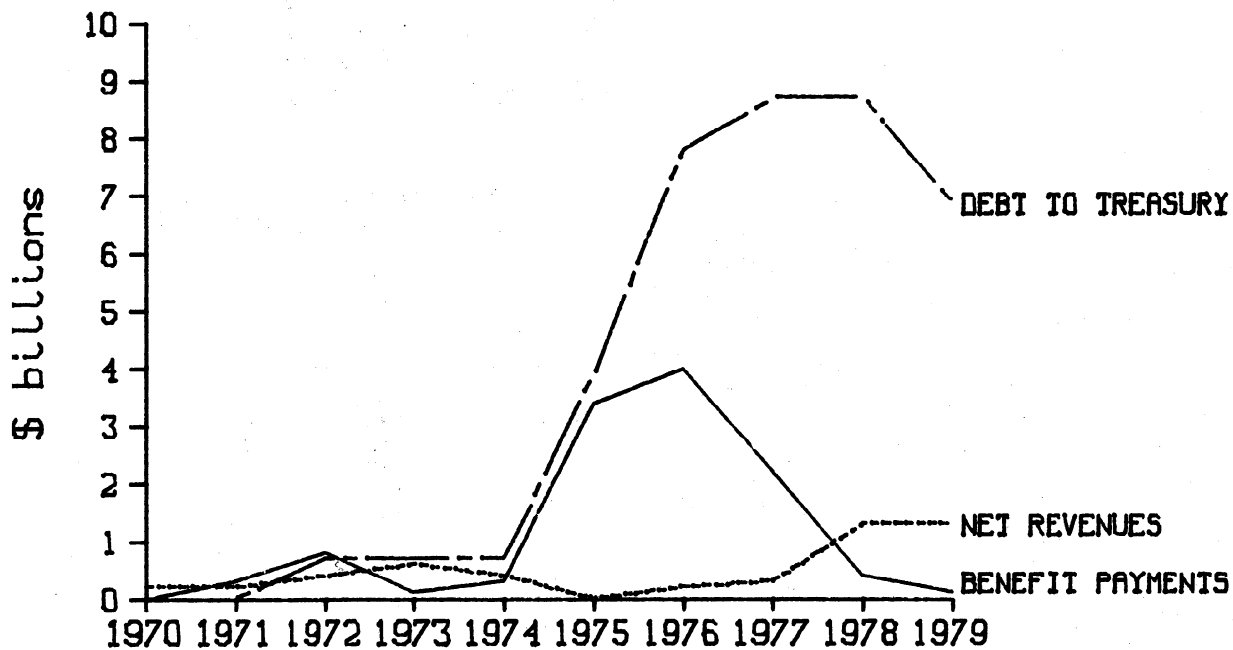


SOURCES: DOL, ETA, UIS.

formulas were sufficiently sensitive to handle the cyclical demands of regular UI benefits but not those of EB. Because of unequal unemployment experiences, not all States were up to the burden of supporting regular UI or their share of EB.

Federal financing flows. Flows in the Federal portion of the UC accounts are shown in Figure 2. Revenues came from the earmarked portion of the FUT. Unfortunately, payments of EB started before the EUCA could build sufficient reserves. As a result, the Treasury had to

FIGURE 2. Federal UI financial flows, 1970–1979



SOURCES: DOL, ETA, UIS.

advance \$700 million to the account as early as 1972. When benefit duration was extended to 52 weeks, the FUT was increased temporarily by 0.08 percentage points to help fund these benefits. The real blow to the solvency of the EUCA came when UC duration was extended temporarily to 65 weeks. In 1975, for example, revenues into EUCA were \$130 million and Federal obligations under EB and FSB were \$3.4 billion, some 26 times as great. During the period January 1975–March 1977, FSB payments aggregated \$5.8 billion. In 1977, the FUT was temporarily increased by 0.2 percentage points to permit the EUCA to begin repaying the \$8.7 billion in debts it had accumulated. Repayments in 1979 were \$800 million.

Summary of finances. From this review of the revenue and cost experiences of the UI system during the 1970's, there is reason to question whether the UI system can recover financially given current funding provisions at both the State and Federal levels. The States were able (as a group) to finance regular UC payments, but neither the States nor the Federal Government provided sufficient revenue to finance the various tiers of EB and FSB legislated by the Congress. At the end of 1977, 2 years after the recession, States' net reserves (gross reserves less borrowing) were \$11.6 billion below their level of 1969. By the end of the decade, net revenues had climbed to \$7.2 billion, still \$5.4 billion below 1969 levels. Since average weekly benefits rose so much during the 1970's, these reserves, relative to covered wages, are even less adequate than suggested by the aggregate numbers.

Table 6 summarizes the financial experiences of the 1970's by comparing gross inflows and outflows for both the State and Federal systems between 1970 and 1979. Total receipts (State UI taxes, interest paid on State reserves, and FUT distributions to the EUCA) were \$72.9 billion. Total benefits paid aggregated \$85.8 billion, some \$12.9 billion above revenues. Of this \$12.9 billion, \$7.8 billion is associated with Federal obligations.

TABLE 6. Summary aggregate revenues and benefit payments of the unemployment compensation system, 1970–1979

Level of government	Revenues (\$ billion)	Benefits (\$ billion)	Excess of costs over benefits (\$ billion)
State	\$69.1	\$74.2	\$ 5.1
Federal	3.8	11.6	7.8
Total	\$72.9	\$85.8	\$12.9

SOURCE: *Handbook of Unemployment Insurance Financial Data 1938–1976*, U.S. Department of Labor, Employment and Training Administration, plus updates.

In order for the UC systems to retire debts and re-build reserves, contributions into the system will have to increase substantially above earlier levels and remain there for a number of years. The current debt situation is exacerbated by two additional considerations. First, the financial condition of many individual State UI reserves is much worse than implied by the aggregate statistics. Second, the economy has now moved into a new recession and States' reserves again are being drawn down. Loans of \$572 million through June of 1980 have been approved, and the Department of Labor expects heavier borrowing to begin during fiscal 1981. Current provisions call for increasing repayments to the Treasury through successive reductions in offsets to the FUT. If carried through, the resulting higher payroll costs to employers will occur at a time when the system is moving into a deficit financing posture, which will also increase UI costs to employers.

Findings

1. Aggregate UC payments increased dramatically during the 1970's, an increase which can be traced to four main factors:

- the recession of 1974–75;
- extensions in benefit duration legislated by the Congress;
- higher WBA's; and
- broadened coverage of workers in the UC system.

2. Taken in aggregate, the UC system was able to respond to the increased demands of paying regular benefits, and total revenues during the 1970's flowing into the State UC systems exceeded State payments of regular UC. In some States, however, the demands even for regular UI benefits exceeded contributions to these States' reserves.

3. The problem is not that aggregate benefits exceeded total revenues during the recession of 1974–75 and its aftermath. The system is purposefully designed so that outflows exceed inflows during a downturn and vice versa during upturns. The problems faced by the system are the magnitude of the benefit costs resulting from the various federally enacted extensions during this period before sufficient reserves had been accumulated to pay them and the unequal outflows of funds in individual States.

4. The extensions of benefit duration—first to 39 weeks, then successively to 52 weeks and to 65 weeks—that were legislated by the Congress were provided without complete recognition as to the probable magnitudes of costs implied by them. As a result, funding provisions for them were inadequate.

5. The specification of the level of government (State or Federal) which should assume the costs of these extensions has been uneven, with the Federal government assuming them in some instances but not in

others. The assumption of FSB payments by the Treasury after March 1977 is an example.

6. The costs associated with paying the extended duration programs enacted by the Congress have left the UC system with a substantial debt load to the Treasury and with reduced reserves. The increases in employer contributions required to retire these debts and rebuild reserves over a 5-year period would require an estimated addition of 0.8 percentage points to total payroll costs and contribution rates—levels substantially greater than employers are used to paying. The situation in some of the individual States is much more severe, where contribution rates above 5 percent just to rebuild financial stability might be required. The problems faced by the system in restoring financial strength are amplified by the downturn the economy entered during the first quarter of 1980. Unemployment is rising and the system is once again being faced with large aggregate benefit outflows, which (based on Department of Labor estimates) will require heavy debt financing early in fiscal 1981 in addition to the \$572 million already borrowed during the first six months of 1980.

7. Because of the economic conditions under which the extended benefit programs became operational and the absence of ready, adequate reserves in funds designated to pay those benefits, the UC system is heavily in debt and should be placed on a sound financial basis as soon as possible. The current debt load is a burden which must be relieved. Even though, in retrospect, not all States responded as strongly as they might have in increasing the inflows to the system during the 1970's, the need to reestablish some financial security to the system is greater than any advantages which might accrue from forcing the States to "take their lumps." An equitable way to achieve this would be for the Federal Government to forgive debts incurred by States and by the EUCA associated with paying EB while the national trigger was on and to forgive all FSB paid from the EUCA.

8. By forgiving a portion of UC payments made during the unusual period discussed in this chapter, some of the current cost pressures will be taken off the payroll tax in two ways. First, "free" reserves of States would be increased either directly or by reduction in loan balances due the Federal Loan Account. Second, the 0.2 percentage point portion of the FUT now temporarily in effect to pay advances could be reevaluated in terms of other needs or recommendations made by this Commission.

Recommendations

The Commission believes that new programs should have adequate financing provisions prior to implementation of those programs. "Adequacy" includes not only providing the means for financing continuing

anticipated benefit payments, but also prior buildup of reserve accounts out of which benefits are to be paid. Since neither aspect was present in the EB programs enacted during the 1970's, the UC system should not be asked to bear their costs. Consequently, this Commission recommends that both the State and Federal accounts from which EB payments were made receive credits from the Treasury in the amount equal to those payments made while the national trigger was on and that the EUCA receive a credit for all FSB payments through March 1977. In aggregate, these credits equal \$12.4 billion. The Commission further recommends that the credits first be used to reduce any outstanding loans charged against the accounts. Only if a credit exceeds an outstanding loan balance should funds be transferred to an account. The accounts and amounts in question are summarized below.

1. The State share of EB while the national trigger was on was \$3.3 billion. Of this \$3.3 billion, \$1.9 billion would go to States which had to borrow in order to pay the required benefits, and \$1.3 billion would go to States which did not borrow.

2. The Federal share of EB, paid out of EUCA but funded through the FUT, also was \$3.3 billion and should be applied to the outstanding Treasury advance to that account.

3. FSB payments funded through the FUT were \$5.8 billion. This amount should be used first to eliminate the remaining Treasury advance to the Extended Unemployment Compensation Account and then credited to the account for use in paying the Federal share of EB in future years.

Footnotes

1. While covered wage data were not available for 1979, benefit costs surely did not exceed those of the high cost years 1975–1976.

2. State debt levels generally move with the size of the deficit or surplus, but these movements are not direct. This lack of concurrent movement arises because some States may be borrowing while others are running surpluses. It would be possible for the State system as a whole to be running a surplus yet have a growth in debt, if some States were forced to borrow because of poor reserve positions while others were using surpluses to build up reserves rather than repay past debt.

3. The nature of the response in State funding to fluctuating financial demands is discussed in some detail in two recent papers written for the Commission. See Marc Freiman, "State Trust Fund Behavior," *Unemployment Compensation: Studies and Research* (Washington, D.C., National Commission on Unemployment Compensation, 1980) and Russell L.

Hibbard, "Solvency Measures and Experience Rating," *Unemployment Compensation: Studies and Research* (Washington, D.C., National Commission on Unemployment Compensation, 1980).

4. Beginning in 1975, some small repayments via reduction of part of the FUT credits to employers occurred. These repayments were completely overshadowed by borrowings in other States.

6.2 Federal Taxable Wage Base

Background

Throughout its deliberations, the Commission continued to regard the payroll tax as the proper way to finance regular unemployment compensation (UC). The taxable wage base and the tax rate are the main elements of this method of financing.

Experience with the Federal taxable wage base. Originally, all covered wages and salaries paid during the year were subject to the Federal Unemployment Tax Act (FUTA). As a result of strong objections to total payrolls as the tax base, the Federal taxable wage base was changed in 1939, effective in 1940, to the first \$3,000 of an individual's earnings.

It is worth suggesting here the main reasons for this change, since they arise in current policy discussions. The primary reason was that employer reporting

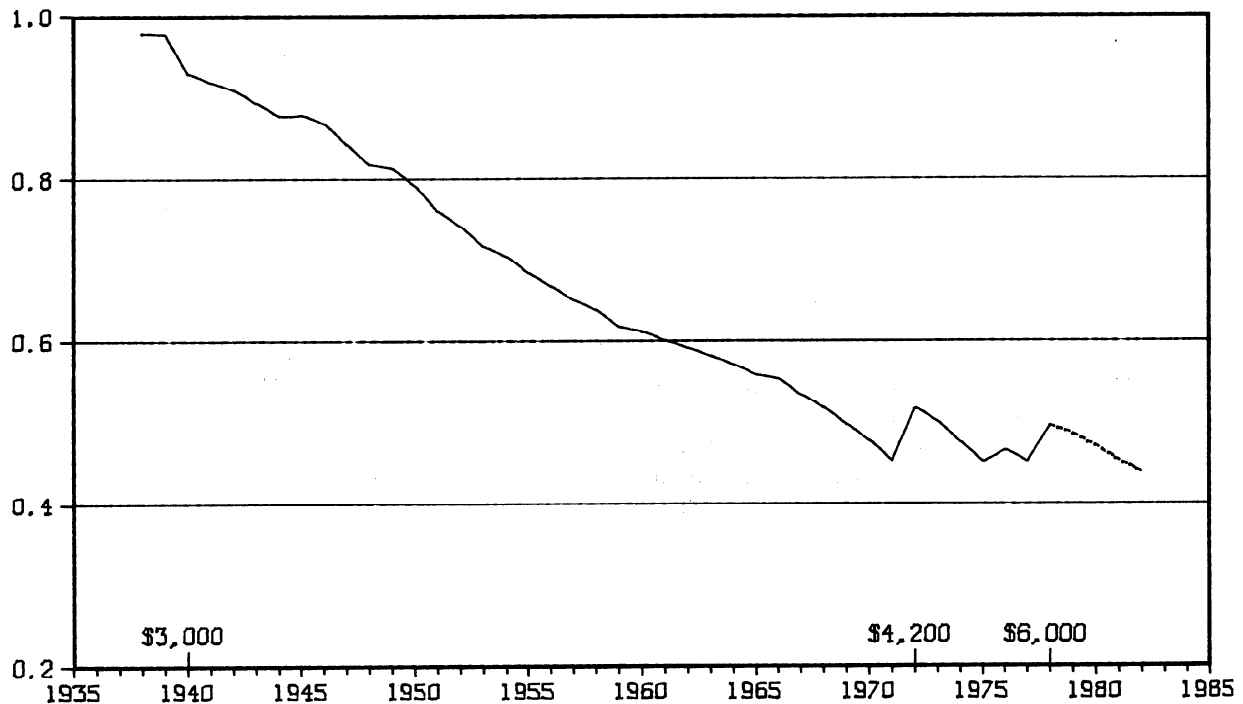
would be much easier if the unemployment insurance (UI) taxable wage base were set at the same level as the Social Security taxable wage base (\$3,000 at that time), thus providing accounting simplicity.

Despite successive increases in the Social Security tax base at later dates, the UI taxable wage base remained at \$3,000 until 1972, when it was raised to \$4,200; in 1978 it was raised to \$6,000. Since 1940, taxable wages as a share of total wages nationally have declined from 98 percent to 45 percent in 1977 (see Figure 1). This tendency, if not checked, will only accelerate further in an inflationary period, when wages rise even more rapidly and the taxable wage base remains constant.

In order to understand the policy issues surrounding the taxable wage base, it is necessary to realize that the Federal taxable wage base actually serves two distinct functions.

The first, and most obvious, role is to provide sufficient funds to finance the Federal responsibilities

FIGURE 1. Ratio of taxable to total wages—U.S. totals



Dashed lines indicate projections.
Source: DOL/EIA/UIS/DAS.

within the program—the administrative costs, the loan fund, and the Federal share of extended benefits. These obligations appear to have been the most influential in effecting adjustments to the base and the FUTA tax rate.

In addition, because of the mechanism by which UI was fostered, the Federal taxable wage base has an effect on State UI taxes. In theory, the States themselves can set their base wherever they wish, but if it is set below the Federal base, the employers will lose the 2.7 percent credit offset on the difference between the Federal and State base. States are free to set their taxable wage bases above the Federal base.

It is worth noting here that the majority of States do not raise their own taxable wage bases until the Federal base is increased. When the Federal tax base was raised to \$4,200 in 1972, only 23 States had already raised their bases above the previous base of \$3,000. When the Federal base was raised to \$6,000 in 1978, only 24 States had increased their bases above the \$4,200 Federal level. Only 17 States are now above the \$6,000 base. As a result of this reluctance of many States to act on their own initiative, there is continued erosion in the taxable wage base ratio (taxable wages divided by total wages). The \$6,000 base permitted taxation of less than 50 percent of total wages in some States in 1978. The decline in the taxable wage base ratio (i.e., the failure of States to increase the base relative to rises in total wages) was one of the reasons for the shortage of funds in the State programs during the seventies. Since unemployment benefits are wage-related, rises in wage levels mean increases in fund liabilities. But if the bases are not adjusted, reserves fail to keep pace with increases in liabilities. Of course, States could offset the restrictive effect on revenues of the constant taxable wage base by raising rates. However, the rates might appear excessively high, creating negative political or psychological effects.

Because so many States are passive in adjusting their bases and await action by the Congress, Federal policymakers must consider both functions of the tax base—to provide revenue for State funds as well as revenue for the Federal responsibilities.

Federal revenue needs. Federal revenue needs have fluctuated over the history of the program as costs have been affected by various factors. Until 1958, there were a number of occasions when surpluses were realized, but some of the surpluses were returned to the States under the provisions of the Reed Act.¹ In contrast, when it was decided to pay for temporary extended benefits (of 1961–62) from the FUTA moneys, it was necessary to raise the Federal tax from 0.4 to 0.8 percent in 1962; it was reduced to 0.65 percent in 1963 and 0.4 percent in 1964.

UI administrative costs have climbed over the years. However, the development of automated data process-

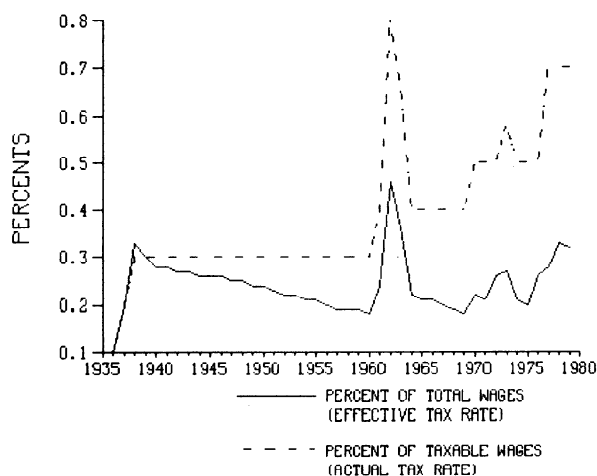
ing systems has helped hold down these costs, which are financed by FUTA revenues. But the reduction or hold in personnel levels because of fund limitations has gone so far as to reduce services provided by the Department of Labor (DOL) to the States and the services provided by State agencies to UI claimants and other job seekers. The Federal costs have been constrained at the price of deteriorating quality in administration. (This is developed in chapter 7.6.)

The lack of sufficient Federal revenues is readily apparent in that advances from the Treasury were required in the mid-seventies to fund the Extended Unemployment Compensation Account (EUCA) and the Federal Unemployment Account (FUA). With respect to the EUCA, there was insufficient time to build reserves to cover the extraordinarily high outlays. Concerning the FUA, the amount of loans to States was completely unanticipated at the recession's onset. See chapter 6.1 for further discussion of these accounts.

Because of the relatively constant taxable wage base, the effective FUTA tax rate (FUTA revenues as a percent of total wages) has averaged generally under 0.3 percent annually during the life of the program, exceeding that level only briefly in the early sixties, and since 1978. For 1979, it was only slightly above 0.3 percent. The effective tax rates and actual or assigned tax rates (revenue as a percent of taxable wages) are shown in Figure 2 and Table 1.

What about the future? Based on a May 1980 Data Resources, Inc., projection of cyclical economic activity, the DOL estimates future Federal revenue needs as shown in Table 2.

FIGURE 2. Federal unemployment tax act rates—percentage of total and taxable wages, 1936–1980



SOURCES: HEW, DOL, Treasury.

TABLE 1. Federal Unemployment Tax Act revenue as percentage of total and taxable wages 1936-1980

	Percent of total wages ¹	Percent of taxable wages ²
1936	0.10	0.1
37	0.20	0.2
38	0.30	0.3
39	0.30	0.3
40	0.28	0.3
41	0.28	0.3
42	0.27	0.3
43	0.27	0.3
44	0.26	0.3
45	0.26	0.3
46	0.26	0.3
47	0.25	0.3
48	0.25	0.3
49	0.24	0.3
50	0.24	0.3
51	0.23	0.3
52	0.22	0.3
53	0.22	0.3
54	0.21	0.3
55	0.21	0.3
56	0.20	0.3
57	0.19	0.3
58	0.19	0.3
59	0.19	0.3
60	0.18	0.3
61	0.24	0.4
62	0.46	0.8
63	0.36	0.65
64	0.22	0.4
65	0.21	0.4
66	0.21	0.4
67	0.20	0.4
68	0.19	0.4
69	0.18	0.4
70	0.22	0.5
71	0.21	0.5
72	0.26	0.5
73	0.27	0.58
74	0.21	0.5
75	0.20	0.5
76	0.26	0.5
77	0.28	0.7
78	0.33	0.7
79	0.32	0.7
80	INA	0.7

1. Effective tax rate.

2. Actual (assigned) tax rate.

SOURCES: Department of Health, Education and Welfare, Department of Labor, and the Treasury.

These data indicate the estimated funding necessary for extended benefits, based on experience to date and the assumed performance level of the economy, and for expenditures for administration that will meet program management needs and will upgrade the quality of services to claimants and employers. Accordingly, in determining the appropriate Federal taxable wage base level for the future, consideration must be given to Federal revenue needs and the effect of the tax base on financing of State benefit programs.

State revenue needs. In theory, it would be desirable to establish a Federal taxable wage base which bears some relationship to insured wages (generally defined as those base period wages required to qualify for maximum potential benefits) or average annual wages since these measures reflect the liabilities of the system. Since insured wages and average annual wages vary from State to State, it might seem reasonable to have a Federal taxable wage base that would also vary from State to State. However, the Constitution prohibits the levying of excise taxes (of which the Federal UI tax is one) which are not uniform among the States. The Solicitor of the DOL informed the Commission that "in determining whether an excise tax meets the requirement of uniformity it is first necessary to determine whether: (1) the object taxed; (2) the right taxed; and (3) the method ordained by statute for assessing and collecting the tax, would individually satisfy the [uniformity] requirement." Under a Federal taxable wage base that equals a percentage of the individual State's average annual wage (or other appropriate measure), "the object taxed would be the average wage in each State, the right taxed would be the right to employ, and the method for assessing the tax would be" a percentage of the average annual wage. The Solicitor indicates further that the right taxed (to employ) and the method for assessing the tax (a percentage of average annual wages) "would be uniform upon all subjects of the same class. However, the object of the tax would vary from State to State," and thus a Federal taxable wage base differing among the States would be unconstitutional.

Since it is not possible to have a different Federal

TABLE 2. Department of Labor estimates of future Federal revenue needs

Fiscal year	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Insured unemployment rate (percent)	4.0	5.4	4.7	3.7	3.2	4.2	3.9	3.0	2.7	3.9	3.7
Average weekly benefit amount (\$)	92	98	103	109	117	125	132	140	149	159	168
Outlays for extended benefits (\$ billion)	0.93	3.13	2.51	0.46	0.08	1.31	1.59	0.10	0.01	1.92	1.71
For State admin. costs, including job service (\$ billion)	1.97	2.33	2.38	2.39	2.46	2.88	2.95	2.93	3.04	3.65	3.72

taxable wage base for each State, consideration was given to a single Federal taxable wage base level that would apply to all States and that would be expressed as a percentage of national average annual wages in covered employment. Such a uniform base would be too low for some high-wage States which would prefer to set their own higher base, as some are now doing (see Table 3).

Since the reason for the decrease in the taxable wage base ratio has been failure to amend the taxable wage base as earnings rise, some persons believe it is wise to provide an automatic adjustment. This is practical, as has been shown in States that have established flexible tax bases (included in Table 3). As indicated in the table, 11 States have established flexible taxable wage bases which are based on a specified percentage of average annual wages (AAW) in the individual State. The percentages range from 65 to 100 percent of AAW.

Increase in tax rate versus increase in tax base. There is a point of view, considered by the Commission, that favors raising tax rates rather than the tax base.

An argument has been made by some employers for an increase in the standard rate, that is, to raise the 2.7 percent credit offset and thus the minimum level of the State maximum tax rate. For example, the 90 percent limit on allowable credit against the Federal tax could be retained. By raising the gross FUTA rate

to 6.0 percent, the net Federal tax (with the 90 percent offset) would then be 0.6 percent and the maximum allowable credit would be increased from 2.7 to 5.4 percent.

This proposal (to raise the gross rate and standard rate) was presented as an alternative to raising the taxable wage base, on the grounds that it would accomplish the same effect—raising more revenue. While such a move may raise additional revenue for State purposes, it does not do likewise for Federal purposes since the net Federal tax is presently 0.7 percent. Also, it is opposed by persons who believe that the decrease in the taxable wage base ratio has caused a shift in burden to low-wage employers, and higher taxes on a low base reinforces the inequity.

A related purpose of the higher standard rate proposal, it can be argued, is to force States to raise their maximum tax rates. If the gross FUTA rate were raised to 6.0 percent with allowable credit of 5.4 percent, 37 States would be required to raise their maximums to 5.4 percent. But the States presently are free to set maximum rates above 2.7 percent. In fact, all but one State have maximum rates above that level, and 16 States have maximums equal to or greater than 5.4 percent. (The highest is Michigan, with a maximum tax rate of 9.0 percent, effective in 1981.) Since States weigh the importance of high-cost industries to their economy in considering where to set their maximum rate, this subject may best be left to the State to decide.

The issue of shift in tax burden must be looked at separately, with respect to the Federal tax and the State tax. The former is a uniform tax rate on all employers and the latter is experience-rated; this may make a difference in how the shift in burden occurs.

With regard to the uniform Federal tax, there is obviously a shift in burden (with respect to effective tax rates) to lower-wage industries away from higher-wage industries when the taxable wage base remains constant and the Federal rate rises, or even if it doesn't rise. Thus holding the taxable wage base constant while wage levels are rising produces different effective tax rates among employers when equal tax rates are in fact assigned.

Concerning the State tax, the issue is complicated by the presence (in 51 States) of experience rating, which levies higher taxes on employers with higher incidence of unemployment.

A constant taxable wage base, particularly a low one, can produce unequal effective State tax rates (assigned or actual tax rates stated in terms of total wages). Unequal assigned and effective tax rates are expected in those parts of the tax structure where experience rating applies. However, in those areas of the tax structure where experience rating does not apply—at the maximum rate and minimum rate which is higher than zero—employers have varying effective rates. Again, holding the taxable wage base constant

TABLE 3. States with taxable wage base above FUTA base (\$6,000) (States with flexible base in italics), 1980

State	State base	If flexible, percent of average annual wages ¹
Alabama	\$ 6,600	NA
Alaska	10,000	NA
<i>Hawaii</i>	11,200	100
<i>Idaho</i>	10,800	100
Illinois	6,500	NA
<i>Iowa</i>	7,400	66⅔
Minnesota	8,000	NA
<i>Montana</i>	7,600	75
<i>Nevada</i>	7,900	66⅔
<i>New Jersey</i>	6,900	²
<i>New Mexico</i>	7,200	65
<i>North Dakota</i>	7,600	70
<i>Oregon</i>	10,000	80
<i>Puerto Rico</i>	Total Wages	NA
<i>Rhode Island</i>	7,200	70
<i>Utah</i>	11,000	100
<i>Washington</i>	9,600	80

¹ *California*: Base is \$7,000 if total disbursements exceed total revenues.
Missouri: Base is \$6,600 if UC fund balance is less than \$125 million in previous calendar year.

² *New Jersey*: Base is 28 times State average weekly wage.

NA = Not applicable.

SOURCE: U.S. Department of Labor, ETA, UIS.

while wage levels rise produces different effective rates when assigned rates are the same or intended to be the same.² However, a taxable wage base which increases over time (or is flexible) tends to reduce the effective tax rate inequities among employers assigned the same rates.

It is recognized that raising the taxable wage base has an impact on experience rating if no offsetting changes are made in a State's tax schedule. Assuming then that there are no offsetting changes, a higher tax base would effectively increase the degree of experience rating by raising the taxes paid by high-cost employers who are assigned the maximum rate. On the other hand, an increase in the tax base reduces the degree of experience rating (unless there is a zero rate) for low-cost employers assigned the minimum rates since they would also pay higher taxes. Indications are that the latter effect more than counterbalances the first. However, it remains possible, if desired, to offset the impact of an increase in the base, by adjusting the tax schedule to incorporate lower minimums and maximums, so as to maintain the same degree of experience rating in the cost distribution.

A continuing argument against raising the taxable wage base is the impact such a move has on the operation of the reserve-ratio experience rating formula in use in 32 States. An increase in the tax base means that a higher portion of the employer's payroll is taxed and that the assigned tax rate may be higher, at least temporarily. (Obviously this assumes no compensating adjustment in the tax rate schedule.) Under a reserve-ratio formula, the denominator (taxable payrolls) increases when the tax base is raised; thus, the reserve ratio declines. If the decrease is large, the employer will be assigned a higher tax rate which applies to a higher taxable wage base. Assuming that the employer's benefit charges remain fairly constant, the increased taxes paid will be reflected in higher subsequent reserve ratios and a lower tax rate will be assigned. However, the immediate impact of a significantly higher tax base may be severe. Of course, the impact will be less if the tax base is raised gradually, as it would be with a tax base geared to average wages. The impact also can be moderated by adjusting the tax schedule to restrict rate changes. Further, the impact of a taxable wage base change could be eliminated by computing the employer's reserve ratio on the basis of total wages (which are not affected by a tax base change) rather than taxable wages, which can increase significantly when the tax base is raised. Obviously, a change would have to be made in the tax rate schedule to incorporate a reserve-ratio computation based on total wages.

On balance, it appears that the reasons for substituting rate increases for base increases are not as compelling as the argument for stabilizing the taxable wage base relative to average annual wages in covered employment.

Findings

In its review of the Federal taxable wage base, the Commission found that the deterioration of taxable wages as a percentage of total wages has caused a relative contraction in resources available to finance administrative costs and benefit levels geared to wages.

In addition, the Commission's findings indicate that to generate additional revenue primarily or solely through increases in the tax rate only worsens the inequities produced by a low taxable wage base. Raising the tax provides the additional revenue required and reduces the inequities to some degree. Except for eliminating the ceiling on the taxable wage base (i.e., taxing total wages), there will continue to be some of the inequities noted, but setting the taxable wage base at a predominant share of total wages will certainly minimize them.

Following its consideration of Federal revenue needs, the long-run financing of State benefits, and the effects of a tax base increase on State experience rating, the Commission concludes that an appropriate means of generating additional revenue for the UI program is through an increase in the Federal taxable wage base. Also, the Commission believes that the taxable wage base should rise periodically in order to reflect benefit liabilities (changing because wage levels are increasing) and administration needs and to minimize the inequities of a low, constant tax base. To accomplish this objective, a Federal taxable wage base which represents a predominant share of national average annual wages in covered employment—65 percent—should be established. The base should be adjusted administratively every 2 years to maintain the 65 percent level.

Inasmuch as the proposed taxable wage base represents a significant increase in 1990 over the present \$6,000 level, it seems appropriate that the base should be phased in. Since it is not legislatively feasible to initiate a tax base increase immediately, the transition to the 65 percent level should begin for tax year 1983.

With respect to the State taxable wage base, each State is encouraged to consider adjusting its individual base to a level above the Federal taxable wage base if appropriate for sound financing of its benefit structure. States should also provide for automatic base adjustment contingent on changes in average annual wage levels. Further discussion of this issue is included in chapter 6.3.

The Commission is aware of the expected shortfall in Federal revenue needs prior to the initiation of the recommended taxable wage base. Chapter 7.6 includes a complete discussion of this matter and the Commission's specific recommendations for dealing with the shortfall.

Estimated revenue under the proposed taxable wage base and outlays (to States and for the Federal

share of extended benefits) for fiscal years 1980 through 1990 are shown on Table 4. Based on this series of cyclical economic activity, the net FUTA tax rate will drop from 0.7 percent to 0.5 percent (reflecting repayment of the trust fund's debt to the Treasury) by fiscal year 1988. Indications are that beginning with fiscal year 1983 revenues are estimated to meet outlays on a year-by-year basis, assuming no other changes in State or Federal law. Further, it is anticipated that under the same conditions reserves can be accumulated in the individual accounts.

Even though the Commission has studied in depth the taxable wage base issue, it believes that future review is appropriate. Such a study should be undertaken late in this decade.

Recommendations

The Commission recommends the following:

1. The Federal taxable wage base should approxi-

mate 65 percent of AAW in covered employment for the most recent year that data are available. Because a significant increase is involved, the 65 percent should be phased in, beginning for the tax years 1983-84, and adjusted every 2 years in accordance with the following schedule:

Years	Percent of AAW	Estimated Federal taxable wage base
1983-84	50	\$ 8,000
<i>Adopted by recorded vote of 9 yeas, 2 nays (Commissioners Cooper, Hill).</i>		
1985-86	55	10,400
<i>Adopted by recorded vote of 6 yeas (Commissioners Bivins, Coleman, Cros- ier, Sanchez, Sullivan, Cohen), 5 nays (Commissioners Cooper, Daniels, Hill, Morris, Seidman).</i>		

TABLE 4. UI program estimates with NCUC-recommended taxable wage base (billions of dollars)

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990
TUR (pct)	6.9	8.8	8.3	7.1	6.1	7.2	7.5	6.2	5.6	7.0	7.4
TUR (pct)	4.0	5.4	4.7	3.7	3.2	4.2	3.9	3.0	2.7	3.9	3.7
Coverage (millions)	85.3	84.6	86.7	89.8	92.9	94.1	95.4	99.1	102.1	101.6	102.7
AWBA	91.74	97.55	103.32	109.48	116.66	124.51	131.54	139.57	148.81	159.20	168.06
<i>State UI</i>											
Regular benefits	13.79	19.79	18.03	15.30	14.37	20.99	21.11	17.53	17.28	27.64	27.74
Claimants (millions)	11.4	13.5	12.0	10.4	9.2	12.5	11.8	9.4	8.8	12.9	12.2
EB (State share)	0.93	3.13	2.51	0.46	0.08	1.31	1.59	0.10	0.07	1.92	1.71
State revenue	13.40	15.59	19.56	21.70	22.50	21.82	25.20	24.20	27.60	25.73	28.00
State trust fund impact (income-outlays)	-1.32	-7.33	-0.98	+5.94	+8.05	-0.48	+2.50	+6.57	+10.25	-3.83	-1.45
<i>Federal accounts</i>											
FUTA revenue	3.39	3.55	3.97	4.41	4.75	5.60	6.13	7.13	7.88	8.93	9.63
To EUCA	1.14	1.27	1.42	1.57	1.70	2.00	2.19	2.55	2.81	3.19	3.44
To ESAA	2.25	2.28	2.55	2.84	3.05	3.60	3.94	4.58	5.07	5.74	6.19
(95 pct limitation)	2.14	2.17	2.42	2.70	2.90	3.42	3.74	4.35	4.82	5.45	5.88
<i>Outlays</i>											
Federal EB share	0.93	3.13	2.51	0.46	0.08	1.31	1.59	0.10	0.07	1.92	1.71
Adm. costs-State (includes ES)	1.97	2.33	2.38	2.39	2.46	2.88	2.95	2.93	3.04	3.65	3.72
<i>Net impact (Income-outlays)</i>											
EUCA	+0.21	-1.86	-1.09	+1.11	+1.62	+0.69	+0.60	+2.45	+2.74	+1.27	+1.73
ESAA (With 95 pct limitation)	+0.17	-0.16	+0.04	+0.31	+0.44	+0.52	+0.79	+1.42	+1.78	+1.80	+2.16
<i>Est. Fed. taxable wage base, NCUC recommen- dation (CY)</i>											
	\$6,000	\$6,000	\$6,000	\$8,000	\$8,000	\$10,400	\$10,400	\$13,000	\$13,000	\$16,100	\$16,100

TUR = Total Unemployment Rate.
IUR = Insured Unemployment Rate.
AWBA = Average Weekly Benefit Amount.
EB = Extended Benefits.
FUTA = Federal Unemployment Tax Act.
EUCA = Extended Unemployment Compensation Account.
ESAA = Employment Security Administration Account.
ES = Employment Service.
Source: USDOL/ETA/UIS/DAS.
(DRI assumptions as of May 1980).

Years	Percent of AAW	Estimated Federal taxable wage base
1987-88	60	13,000
<i>Adopted by recorded vote of 9 years, 2 nays (Commissioners Cooper, Hill).</i>		
1989-90	65	16,100
<i>Adopted by recorded vote of 8 years, 3 nays (Commissioners Bivins, Cooper, Hill).</i>		

2. There should be no change in the FUTA rate or the Federal taxable wage base for calendar years 1981 or 1982. To avoid a possible shortfall of funds for fiscal year 1982, the Commission recommends that a one-time authorization be approved by the Congress to make available for appropriation in Grants-to-States any funds not otherwise committed in the Employment Security Administration Account (see chapter 7.6).

3. The Congress should authorize a study in 1989 to further evaluate the 65 percent taxable wage base and to determine if a 65 percent base will provide a financially sound program in the future.

6.3 Financing State Programs

Under the Federal-State employment security system, States are virtually free, except for the Federal experience-rating requirements, to design their own financing systems, which over time should produce revenues commensurate with benefit costs. Ideally, State laws should (1) provide for an adequate reserve in order that adequate worker benefits can be provided and (2) protect employers against frequent and severe rate fluctuations.

The need for unemployment insurance (UI) program reform, particularly in the taxation (financing) area, became evident in the seventies. The fact that nearly half the States had to borrow from the Federal Unemployment Account (FUA) during the last recession has emphasized the deficiencies in State taxation legislation. Consequently, many States are now in a situation where simultaneously they must meet rising benefit payment obligations, build or rebuild reserves, and in some cases repay outstanding loans.

The need for long-term financial planning is obvious. In order to regain and maintain the financial integrity of the UI system, tax reform is required. In this regard, factors which States should take into consideration in developing their tax programs are:

Adopted by recorded vote of 9 years, 2 nays (Commissioners Cooper, Hill).

[*Commissioner Cohen:* The cost estimate for the Commission's recommendation to increase the maximum taxable wage base is based on continuation of the existing 0.7 percent Federal rate. However, it is my expectation that later in the 1980's it may be possible to decrease this rate to 0.6 percent or even 0.5 percent. Therefore, the 1980 estimate may be on the high side. If unemployment later in the decade is reduced, as I hope it will be, and lesser amounts are needed for extended benefits and reinsurance, it should be possible to reduce the 0.7 percent rate. I hope so.]

[See section 12.0, "Commissioners' Supplemental Statements."]

Footnotes

1. Enacted in 1954, Public Law 567. See chapter 7.6 for further explanation of the Reed Act.

2. Paul J. Mackin, in *Benefit Financing in Unemployment Insurance: A Problem of Balancing Responsibilities* (Kalamazoo: The W.E. Upjohn Institute for Employment Research, 1978), fully discusses the taxable wage base issue in benefit financing.

1. adequacy of the tax structure—ensuring that the system can match income and outlays,
2. timing—ensuring that the system is responsive to the economic cycle, and
3. equity—ensuring that there is a fair distribution of taxes among employers.

The Commission believes the effort to restore the financial integrity of the UI system and to make it as nearly as practicable self-supporting, must be undertaken at both the State and Federal levels. In this regard, the Commission studied numerous financial issues. Included in this chapter are: (1) employee contributions, (2) recovery of pooled costs, (3) State solvency measures, (4) the State taxable wage base, and (5) experience rating.

Background on employee contributions

There has been general acceptance of employer financing of regular State UI benefits. However, such is not the case with respect to employee or worker contributions.

Originally nine States provided for employee contributions.¹ Tax rates varied from 0.5 percent to 1.5 percent of taxable wages, with most States providing

for 1.0 percent. Three States experience-rated the tax. All except two of the nine, Alabama and New Jersey, have since repealed the employee contribution provisions.² In Alabama and New Jersey, employees pay contributions of 0.5 percent of State taxable wages. However, in Alabama employees pay contributions only when the fund is below what is considered a minimum normal amount; otherwise they are not liable for contributions. Alaska enacted employee contributions in 1955. The rate varies from 0.3 percent to 0.9 percent, depending on the rate schedule in effect.

The wage base used to determine the amount of employee contributions is the same as that used for employer taxes in the State. Employee contributions are deducted by the employer from the worker's wages and sent with the employer's taxes to the State employment security agency. Table 1 shows selected Alabama, Alaska, and New Jersey employer and employee contribution data for calendar years 1978 and 1979.

Obviously, employee contributions represent an additional source of income and could mean employer tax relief—relief in that employers' tax burden could be lessened or at least not increased. Also, some persons have suggested that employee contributions could lead to a stronger labor voice in the UI legislative process. Some adversaries of this financing option also believe worker contributions would influence disqualification rulings in favor of the claimant because the claimant had contributed to the financing of the program.

Indications are that worker contributions were repealed primarily because they represented a relatively small share of total contributions and simply were not needed to finance the program. Further, employers were concerned about increasing labor influence on legislation.

Findings on employee contributions

The Commission believes that regular State benefits as far as possible should be financed entirely by employer

contributions. However, the Commission recognizes that employee contributions are an additional source of revenue for the UI program and is aware of the arguments for and against their use.

Background on recovery of pooled costs

In addition to provisions that directly determine the individual employer's rate (experience rating), there are other provisions in State laws which indirectly affect employer rates. Among such provisions are those that determine the amount of pooled or socialized costs—costs which are absorbed by the system as a whole, not by individual employers. Pooled costs are comprised of noncharged benefit costs and ineffectively charged benefit costs. (The specific types of benefit payments included in each category are shown in subsequent text.) While it is recognized that the amount of pooled costs reflects the degree to which State experience rating is operative, they are dealt with in this chapter only as they relate to solvency.

Depending on individual State laws, included in benefits noncharged are:

1. benefits paid following a period of disqualification for voluntary quit, misconduct, and refusal of suitable work;
2. benefit awards finally reversed;
3. reimbursements on combined wage claim;
4. State share of extended benefits;
5. benefits paid to individual in approved training;
6. benefits paid for unemployment due to a disaster;
7. benefits paid to individual if employer continues to employ claimant in part-time work to same extent as in base period;
8. benefits based on employment of short duration;
9. dependents' allowances; and
10. payments made in error and not recovered.

Noncharged benefits produce the largest amount of pooled costs in most States. Data for the period 1970 through 1979 show a wide variation among States in the percent of total benefits noncharged. Generally, the percentages range from zero to near 50 percent. In the mid-seventies one State recorded 53 percent of its benefits noncharged. About half of the States usually show 20 percent or less of their total benefits as noncharges.

Ineffectively charged benefits represent a second source of pooled costs. Included in ineffective charges are:

1. benefits charged to individual employers, who because of prior charges are already taxed at the maximum rate,
2. benefits charged to inactive (out-of-business) employers, and
3. negative balance cancellations (in reserve ratio States).

TABLE 1. Employee and employer contributions to State UI funds, 1978 and 1979

	1978			1979		
	Average employ- er tax rate ¹	Employ- ee tax rate	Employ- ee con- tribu- tions due (in thou- sands of dollars)	Average employ- er tax rate	Employ- ee tax rate	Employ- ee con- tribu- tions due
Alabama	2.47	0.5	30,837	2.2	0.5	23,359
Alaska	4.00	0.8	9,956	4.0	0.8	9,972
New Jersey	3.76	0.5	74,395	3.7	0.5	80,325

¹ All rates given as percentage of State taxable wages.

Obviously each State will produce differing amounts of ineffectively charged costs, simply because of the taxation provisions unique to each State law. The major portion of ineffectively charged costs are those related to employers at the maximum rate, particularly during a recessionary period. Even though benefits charged to employers already at the maximum rate may be charged over the long run, in some States (e.g., States using a reserve ratio experience rating formula) they may not be recouped on a current basis. In such instances, all employers as a group finance these costs on a current basis since tax rate schedules are adjusted to ensure fund adequacy or a special surtax is applied. Aggregate data showing the extent of ineffective charges are not available, but by the very nature of these charges, all States will realize them to some degree.

The charging and recovery of pooled costs are handled differently among the States. About one-fourth of the States provide for a separate fund or account against which pooled costs are charged. These accounts usually are credited with penalty and interest collections and other incidental income. When the accounts drop below a prescribed level, employers are usually assessed additional rates (either a uniform amount or a percentage increase). The remaining States basically do not provide for direct recovery of pooled costs. They simply adjust the tax rate schedules or assess additional taxes based on their fund balances. In other words, recovery of pooled costs is accomplished through the States' overall fund solvency provisions.

Findings on recovery of pooled costs

Underfinancing and inadequate financing of pooled costs do not alone cause insolvency. Obviously other factors—high level of insured unemployment, general underfinancing of the entire benefit structure—contribute to State insolvency. However, in order to develop and maintain sound financing programs overall, States must carefully consider the level and recovery mechanism for pooled costs, particularly in those States with a relatively high level of such costs.

Background on State solvency measures

Federal action. There was early concern on the part of the Social Security Board, the Federal Advisory Council on Employment Security, and the Interstate Conference of Employment Security Agencies to assure the solvency of State funds. In fact, the original draft bill of the Social Security Board (SSB) recommended provisions under which reduced rates would be suspended if certain fund conditions were not met. The provisions included a solvency measure which was stated in terms of a multiple of benefits paid. In addition, the 1939 Social Security Amendments as passed by the House of Representatives (but not enacted) included a standard

which a State would have had to meet before additional credit under the Federal Unemployment Tax Act (FUTA) would have been given.

Initially, 27 of the 38 States with experience rating in effect adopted the Social Security Board's recommendations. However, by 1951, States had developed new and less stringent tests of solvency. By then, only seven State laws incorporated the original SSB recommendation of a minimum solvency test in terms of a multiple of benefits paid. Four States currently use a multiple of benefits paid.

The Federal Advisory Council became involved in the solvency issue in 1952, when it recognized the inadequacy of some State reserve requirements. Its 1953 report to the Secretary of Labor indicated that the Advisory Council "agreed that the most effective solvency measure is one that evaluates the reserve as a multiple of the State's average annual benefit costs."

In 1959, the Committee on Benefit Financing of the Interstate Conference of Employment Security Agencies issued a report concluding that the highest-cost consecutive 12-month period should be used as a base and that 1.5 times those costs should be considered as a minimum adequate reserve. The Committee has modified this since, indicating that other factors should be considered. Also in 1959, the Federal Advisory Council expressed concern with dwindling State reserves (following the recession) and again studied the solvency issue. As William Haber and Merrill G. Murray stated it, the "Federal responsibility in this area was set forth by the Federal Advisory Council" in its March 1960 resolution, which urged "speedy State action" and said that "in its absence, Federal solvency standards might be necessary."⁸

The difficulty with a Federal uniform standard lies in developing one that is effective and equitable among States. To take into account State differences in UI program structure, industrial mix, seasonality, and economic growth would be extremely difficult and would probably result in a standard that is very complex.

While no formal proposals for a Federal solvency standard (except for that included in the Social Security Amendments passed by the House in 1939) have been offered, the Department of Labor has for about 20 years used an adequacy guideline that commonly is referred to as the 1.5 multiple. The guideline, developed by the States through the Benefit Financing Committee of the Interstate Conference of Employment Security Agencies, recommends that State reserves (a percentage of total wages) equal 1.5 to 3.0 times the highest consecutive 12-month benefit cost rate (benefits as a percentage of total wages) experienced by the State since 1957. The 1.5 level represents a minimum adequate reserve, while up to 3.0 would be a fairly adequate fund. It was generally believed that, if States could accumulate 18 months (1.5 years) of recessionary level funds prior to a downturn, then the funds on

hand could cover the benefit costs associated therewith. Incoming moneys would provide the base for rebuilding the fund for the future.

The Commission recognizes that maintaining a reserve equal to the 1.5 multiple does not guarantee fund solvency; nor does a multiple of less than 1.5 necessarily mean insolvency. Nevertheless, data indicate that States with reserves equal to at least the 1.5 multiple are less likely to require Federal advances. This was evidenced during the recent recession. At the end of 1973, 21 States had a reserve multiple equal to or exceeding 1.5. Of these, only the District of Columbia, Florida, and Wisconsin were forced to borrow from the Federal Unemployment Account (FUA) at some time during the recessionary period. At the same time, 31 States were below the 1.5 guideline; 22 had to borrow. The table below shows the number of States which had reserve multiples at year end equal to or exceeding 1.5 for the period 1971-79.

Year	Number of States
1971	22
1972	21
1973	21
1974	15
1975	2
1976	1
1977	1
1978	2
1979	1 (estimate)

This particular fund adequacy measure is merely a guideline used by the Department of Labor and is not mandated. If its limitations are recognized, it nevertheless can be a useful analytical tool in developing alternative financing schemes.

In addition, further study should be devoted to the concept of a Federal solvency standard, not only to determine an appropriate standard, but also to see how it could be administered.

State action. As indicated previously, States are free to enact tax legislation governing the determination of employer contribution rates. The legislation varies significantly among States with respect to experience rating provisions and solvency measures.

The most significant determinant of individual employers' contribution rates, other than experience rating provisions, are the measures (either explicit or implicit) within all State laws which provide for the adjustment of tax revenues when the State's reserve drops below a predetermined level. The individual State solvency provisions automatically invoke such measures as (1) additional tax components, (2) the application of higher rate schedules, or (3) the suspension of reduced rates. In brief,

- 23 States trigger on highest rate schedules when the State fund balance is less than a prescribed *percentage of annual payroll*.

- 9 States trigger on highest rate schedules when the State fund balance is less than a prescribed *dollar amount*. (One State triggers on highest rate schedule when the fund balance is less than a prescribed dollar amount and less than a percentage of payroll.)

- 4 States trigger on highest rate schedules when the State fund balance is less than a prescribed *multiple of benefits* paid during a preceding period.

- 3 States trigger on highest rate schedules when the State fund balance is less than a prescribed *multiple of benefit cost rate*.

- 12 States trigger on highest rate schedules or additional tax components pursuant to individual formulas.

- In addition, 18 States suspend all reduced rates (rates below the standard rate, usually 2.7 percent) under certain fund conditions.

The last measure, the suspension of reduced rates, usually means in practice a uniform minimum tax rate (generally 2.7 percent, unless the standard rate is higher) for all employers. The disadvantages of such a measure, especially in reserve-ratio States, are that the uniform rate may yield revenue far in excess of the amount needed to provide a safe level of reserves (particularly if the fund is only slightly below a conservatively set level) and that the suspension may occur during recession conditions, when the higher rates for many employers tend to intensify the cyclical aspects of the tax program.

Also, the increased rate paid by employers and credited to their accounts when reduced rates are suspended may so increase their individual reserves that their rates will be severely lowered when reduced rates again become effective. In turn, reduced revenue from the lower rates may again reduce the fund below a minimum safe level. The practice of suspending reduced rates thus may itself produce severe rate fluctuations and may actually perpetuate emergency fund conditions.

Utilizing a solvency measure that is stated in terms of a flat, fixed dollar amount (operative in nine States) also can lead to financial problems. Because of inflation such a measure obviously erodes over time and consequently does not effect an adjustment of revenue in a timely manner.

On the other hand, solvency provisions that are stated in terms of a percentage of wages or payroll or of a multiple of benefits paid or benefit cost rates will more accurately signal solvency problems since they represent dynamic rather than static measures. They are not adversely affected by inflation and reflect changing program liability.

Findings on State solvency measures

The Commission recognizes that States are in a critical period of restoring the financial solvency and integrity of their UI programs. Long-range financial planning on the part of States is a necessity. Increased resources at all levels—State, regional, and national—need to be devoted to this effort.

The Commission strongly urges each State to develop effective solvency measures. Both reserve levels and the system's revenue-generating capacity should be considered in designing the specific solvency measure.

Past experience indicates that reserves as a percentage of total wages at the beginning of a downturn should be between 1.5 and 3.0 times the State's average annual benefit cost rate for some prior period. Using an average of several high benefit cost rates provides more stability than a one-year rate, which could shift dramatically from year to year. The past measurement period should be responsive to changing economic conditions and therefore be a moving base period (e.g., the most recent 15 years of experience).

With respect to the tax structure adequacy, the Commission's review indicates that State laws should provide for a maximum income rate, or revenue-generating capacity, that is in excess of the expected long-term benefit cost rate. The excess allows for planning error and added fund rebuilding capacity.

Those States opting for a relatively low reserve multiple, less than 2.0 perhaps, accordingly should utilize a higher maximum income rate, and vice versa. Obviously, the combination of reserve level and revenue-generating capacity are for the most part determined by State economic conditions and political preferences.

The Commission's review also found that the use of a static or fixed measure (e.g., absolute dollar amount) to adjust tax inflow into the fund can lead to financial difficulties. A fixed measure simply does not keep pace with the changing liabilities of the system and risk to the fund. The Commission believes that a provision stated in terms of a dynamic criterion (such as total wages or flexible taxable wages) more accurately reflects the changing financial responsibilities of the system.

Background on State taxable wage base

As indicated previously, the taxable wage base is one of the main elements of the UI financing structure. In theory, States themselves can set their taxable wage bases. For all practical purposes, however, the minimum level is determined under Federal law, since employers would pay higher Federal taxes if the State base were below the Federal base. A complete discussion of the Federal taxable wage base is included in chapter 6.2.

Revenue generated under the State UI programs is used solely for the payment of regular State benefits and the State share of extended benefits. Obviously, the combination of the taxable wage base and the tax rate determines the distribution of the tax burden among the State's employers. Discussed in this section are the relationship the State base bears to program liabilities and the means of adjusting the base to reflect the changes in such liability.

Under State UI laws, the amount of wages earned in the base qualifying period determines the amount of potential benefits a claimant may receive. Higher earnings signify a higher weekly benefit amount (WBA) up to the maximum and generally mean longer duration. Thus, the relationship between earnings and benefits is readily apparent.

Inasmuch as the potential risk or liability of the fund is continually rising simply because wages are increasing, the taxable wage base should also rise, that is, be flexible. Generally, a taxable wage base that is stated in terms of a percentage of average annual wages, a multiple of maximum weekly benefit amount, or insured wages (base period wages required to qualify for the maximum potential benefits) is by its very nature flexible, the degree of flexibility depending on how often a State elects to recognize a change.

Presently, 15 States provide for a flexible taxable wage base (including Puerto Rico, which taxes total wages) and most of these States utilize a specified percentage of average annual wages. (See Table 3 in chapter 6.2.) It is interesting to note that of the 36 States with a flexible maximum weekly benefit amount, only 13 also provide for a flexible taxable wage base.

Findings on State taxable wage base

The Commission believes that States should give consideration to establishing a taxable wage base above the Federal taxable wage base if potential risk to the individual States' funds warrants such moves. Furthermore, the Commission recognizes that potential program risk is continually rising (in terms of average wages, maximum weekly benefit amount, etc.) and therefore believes that the base on which taxes to support the program are generated also should increase periodically.

Background on experience rating

The system under which employers are assigned tax rates in accordance with their individual experience with unemployment (and subject to the needs of the State program) is referred to as experience rating (or merit rating). Within the confines of the general Federal requirements, the experience rating provisions of State laws vary greatly. The most significant variations arise from the differences in the formulas used for rate determination. The factor used to measure experience

with unemployment is that which each State considers to best reflect the relative incidence of unemployment among the work forces of different employers. Differences in such experience are the major justification for differences in tax rates. At present there are four distinct systems, usually referred to as reserve-ratio, benefit-ratio, benefit-wage-ratio, and payroll-declines formulas. A few States have combinations of the formulas.

In spite of the significant differences in their basic formulas, all systems have certain common characteristics. All formulas are devised to establish the relative experience of individual employers with unemployment or with benefit costs. To this end, all have factors for measuring each employer's experience with unemployment or benefit expenditures, and all compare this experience with a measure of exposure—usually payrolls—to establish the relative experience of large and small employers. However, the four systems differ considerably with respect to:

- the factors used to measure experience and the method of measurement;
- the time period during which the experience is recorded;
- the relative weight given the factors in final rate assignment.

Brief descriptions of each of the formulas follow.

Reserve-ratio formula. The reserve-ratio system is in effect in 32 States and was the earliest experience rating formula in use. Under this system the employer's reserve (contributions less benefits) is divided by the payroll to determine the size of the account balance in terms of the potential liability for benefits that inheres in wage payments (reserve-ratio). The reserve balance generally includes contributions and benefits from the date the employer became subject to the State law. However, some States limit reserve accumulation to some prior specific date or the past several years. The payroll amounts used in the formula are taken from periods of from one to five years; most States use a three-year average. Under this plan, as the reserve ratio increases, the employer's tax rate decreases, and vice versa. In practice, reserve-ratio systems tend to operate the most countercyclically, since payrolls fluctuate farther and more rapidly than reserve balances. In other words, firms with economic difficulty of short duration probably do not experience tax rate increases immediately because reserves built up in good years are slow to change. However, it is recognized that in all reserve-ratio States a declining fund balance may cause a general rise in taxes as a higher tax rate schedule becomes effective. Since this system measures reserves in terms of current dollars, the effect of inflation is not considered in determining tax rates.

Benefit-ratio formula. The benefit-ratio formula (operative in 11 States) also uses benefits as the measure of experience, but eliminates contributions from the computation, thereby relating outlays directly to payrolls. The ratio of benefits to payrolls is the index for rate variation, the theory being that if each employer pays a UI tax rate which approximates the employer's benefit ratio, the program will be adequately financed. Rates are varied by utilizing several different schedules, based on specified levels of the State fund. Fund levels are generally stated in terms of a flat dollar amount, a proportion of payrolls, or a fund adequacy percentage.

Unlike the reserve-ratio system, the benefit-ratio plan is geared to short-term experience, with 10 of the 11 States employing a formula using only the prior 3 years in determining benefit ratios. In other words, the system is more or less a pay-as-you-go plan. It is obviously more responsive to economic downturns than the reserve-ratio system and consequently less countercyclical as well.

Benefit-wage-ratio formula. The benefit-wage-ratio system, operative in five States, is substantially different from the previously mentioned plans in that it does not measure *all* benefits paid to the workers of the individual employers or taxes paid. The relative experience is measured by worker separations which result in benefit payments; however, the duration of their benefits is not a factor. The separations, weighted with the wages earned with each base period employer, are noted on each employer's experience-rating record as benefit wages. Only one separation per beneficiary per year is recorded for any one employer. The employer's experience factor is the ratio of benefit wages to total taxable wages.

Since benefit wages measure only the frequency of unemployment, and not the duration, this ratio approximates the severity of unemployment. Through the application of a State experience factor (described below) each employer shares in the cost of average statewide duration of benefits.

The State experience factor portion of the formula is the ratio of total benefit payments to total benefit wages. This component assumes that, on the average, workers who draw benefits receive a certain amount of benefits for each dollar of wages paid, and the same amount of taxes per dollar of benefit wages is needed to replenish the fund. The total amount to be raised is distributed among employers in accordance with their benefit-wage ratios (employer experience factor). The multiplication of the two experience factors, employer and State, determines individual tax rate according to a table. The range of rates is limited by a minimum and a maximum.

Payroll-declines formula. The payroll-declines system is utilized in three States. This formula takes no ac-

count of tax payments or benefits paid to unemployed workers. Rather, the index is based on variations in payrolls from quarter to quarter (measures seasonal fluctuations) and/or year to year (assesses general business declines). Each State uses a different method to determine rates on the basis of the amount of decline in each employer's payroll over the specified period, expressed as a percentage of payrolls.

Experience rating continues to be a controversial feature of the UI system. Also, it appears firmly established within the system. Experience rating as the method of financing the UI program was considered by the Commission only in terms of specific elements related to experience rating, rather than in its concept. With State fund solvency a major concern, the Commission accordingly reviewed Federal requirements for permitting reduced rates of contribution and State law provisions for establishing minimum and maximum tax rates.

Federal requirements for permitting reduced rates of contribution. State experience rating provisions have developed on the basis of the additional credit provisions of the Social Security Act, now the Federal Unemployment Tax Act, as amended. Originally the Federal law allowed employers additional credit for a lowered rate of contribution (a rate below 2.7 percent) if the rate was based on not less than 3 years of "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk." This requirement was modified by the 1954 amendment, which authorized the States to extend experience rating reductions to employers after they have at least 1 year of such experience. The requirement was further modified with respect to newly subject employers (employers not qualified for experience rating under State law) by the 1970 amendments, which permitted the States to allow an immediate reduced rate, but not less than 1 percent, on a "reasonable basis." Reasonable basis is generally defined, for example, as the benefit cost rate for some previous period, or an average industry contribution rate. More simply, present Federal law permits (1) reduced rates for employers with at least 1 year of experience with respect to unemployment or other factors bearing a direct relation to unemployment risk and (2) reduced rates (but not less than 1 percent) for newly subject employers on a reasonable basis.

Of the 51 States in which experience rating is operative, 37 require less than 3 years for an employer to qualify for experience rating. One State, Delaware, requires 4 years of experience.

Generally, new and newly covered employers under optimum fund level conditions pay the standard rate (2.7 percent) until they meet the requirements for experience rating. However, some States permit lower

rates (but not lower than 1.0 percent) that are based on, for example, the benefit cost rate for some previous period, the average contribution rate for all employers, or an average industry contribution rate. On the other hand, in some States unfavorable fund level conditions result in new employer contribution rates in excess of 2.7 percent. In fact, for calendar year 1980 fewer than 10 States permitted new employer rates of less than 2.7 percent, and 26 States assigned rates above 2.7 percent to such employers.

Assignment of tax rates. The spread of tax rates among employers is probably the most controversial element of the experience rating system since it greatly affects the distribution of the tax burden. Under a narrow spread of rates, low-cost employers will assume a greater share of the tax burden, reducing the effectiveness of experience rating provisions. On the other hand, a wide spread of rates may lead to a higher number of business failures as marginal, high-cost employers are assigned higher tax rates. The range of rates around a desired income level is for all practical purposes a political decision.

Minimum tax rates. Under experience rating, specified minimum rates under the most favorable fund level conditions vary from zero to 1.2 percent of taxable payrolls; 32 States have minimum rates of 0.1 percent or less, 12 of them permitting zero rates.⁴ Five States have zero rates in effect in 1980.⁵ Proponents of zero rates note that it extends the positive incentive effects of experience rating. Opponents of zero rates argue that UI is a social insurance program and all employers should participate in its financing. Even low-cost employers should share in financing since they benefit from aggregate consumer demand and the broad social aspects of the UI program. A more recent argument for the elimination of zero rates is that experience rating systems which include zero rates not only extend beyond the theoretical bounds of social insurance, but go beyond the bounds allowed by private insurance as well. For example, an individual or firm in the private sector who has carried private insurance for a given time period and never filed a claim may earn a reduced rate or premium, but never a zero rate. A minimum rate greater than zero would not disrupt the incentive effects of experience rating.

Maximum tax rates. Maximum tax rates range from 2.7 to 9.0 percent (effective in Michigan in 1981). In fact, only one State has not raised its maximum rate above the standard rate of 2.7 percent. Just over half of the States have a maximum rate above 4.4 percent. The maximum tax rate is one element which determines the yield of a taxation system, so there is a relationship between the maximum tax rate and solvency. Further, the maximum tax rate is one of the factors in determin-

ing the distribution of the tax burden among employers. Generally, the wider the range between minimum and maximum tax rates within a given tax schedule, the higher the degree of experience rating.

Findings on experience rating

The Commission discussed amending Federal law to allow States a broader basis (than experience with unemployment) for permitting reduced rates. The intent of such an amendment is to provide States more flexibility and to perhaps encourage States to be innovative with respect to developing experience rating formulas. The Commission is evenly divided on the issue.

Following its review of new and newly covered employer tax rates, the Commission concluded that States should continue to have discretion in establishing tax rate for such employers. However, the Commission believes that the minimum rate required under Federal law for newly subject employers, presently 1.0 percent, should be changed to a rate that more closely approximates the rate an employer is likely to earn under experience rating conditions.

With respect to minimum State tax rates, the Commission believes that in keeping with insurance concepts (social or private) zero rates for experience-rated employers are not appropriate within the UI program.

Concerning the determination of maximum contribution rates, the Commission believes that these rates should be based upon consideration of such factors as (a) past and anticipated benefit cost rates, (b) the range between minimum and maximum tax rates, (c) the relationship between the maximum rate and past average contribution rates, and (d) the maintenance of a sound financing system.

Recommendations

The Commission recommends the following to States:

1. As far as possible, regular State benefits should be financed wholly by employer contributions. States should continue to be free, as they are presently, however, to require employee contributions for temporary disability benefits or unemployment benefits.

2. To assure the payment of all benefits when due, benefits not charged and/or ineffectively charged to an individual employer account should be appropriately financed within the State taxation program. In this regard, States should annually review and evaluate the extent to which benefit costs are noncharged or are ineffectively charged to individual employer accounts and should provide for total replenishment of the State fund with respect to such costs within a reasonable period of time. Particular attention should be given to the impact that pooled costs have on State solvency.

3. Each State should develop in its State law a specific solvency plan to finance benefits over a business cycle and to maintain adequate reserves to accomplish that result.

States should develop a financing system that will provide adequate reserves and a sufficient replenishment capability without neglecting countercyclical considerations. States should work toward the objective of having (1) at the beginning of any economic downturn a reserve fund of not less than two times the product of (a) its average annual benefit cost rate in the highest 3 years of the prior 15 years and (b) total wages for the most recent year and (2) a revenue-generating capacity at least 30 percent above the expected long-run benefit cost rate. The combination of reserve levels and replenishment rates should be determined by each State, with those States opting for lower reserves having more rapid replenishment rates and those States selecting higher reserve levels having slower replenishment rates.

4. Provisions in State laws for periodically measuring the status of the State reserve funds, as they affect both the adjustment of revenues and the solvency of the fund, should be stated in percentage of wages (preferably total wages) rather than absolute dollar amounts.

5. States should be free to increase their taxable wage bases above the Federal level. States should be encouraged to include in their State laws automatic adjustments of the taxable wage base levels in relation to changes in wages covered by the State program.

*Adopted by recorded vote of 8 yeas,
2 nays (Commissioners Cooper, Hill).*

6. Every State should have a minimum tax rate that is greater than zero.

7. The maximum tax rate in a State should be set so that the vast majority of benefit payments are effectively charged to the employers from which benefit rights accrued. The maximum State employer contribution rate in a given year should be based upon consideration of such factors as (a) the average benefit cost rate in the previous 3 years (or the estimated average benefit cost rate in the succeeding 3 years), (b) the maintenance of a range of rates between the minimum and maximum of at least 2.7 percent, and (c) in States where the average benefit cost rate (based on taxable payrolls) exceeds 1.45 percent, the establishment of a maximum rate at least twice the average contribution rate for the previous 3 years. The Commission points out that States, in the development of their overall tax program, should give particular consideration (a) to ensuring that the total yield of all employer rates over a reasonable period of years is adequate to produce sufficient income to pay all benefits when due and (b) to providing as far as possible a taxation system which is countercyclical in nature.

*Adopted by recorded vote of 11 yeas,
1 nay (Commissioner Bivins).*

The Commission recommends the following to the Congress:

The Federal Unemployment Tax Act should require that a State law may provide that the contribution rate for new (unrated) employers may be different from that standard rate (2.7 percent), but not less than the current average contribution rate (based on the most recent data available) in the industry of the new employer.

[Commissioner Cohen: I proposed to the Commission that the Federal standard relating to experience rating be amended. I proposed relaxing the requirement to give States more flexibility on this matter (Section 3303(a)(1) of the FUTA). This proposal was rejected by a tie vote of 5 to 5. A previous motion to retain the Federal standard on experience rating was also defeated by a tie vote of 5 to 5. My proposal was to allow States to experience-rate on the basis of "employment" as well

as unemployment and to eliminate the reference to a "direct" relationship to the risk. This effort to give the States greater latitude did not obtain support from the employer representatives on the Commission, whose general position is to give the States maximum latitude on benefits but not on experience rating.]

Footnotes

1. Alabama, California, Indiana, Kentucky, Louisiana, Massachusetts, New Hampshire, New Jersey, and Rhode Island.

2. Some States diverted the UI employee tax in total (California and Rhode Island) or in part (New Jersey) to temporary disability programs for workers.

3. William Haber and Merrill G. Murray, *Unemployment Insurance in the American Economy* (Homewood, Ill., Richard D. Irwin, 1966).

4. Excludes Puerto Rico (2.95 percent) and Virgin Islands (2.7 percent), which do not experience-rate employers.

5. Colorado, Iowa, Missouri, South Dakota, and Wisconsin.

6.4 Federal Loan Policy

Background

The George loan fund (named after Senator Walter F. George, chairman of the Senate Committee on Finance) was enacted in 1944 and provided interest-free loans to States in which unemployment insurance (UI) fund balances fell below specified levels. An account from which loans were to be made was established in the Unemployment Trust Fund; appropriations to the account were authorized but never actually made. The provisions of the George loan fund were allowed to expire in 1952, simply because no State ever became eligible.

Subsequent provisions and early experience with the loan fund. In 1954, new legislation was enacted making Federal loans available to States from a Federal fund called the Reed loan fund. States were eligible for loans if fund balances at the end of a quarter were below outlays for the four quarters ending on that date. Included in the legislation were provisions for automatic repayment (beginning 4 years after the loan was made) by States and automatic financing, through the Federal Unemployment Tax Act (FUTA), of a loan fund account. Under this legislation, Alaska qualified for and received \$8.8 million beginning in 1955; in 1958–59, Michigan received \$113 million and Penn-

sylvania \$112 million. Michigan never actually needed to use its loan, and Pennsylvania did not need its loan until 1961. Since the loans bore no interest, there was no incentive to repay them sooner than required. Consequently, legislation in 1960 tightened the repayment provisions as well as the qualifying conditions. These provisions essentially still are applicable.

Under present Federal law (Title XII of the Social Security Act), a State is eligible for an advance (loan) when its UI reserve fund at the end of a month and estimated tax receipts decline to such a point that without a loan it cannot meet its estimated benefit payments during any one or all of the ensuing 3 months. The loan is equal to the amount(s) estimated to be needed to make up the monthly deficit(s). Thus, advances from the Federal Unemployment Account (FUA) can be made only when a State fund actually becomes insolvent. As in prior legislation, the loans to States are interest-free; that is, States are not charged an explicit rate of interest. There is an implicit cost of borrowing, however, since States with outstanding loans earn interest only on their positive reserve balances, net of loans. The loss of interest earnings on any reserve balance up to the amount of any outstanding loan constitutes a cost of borrowing.

Repayment provisions. Under current repayment provisions, if an advance is not entirely repaid by the State by the second January 1 after the State receives the

TABLE 1. Loan repayment provisions ¹

January 1 after loan	Standard net FUTA tax rate (percent) ²	Credit reduction (percent)	Additional credit reduction (percent)	Effective net FUTA tax rate (percent) ³
1	0.7	0.0	0.0	0.7
2	0.7	0.3	0.0	1.0
3	0.7	0.6	2.7-ATR	1.3 minimum
4	0.7	0.9	2.7-ATR	1.6 minimum
5	0.7	1.2	2.7/BCR-ATR	1.9 minimum
6	0.7	1.5	2.7/BCR-ATR	2.2 minimum
7	0.7	1.8	2.7/BCR-ATR	2.5 minimum
8	0.7	2.1	2.7/BCR-ATR	2.8 minimum
9	0.7	2.4	2.7/BCR-ATR	3.1 minimum
10	0.7	2.7	2.7/BCR-ATR	3.4 maximum
11	0.7	2.7	2.7/BCR-ATR	3.4 maximum

ATR = State's average contribution rate for previous year.

BCR = State's average benefit cost rate for previous 5 years.

¹ Under Chapter 23 of the Internal Revenue Code.² Assuming current 0.7 percent rate remains in effect³ Does not include additional credit reduction.

loan and remains unpaid on the following November 10 of that year, the FUTA tax credit applicable for that year for the State's employers is reduced 0.3 percentage points. For each succeeding year in which the loan remains outstanding, the reduction is an additional 0.3 percentage points (i.e., 0.6, 0.9, 1.2 percentage points, etc., in successive years). A further reduction is made if, in either the third or fourth year after the loan is made and remains unpaid, the State's average contribution rate is less than 2.7 percent of taxable wages. The amount of reduction is equal to 2.7 percent less the State's average contribution rate for the previous year. In the fifth and subsequent years of an outstanding loan balance, a further reduction is made if the State's average contribution rate is less than either the State's previous 5-year average annual benefit cost rate or 2.7 percent, whichever is higher. The added credit reduction equals the difference between the cost rate or 2.7 percent and the State's average contribution rate (see Table 1). Under the above provisions, a State has from 2 to 3 years (depending on the month the first loan is secured) before repayment of a loan begins (see Table 2). Countercyclical in nature, these provisions give States sufficient time, theoretically, to rebuild fund reserves.

Because of the severe economic downturn of the mid-seventies, the Congress enacted legislation that permitted States with outstanding loans to delay repayment if they met certain tax structure criteria or actually repaid a portion of the loan. Public Laws 94-45 and 95-19 provided "deferral" (or waiver) of automatic tax credit reduction for taxable years 1975 through 1979. The intent of the deferral was to ease the burden of States in which repayment of loans was scheduled to occur at the same time those States faced

extraordinarily high benefit outlays. As noted later, the deferrals actually may have caused serious financial problems. Permanent repayment provisions again were effective beginning with taxable year 1980.

Experience of the 1970's. Borrowing under the present loan provisions was heavy during the 1970's. In all, 25 States secured loans at various times. Connecticut was the first to draw on the FUA, starting in early 1972. The bulk of the States, 20, initiated borrowing in 1975 and 1976. From March 1972 through June 30, 1980, advances totaling \$6.2 billion were made; 75 percent of the debt was incurred from 1975 to 1977. In order to oblige all State needs at that time, the FUA, which is normally funded through the FUTA, secured advances of \$5 billion from general revenues.

As of June 30, 1980, about \$1.9 billion had been repaid, leaving 70 percent (or \$4.3 billion) still outstanding and leaving 15 States with debts. Ten States repaid their loans in full. Michigan repaid its loan in full in December 1979 but secured further loans beginning in January 1980 (see Table 3).

TABLE 2. Examples of time lapse for loan repayment

	Example A	Example B
State first borrows	Dec. 20, 1980	Jan. 7, 1980
First Jan. 1	1981	1981
Second Jan. and Nov. 10	1982	1982
Payment due Jan. 31	1983	1983
On taxable wages for	1982	1982
Elapsed time from first loan	2 years +	3 years +

TABLE 3. Advances to States from the Federal unemployment account (in millions per calendar year)

State	1972	1973	1974	1975	1976	1977	1978	1979	Loans approved through 6/30/80	Repayments	Total outstanding	
											Amount	Percentage of 1979 total wage
CT	\$31.8	\$21.7	\$ 8.5	\$ 203.0	\$ 137.0	\$ 75.0	\$ 37.0	—	—	\$ 143.1	\$ 370.9	2.0
WA	—	40.7	3.4	50.0	55.3	—	—	—	—	149.4	0	0
VT	—	—	5.3	23.0	9.2	10.2	—	—	—	7.0	40.7	2.0
NJ	—	—	—	352.2	145.0	141.7	96.0	—	—	83.0	651.9	1.6
RI	—	—	—	45.8	20.0	9.0	31.0	5.0	18.5	8.1	121.2	2.8
MA	—	—	—	140.0	125.0	—	—	—	—	33.3	231.7	0.7
MI ¹	—	—	—	326.0	245.0	53.0	—	—	330.0	624.0	330.0	0.6
PR	—	—	—	35.0	22.0	18.2	13.5	—	—	—	88.7	1.7
MN	—	—	—	47.0	76.0	49.0	—	—	1.9	172.0	1.9	*
ME	—	—	—	2.4	12.5	8.0	13.5	—	—	—	36.4	0.9
PA	—	—	—	173.8	379.2	373.3	261.0	35.0	222.0	54.6	1,389.7	2.3
DE	—	—	—	6.5	14.0	16.1	10.4	—	—	3.1	43.9	1.3
DC	—	—	—	7.0	26.6	25.4	8.4	6.1	—	8.0	65.5	1.2
AL	—	—	—	10.0	20.0	26.7	—	—	—	56.7	0	0
IL	—	—	—	68.8	446.5	243.3	187.9	—	—	—	946.5	1.4
AR	—	—	—	—	20.0	10.0	—	—	—	30.0	0	0
HI	—	—	—	—	22.5	—	—	—	—	22.5	0	0
NV	—	—	—	—	7.6	—	—	—	—	7.6	0	0
VI	—	—	—	2.5	5.6	2.8	—	—	—	3.0	7.9	2.2
OR	—	—	—	—	18.5	—	—	—	—	18.5	0	0
MD	—	—	—	—	36.1	26.5	—	—	—	62.6	0	0
OH	—	—	—	—	—	1.9	—	—	—	1.9	0	0
FL	—	—	—	—	10.0	32.0	—	—	—	42.0	0	0
MT	—	—	—	—	1.4	7.9	1.2	—	—	3.4	7.1	0.2
NY	—	—	—	—	—	155.8	180.0	—	—	335.8	0	0
Total	\$31.8	\$62.4	\$17.2	\$1,493.0	\$1,855.0	\$1,285.8	\$339.9	\$46.1	\$572.4	\$1,869.6	\$4,334.0	0.4

¹ Michigan repaid its loan in full in December 1979 but secured further loans beginning January 1980.

² Less than 0.1 percent.
SOURCE: DOL/ETA/UIS.

Utilizing the administration's July 1980 economic assumptions, the U.S. Department of Labor (DOL) estimates that loans for fiscal years 1980–85 could amount to \$18 billion. For fiscal years 1981–82 alone, additional State borrowing of approximately \$9 billion is expected, with an estimated 22 States requesting loans.

While the deferrals were well intentioned at the outset, the practical effect is that States will be required to repay loans (thus higher taxes) at the same time the economy is headed into a downturn, with subsequent higher benefit outlays. Thus the deferrals prevented the provisions from being tested.

The need for a loan qualifying requirement. States that borrowed during the 1970's were not all equally well prepared in terms of accumulating the necessary reserves during the relatively high employment years of the preceding decade. Also, it appears that in response to the heavy borrowing of 1975–76 some States have made minimal or no effort to change their financial provisions to meet current benefit obligations or to repay loans. If legislatures in these States continue their reluctance in altering their financing structures, some

of the loans may not be repaid (assuming present repayment provisions) until after 1990.

To ensure that States do not use loan privileges in place of sound financing practices, States could be required, as a condition for securing a loan, to have approved solvency provisions in their State laws. There could be some certain minimum level of tax effort, or reserves at the onset of the recession at some minimal level, or a tax structure designed for rapid replenishment of the depleted funds. Such a requirement could be any one or a combination of these approaches.

As noted in chapter 6.3, presently all State laws have measures that provide for the adjustment of tax revenues when a State's reserve drops below a predetermined level. The individual State solvency provisions automatically invoke such measures as additional tax components, the application of higher rate schedules, or the suspension of reduced rates. The provisions vary from State to State and are not required under Federal law.

Interest-free nature of current Federal loans. To circumvent the difficulties of defining solvency standards for the States, it may be possible to achieve the same

objective by providing inducements to the States for following sound reserve policies on their own. Loans would not be eliminated, but interest could be charged so as to make more attractive the alternative of building and maintaining adequate reserves. Interest-free loans are particularly attractive when market interest rates are high and during inflationary periods, when repayment is made in devalued dollars.

In a system where loans are made at interest rates that reflect rates of inflation, inherent subsidies are not involved. In contrast, under present Federal provisions, the repayment of interest-free loans in devalued dollars causes subsidization. When States borrow from the FUA, they essentially are borrowing from all other nondebtor States. When the loans are repaid in devalued dollars with no interest charges, borrowing States have received, in effect, a subsidy because they have not fully financed their own benefit costs.

Additionally, there is the obligation of States to pay a responsible share of costs (of which the interest is part) incurred on their behalf by the U.S. Treasury. Finally, an interest-free loan provides virtually no incentive for prompt repayment.

Proposed change in Federal repayment provisions. There is a case to be made for giving the States more flexibility in the manner of repayment. Under the present repayment provisions, the additional taxes are levied uniformly in addition to the current net Federal tax of 0.7 percent. It has been proposed that repayment of an equivalent amount from the State's trust fund account be allowed at the State's option. This would permit the individual State to determine the distribution of the repayment burden.

A State would be permitted to reduce its balance of advances by making repayments, in the form of transfers from its trust fund account, that are not less than the sum of (1) the tax that otherwise would be payable under the credit reduction provisions and (2) any advances secured during the year ending November 9. In addition, there would have to be a sufficient amount available in the State's trust fund account to pay benefit costs during the 6-month period beginning November 1.

Under this proposal (H.R. 4007 by Representative Brodhead, 1979), States could accumulate repayment moneys through the experience-rating provisions of their laws, if that is desired, or they could assess a uniform State tax to derive the needed revenue.

Findings

The Commission's review of Federal loan policy found that the availability of loans to States is an essential part of the Federal-State UI program. The experience of the 1974-76 recession, however, demonstrated that there are areas in which improvement is necessary. These are specifically the qualifying requirements, the loan financing policy, and the repayment provisions.

The Commission has not been able to devise a single solvency standard that would be applicable uniformly to all the States, but the Commission believes the DOL should continue to study this problem to devise tests of effort and performance in the financing area. Nevertheless, as a condition for a loan, State laws should be required to contain solvency provisions.

In contrast to present loan financing policy, the Commission finds that interest should be charged on loans as an inducement to follow sensible reserve policies and thereby lessen the probabilities of borrowing. Further, the charging of interest should reduce the present advantages of borrowing and encourage prompt repayment on the part of debtor States. The rate of interest probably should be at least equal to the yield earned on positive fund balances. Once appropriate legislation is enacted, interest should be charged beginning the day the loan is incurred.

There should be no interest charges on present loans, since that would abrogate an agreement entered into in good faith by the borrowing State.

As for the repayment provisions, these appear to be sound, even though deferrals kept them from operating for a complete repayment cycle. The Commission believes that, while the deferrals were enacted with the intent of relieving State tax burdens, they may actually have caused a more serious problem as another recession begins. Further deferrals of credit reduction (loan repayment provisions) should not be considered by the Congress.

The Commission fully supports the principle of H.R. 4007 (Brodhead, 1979), which would allow the States an additional repayment option.

Recommendations

The Commission affirms the principle of a Federal loan fund and recommends the following to the Congress:

1. In order to qualify for a loan, a State's laws should include solvency provisions approved by the Secretary of Labor.

Adopted by recorded vote of 8 yeas, 1 nay (Commissioner Crosier), 2 abstaining (Commissioners Cooper, Hill).

2. Interest should not be charged with regard to present outstanding loans; and beginning as soon as legislatively possible, but not later than July 1, 1981, all new loans should bear interest.

3. Current statutory repayment provisions should be retained, and H.R. 4007 (Brodhead, 1979) should be incorporated into Federal law.

4. Further deferral (waiver) of Federal loan repayment provisions should not be permitted.

Adopted by recorded vote of 8 yeas, 3 nays (Commissioners Daniels, Morris, Seidman).

6.5 Reinsurance

Background

Reinsurance and cost-equalization proposals have been under consideration since the beginning of the unemployment insurance (UI) program in the 1930's. Any insurance program involves the pooling of contributions and distribution of the payments in some defined relation to a specific risk. In the early days of the program, proposals to distribute the risk and the cost of unemployment insurance over a broad scope of employers and industries beyond an individual State were suggested. Among such proposals was one made in the early 1940's by the Social Security Board to distribute part of the cost on a wider basis by paying one-half of all State unemployment insurance benefits from a uniform Federal tax on all covered employers.

Under present law, the administrative costs of the UI program are pooled or shared on a nationwide basis, as opposed to the regular benefit costs, which are the responsibility of the individual State. Similarly, the Federal share of extended benefit costs is pooled, while the State share of such costs is the liability of each State. Thus, some redistribution of risk and costs from State to State (interstate) already exists within the program.

Some intrastate pooling or redistribution of risks and costs from employer to employer also exists. Under State experience-rating provisions, some employers contribute at a minimum rate (greater than zero) while experiencing little or no unemployment benefit costs. Other employers with high levels of UI costs have their contributions limited by the maximum contribution rate. Thus, there is some redistribution or pooling of costs within each State program.

The more extensive such redistribution of costs becomes, the more it strengthens the underlying insurance concept of spreading the risk, but with cost-equalization elements. In contrast, some argue that more pooling does not necessarily mean more insurance—in other words, they contend that experience rating is a sound insurance practice. Redistribution of costs within the UI program introduces controversial issues concerning who should bear the cost and to what extent. These debatable issues have been present since the beginning of the program and undoubtedly will continue to persist for the foreseeable future.

The recession of the mid-seventies escalated benefit costs, forcing many State funds into insolvency and imperiling the solvency of others. This in turn brought forth a renewal of specific proposals for reinsurance and cost equalization. Concern over possible future recessions during the 1980's has reinforced the interest in some type of a plan which would assure a State

that high and unexpected costs would not result in insolvency of its UI fund.

The concept of reinsurance has evolved out of the experience of private insurance. By private insurers' definition, reinsurance is the method of distributing the costs of a catastrophe over more than one insurance carrier to prevent any unforeseen huge losses falling exclusively on one carrier. Obviously, any such reinsurance plan also includes some element of equalization of costs.

Reinsurance, as used in private insurance, is transacted on the basis of one insurance carrier agreeing to indemnify another insurance carrier for all or part of the insurance risk and costs as provided in the arrangements between the two carriers. More simply stated, reinsurance is insuring of the insurers.

On the other hand, some persons in the UI field differentiate and define reinsurance and cost equalization in terms related to the objective of each: reinsurance protects against the uncertainty of costs, while cost equalization lessens inequality of costs. Another distinction often made between reinsurance and cost equalization concerns the baseline for determining whether the insured is eligible for reimbursement under any such program. In reinsurance the baseline is considered to be the insured's own past experience, while in cost equalization the baseline is thought to be a measure uniform among those insured regardless of individual past experience.

For the purpose of the Commission's examination of this matter, the general term *reinsurance* is used to include various types of plans to insure the financial integrity of State financing systems under high-risk conditions. Frequently, the comparison is made with proposals in the health insurance field to insure against catastrophic costs. The Commission examined a number of proposals designed to strengthen the capacity of the State-by-State approach to the financing of UI. Any such plan should enable a State to develop a responsible financing system with some assurance that, if unexpected, high-risk (catastrophic) costs developed, the State would be able to call upon some outside financial aid.

Comparison of plans. The Commission has studied the design characteristics of the major reinsurance proposals, how the plans would have performed had they been in place in the seventies, and how they would perform under estimated future economic activity. Basically, four different types of reinsurance plans were available for Commission consideration:

- The Brodhead Plan (H.R. 3937) was introduced into the House of Representatives by Representative Brodhead in 1979. (An early version, H.R. 8292, was introduced in 1977.)

- The Cal-Tax Plan was developed by the California Taxpayers' Association.

- The Javits Plan (S. 825) was introduced into the Senate by Senator Javits in 1979. (An early version, S. 1853, was introduced in 1977.)

- The Washington and Utah plans were separately developed by the respective State employment security agencies. They are identical except that the Washington plan does not specify a financing element, and Utah does not include reinsurance reimbursement for the State share of extended benefits (EB).

Table 1 summarizes the main elements of the plans considered. Each plan specifies the eligibility requirements or triggers for receipt of reinsurance payments, the State base period, the definition or computation of excess costs (costs above the normal), the per-

centage of or rate at which excess costs are reimbursed, and the method of financing the reimbursement or payment. A more detailed explanation of the various elements is included in subsequent text.

Eligibility requirement for receipt of reinsurance payments. An important feature of any plan is the definition of conditions or contingency that establishes a State's eligibility for receipt of reinsurance payments. The following conditions are specified by the plans either alone or in combination:

1. a specified rate of national insured unemployment or a specified increase in the rate of national insured unemployment,
2. a specified rate of State insured unemployment,
3. a specified rate of State total unemployment,

TABLE 1. Key elements of four 1979 reinsurance plans

Plan	Eligibility trigger		State base period	Excess costs ¹	Reimbursement rate for excess costs	Financing
	National	State				
Brodhead	National annual IUR at least 4.5 pct or at least 125 pct of previous year IUR ²	State IUR at least 4.5 pct or State IUR at least 125 pct of base period IUR	5 of previous 7 years, excluding high and low IUR years	Regular State benefit costs in current year minus base period average annual costs	2.5 pct to 35 pct for absolute rate and/or 2.5 pct to 15 pct for increase in rate	0.2 pct FUTA for reinsurance account ³
Cal-Tax	None	State IUR at least 6.0 pct or TUR at least 8.0 pct and State IUR greater than 100 pct of base period average IUR	Of previous 5 years, 2 with highest IUR's	Pct by which IUR exceeds base period average IUR times all benefit costs in current year	30 pct	0.2 pct FUTA for reinsurance account ³
Javits ⁴	None	State IUR at least 6.0 pct	Of previous 5 years, 3 with lowest total costs or year with lowest total costs if IUR above 6 pct in all previous 5 years	Total State benefit costs in current year minus average annual benefit costs in base period	50 pct if IUR is 6.0 to 6.9 pct, 66⅔ pct if IUR is 7.0 to 7.9 pct, 75 pct if IUR is 8.0 pct and over	General revenues
Washington and Utah	None	State benefit cost rate at least 150 pct of base period average cost rate	10 previous years	Regular State benefit costs in current year minus product of 1.5 times base period average benefit cost rate times total wages in current year	50 pct	Shared 50 pct State account and general revenues ⁵

¹ All plans, except Utah plan, include reimbursement for a portion of States' share extended benefits, either in excess cost component or as a separate element (Brodhead).

² If latter condition is met in 1 year and if IUR increased in second year (although not by 25 percent), plan would remain in effect for second year.

³ In effect when reinsurance account is below a specified level.

⁴ Regular, additional, extended, supplemental weeks claimed and ¼ exhaustees included in calculation of State IUR; regular, additional, extended, and supplemental benefit costs included in total benefit costs. Other plans use regular weeks claimed only in IUR computation.

⁵ Utah plan only; Washington plan does not specify a financing element.

4. a percentage increase in the rate of State insured unemployment, and

5. a percentage increase in the State's benefit cost rate.

The Brodhead plan (H.R. 3937) includes items 1 and 2 or 4. The Javits plan (S. 825) uses item 2 only. The Cal-Tax proposal uses items 2 or 3 and 4. The Washington and Utah plans include item 5.

In the Brodhead proposal, a national trigger is included to counterbalance the rather liberal State qualifying requirement of 4.5 percent insured unemployment rate (IUR) or 25 percent increase in the IUR. More specifically, the national trigger must be "on" before any State can become eligible for a reinsurance payment. While Cal-Tax has no national trigger, it has more restrictive State requirements: 6 percent IUR or 8 percent total unemployment rate (TUR) and a percentage increase in the IUR. All plans except the Washington and Utah plans use IUR measures over benefit cost measures so as to limit the influence on benefit costs of changes in legislative provisions affecting benefit cost levels. However, a change in the benefit costs is the most direct measure of the financial impact of a recession.

Base period and excess costs. The plans use different base periods as the benchmark or baseline for determining trigger rate increases and calculating the excess benefit costs that are to be insured. Base periods range from 1 to 10 years: one plan excludes years with highest and lowest IUR's, another includes only years with highest IUR's, and another uses year(s) with lowest costs. The base period must be long enough to show over-the-cycle normal costs and short enough to reflect payments for fairly recent benefit cost experience.

To determine excess costs the Brodhead and Javits plans simply subtract the base period average annual costs from current year costs. The Washington and Utah plans define excess costs as current year costs less 150 percent of the base period average benefit cost rate applied to total payrolls for the current year. In the Cal-Tax plan, excess costs are defined as the percentage by which the current year IUR exceeds the base period average IUR times current year costs. For example, if the current year IUR exceeds the base period average IUR by one-third, then 33 percent of current year costs will constitute the excess costs in this instance.

Reimbursement rate and reinsurance payment amount. Once the amount of excess costs is determined, the question remains as to what portion of these costs will be reimbursed from a reinsurance fund or account. Of the plans considered, the reimbursement rate ranges from 2.5 to 75 percent depending on the specific plan.

The Cal-Tax plan provides a flat 30 percent (i.e., with 70 percent of the excess costs financed by the State); the Washington and Utah plans provide a 50 percent reimbursement rate.

Both the Javits and Brodhead proposals vary the reimbursement rate with the severity of unemployment. In the Javits plan, the reimbursement rate is 50 percent, 66⅔ percent, or 75 percent, depending on whether the State IUR is 6 to 6.9 percent, 7 to 7.9 percent, or 8 percent and over, respectively.

In the Brodhead plan there are two schedules of reimbursement rates: one schedule applies to the absolute level of the State IUR, the other to percentage changes in the current IUR level over the base period IUR. The rates from both schedules are totaled (if a State meets both State eligibility conditions) to determine the applicable reimbursement rate; but the total rate may not exceed 50 percent. The minimum reimbursement rate at 2.5 percent is very low. This plan's wide range of rates (2.5 to 50 percent), while complicated, has the advantage of avoiding the cliff effect (an all or nothing reimbursement) when a State is just over or just under the IUR threshold.

The methods among the plans for determining the payments or reimbursement amounts to States are quite similar. The Javits and Cal-Tax plans apply the reimbursement rate to current year excess costs (which include State share of EB costs, if any) to determine the payment. The Brodhead and Washington plans (which do not include State share of EB costs in the computation of excess costs) apply the appropriate reimbursement rate to current year excess costs and State share of EB costs, if any. The Utah plan does not provide for any reimbursement of State share of EB costs and simply applies the reimbursement rate to current year excess costs.

Financing reinsurance payments. The financing mechanisms for reinsurance payments vary from plan to plan. All plans establish a reinsurance account or fund within the Federal Unemployment Trust Fund. The Brodhead and Cal-Tax plans earmark a portion of the Federal UI tax to fund their accounts. Under the Brodhead plan, a 0.2 percent tax is assessed when the reinsurance account is less than the greater of \$3 billion or 0.4 percent of taxable wages. The Cal-Tax proposal also assesses 0.2 percent, but when the reinsurance fund is less than 0.6 percent of taxable wages. In contrast, the Javits plan uses general revenues to fund its account. The early version of the Brodhead proposal used general revenues also. Financing under the Utah plan is unique in that it uses two sources of revenue. Its reinsurance fund is financed from general revenues and from individual State trust fund accounts on a 50 percent shared basis. States are experience-rated and the applicable tax is based on a

State's potential liability with past receipt of reinsurance payments used as a guide.

The estimated payments for each plan, shown in Table 2, are based on a projection of cyclical economic activity. Accordingly, the data provide a comparison of costs under a given series of economic assumptions. The costs of the plans considered vary widely, the Javits plan being the most costly and the Cal-Tax proposal the least costly. As indicated in the table, the proposals vary not only in the cost aspect, but also in the number of States who qualify for reinsurance payments. For example, the Brodhead plan is less costly than the Javits proposal, but more States receive payments on a yearly basis.

An additional plan considered by the Commission is one that provides for 30 percent reimbursement of excess costs and is financed by a 0.1 percent Federal Unemployment Tax Act (FUTA) contribution. Under this plan, if for any single year the funds in the reinsurance account are not sufficient to reimburse the eligible States at the 30 percent rate, then the payments are limited to the amount actually available in the account. The Commission-considered alternative originally incorporated 4.5 percent national and State trigger elements and defined excess costs as those costs over 2.7 percent of taxable wages. However, because there was no consensus concerning the appropriateness and levels of such triggers, they were eliminated. Essentially then, the eligibility requirement for this plan is a benefit cost rate (in terms of taxable wages) greater than 2.7 percent. The costs shown in Table 2 for the Commission-considered alternative reflect the amount of reinsurance payments to States whose costs are over 2.7 percent for the year in question; the reimbursement rate is 30 percent.

It is probable that 0.1 percent of Federal taxable wages (assuming enactment of the Commission-recommended taxable wage base) can finance some type of reinsurance plan. A 0.1 percent FUTA contribution is roughly equivalent to \$1 billion in revenue per year. The Washington and Utah plans and the Cal-Tax plan can be financed for less than 0.1 percent of taxable payrolls over the 10-year period. The Commission-considered alternative can be financed by a 0.1 tax since payments over time are limited to the amount of revenue generated by 0.1 percent. Although the payment shown is \$13 billion, the actual payout would be restricted to roughly \$10 billion.

Findings

The Commission finds that there is a reasonable basis for the adoption of a reinsurance plan in the UI system. However, the Commission believes it is not wise to inaugurate a reinsurance plan which is retroactive in its application. Any such plan should be prospective and financed over a period of years on some self-contained basis. (As noted in chapter 6.1, the Commission has recommended several measures designed to deal with the debt incurred during the mid-seventies.)

A reinsurance plan would not be a substitute for the Federal loan fund. It would not be a substitute for sound financial planning on the part of individual States. But it could diminish dependence on loans and permit the State reserves to be utilized during times of high levels of unemployment without the need for emergency surtaxes in the midst of or immediately following a severe recession. Thus, reinsurance would permit a more orderly economic recovery after a severe period of unemployment.

TABLE 2. Projection of payments in millions of dollars under selected reinsurance plans

Fiscal year	Brodhead		Cal-Tax		Javits		Washington ¹		Commission-considered alternative	
	Amount	Number of States	Amount	Number of States	Amount	Number of States	Amount	Number of States	Amount	Number of States
1980	\$ 1,861	34	\$ 71	6	\$ 1,748	10	\$ 434	9	\$ 1,098	28
1981	3,601	40	863	18	5,603	18	1,107	17	1,873	33
1982	2,243	23	0	0	3,713	12	1,030	7	1,962	28
1983	0	0	0	0	1,073	4	10	1	897	18
1984	0	0	0	0	837	3	0	0	785	14
1985	2,358	21	0	0	3,296	11	53	2	2,122	26
1986	0	0	0	0	1,080	5	0	0	1,153	16
1987	0	0	0	0	49	2	0	0	538	10
1988	0	0	0	0	76	2	0	0	521	8
1989	2,395	18	120	8	4,236	10	0	0	2,285	22
Total	\$12,458		\$ 1,054		\$21,711		\$ 2,634		\$13,234 ²	

¹ Utah plan does not include reimbursement for State share of EB; its estimated cost for the decade is roughly half of the Washington plan total.

² Cost of the plan is limited to the lower of 30 percent of excess costs or the amount available in the reinsurance account; over the decade, for example, the payments would be limited to \$10 billion.

SOURCE: USDOL/ETA/UIS/DAS.

A reinsurance plan would also help toward stabilizing the revenue requirements of a State financing system so as to avoid extreme year-to-year fluctuations in contribution rates due to changing benefit costs. Moreover, the Commission would expect that, with a reinsurance plan, States will be better able to plan for handling unexpected unemployment developments, decrease their primary reliance on loans, and ensure that they can more promptly repay any loans.

The Commission recognizes that some employers in a number of States would be contributing toward a reinsurance plan without the immediate likelihood of States receiving any financial assistance from the plan in any particular recession or depression period. However, the changing nature of employment and unemployment in the nation, which is likely to continue during the years ahead, does not make any employer, employee, or State immune from such future negative developments—witness the surprising effects of the last recession on some southern States. Moreover, corporations frequently must relocate operations from one State to another and are subject to varying economic climates. International developments may cause employment to decline or rise in different States. Hence, it would be prudent to assure employers, States, and the general public that the changing nature of employment and unemployment would not adversely affect in the future a State unemployment insurance fund which currently might not appear to be vulnerable.

An important feature of all plans studied by the Commission is that excess costs, however defined, are to be shared by the State and the Federal Government; no plan should have a 100 percent Federal reimbursement rate. Coinsurance of the excess benefit costs ensures continuing State prudence in benefit financing policy. A low reimbursement, such as the Federal reinsurance fund underwriting of less than half the excess costs, should be adequate protection even where the measure of eligibility is in terms of a benefit cost rate rather than insured unemployment.

The question was raised within the Commission of whether, if a reinsurance plan is financed by a payroll tax, the tax could be varied both according to the level of the reinsurance account and according to the level of each State's reserve. This would be a form of experience rating and would minimize interstate subsidy. The advantage of experience rating the reinsurance tax is that it would mean less subsidizing by the States. The objection is that it would add relatively more to the burden of the high-cost States.

In conclusion, a major justification for any kind of reinsurance plan is that it would ensure the continuation of a sound State-by-State unemployment insurance system. Therefore, the Commission believes it would be prudent for the Congress to include a reinsurance element in the present system and evaluate its effectiveness over a reasonable period of time.

Recommendations

The Commission recommends the following to the Congress:

1. A reinsurance plan should be established within the Federal-State system.
2. Any such plan should be prospective in its application.
3. Such a plan should not be effective before 1985 to enable States and the Federal Government to resolve the current financial difficulties of some States.
4. The initial reimbursement rate of the reinsurance payment to any eligible State should not be more than 30 percent of the defined excess costs.
5. Only States whose benefit costs in a year are more than 2.7 percent of taxable payrolls should be eligible for any payment.
6. The total cost over time of any such reinsurance plan should be limited to the total yield of a Federal employer contribution (under FUTA) of 0.1 percent of taxable payrolls.
7. If the revenue from such income is not sufficient to provide for 30 percent reimbursement of excess costs, payments should be reduced by the proportional deficiency in the reinsurance account.
8. Provision should be made for the study and evaluation of any such plan with the clear understanding that the Congress could subsequently amend, repeal, continue, or improve such arrangements.

The provisions of the plan recommended by the Commission are intentionally restrictive and conservative. After some period of experience, the plan could be improved and extended. The Department of Labor, the Congress, and the recommended future commission should periodically evaluate the operation of the plan.

The Commission is divided as to whether any reinsurance plan should become operative under any eligibility requirements (triggers)—State or national or both. Some believe that the triggers applicable to any extended benefit plan should be equally applicable to the reinsurance plan. Some members believe such triggers should not be applicable under either plan. A majority of the Commission, however, believe that the application of the 2.7 percent benefit cost provision (for determining excess costs and thus eligibility) in the plan would ensure that the reinsurance payments would be made only when a State had experienced continued high levels of unemployment.

*Adopted by voice vote with 2 nays
(Commissioners Cooper, Hill).*

[See section 12.0, "Commissioners' Supplemental Statements."]

6.6 Limitations of Unified Federal Budget

Background

When the unemployment insurance (UI) program was established as a part of the 1935 Social Security Act, financing was established as a joint Federal-State effort. While the basic Federal payroll tax for UI was set at 2.7 percent, the legislation provided that all employers who contribute to a Federally approved State program would receive a tax credit equivalent to the Federal portion of the total payroll deduction. Since all States have established qualified programs, employer contributions largely represent State, rather than Federal, UI taxes. At this writing, 0.7 percent of the taxable wage base of \$6,000 is the effective Federal payroll tax for UI.

The 1935 legislation required that UI contributions could be used for no other purpose than paying benefits and administering the program. In other words, the UI contributions were “earmarked” for the UI program. To accomplish this, each State was required to deposit its UI receipts from employers with the U.S. Treasury, which would maintain individual State trust funds. The concept was that the Treasury would hold these funds “in trust” for each State, making them available on demand to the States for payment of permissible UI disbursements.

This treatment of the UI trust fund was not unique. The general policy of the Federal Government in treating trust funds was to hold them outside what was later to be called the “administrative” budget, at least partly on the rationale that they were earmarked and “not available for the general purposes of the Government.”¹

Over time, the number and size of trust funds outside the Federal administrative budget expanded. In the 1950's, the new interstate highway program was established with a trust fund. The social security program established a separate trust fund for old age and survivors' insurance, another for disability payments, and later two separate trust funds for hospital insurance and medical insurance for the aged. As the funds expanded in size and number, their significance in “Federal” revenues and expenditures grew. By 1967, trust fund receipts were flowing at an annual rate of \$45.5 billion, nearly 40 percent of the administrative budget from which these were segregated. As a result, the administrative budget became less important, and the “consolidated cash budget” (the administrative budget plus trust funds) more important in analyzing the impact of Federal activities on the economy. Increasingly, attention focused on the consolidated budget, which included trust fund revenues and payments.

In 1967, President Lyndon Johnson appointed a President's Commission on Budget Concepts to explore budget concepts and how they are presented. Its chief recommendation was that the Federal Government

present a single unified budget that specifically would include the financial operations of all the trust funds. The Commission argued that past separation of trust funds “has been the major reason for increasing dissatisfaction with the administrative budget.”² The Commission also pointed out that, while the trust funds do not belong to the Federal Government, Federal legislation affecting tax and contribution rates and changing benefit and grant formulas occurs virtually every year in one or another of the programs funded by trust funds. The Commission's recommendations for including trust funds in the unified Federal budget were largely accepted, and the UI trust funds, along with most others, were included with the unified budget in 1968.

Since inclusion with the general budget in 1968, the UI program has grown substantially, with increasing Federal responsibility being assumed for financing several extended benefit programs. At the same time as Federal participation in funds was expanding, States continued to modify their contribution and benefit formulas and to change eligibility and qualification rules in ways that have substantially modified the overall cost of the UI program.

All UI trust funds are now part of the unified Federal budget. At this time there are four types of trust funds:

- Fifty-three individual State accounts (including the District of Columbia, Puerto Rico, and the Virgin Islands)
- One Employment Security Administration Account to manage the 0.45 percent contribution that pays for UI administration
- One Extended Unemployment Compensation Account to manage the 0.25 percent contribution to pay for the Extended Benefit program
- One Federal Unemployment Account that is used to provide loans to the States when their own accounts are not sufficient to meet UI obligations

Together these funds rank fourth in size among the 12 nonrevolving trust funds accounted for in the unified Federal budget.

While trust funds were placed within the unified Federal budget in 1968, not all activities of the Federal Government are included. A number of Federal agencies, largely lending or joint public/private entities, are excluded, even though their financial operations (or many aspects of them) flow through the U.S. Treasury. Examples are the financing of rural electric and telephone systems, the relatively new Federal Financing Bank, the Board of Governors of the Federal Reserve System, and the Pension Benefit Guaranty Corporation. The Postal Service receipts and disbursements are not included in the unified Federal budget.

Inclusion of trust funds in the unified Federal budget appears to have focused increased Federal attention on

financial aspects of the UI program stemming from the recurring Federal budget deficits and searches for ways to reduce or eliminate those deficits. The annual process now established under which the Congress agrees on the totals for budget receipts and expenditures has put all spending, including that for trust funds, into the budget review process.

Because of the high deficits created by the recession of 1974–75 and the Federal Government's inability since then to eliminate deficits from the budget, this review process more and more reflects efforts to reduce Federal spending. Since the UI budget is now running deficits, it has shared the attention in these cost-cutting efforts. The dominance on UI cost-saving proposals initiated in the Congress reflects this concern. A few recent actions or proposals illustrate this emphasis:

- Deducting pension benefits dollar for dollar from UI benefits (passed)
- Eliminating the national trigger for extended benefits
- Making more stringent qualification requirements for former military personnel
- Encouraging States uniformly to require a one-week waiting period
- Encouraging Federal agencies to challenge possible improper UI claims under the UI program for Federal employees

These proposals have all come at a time when the unemployment rate reached 9 percent in the recession of 1974–75 and stubbornly refused to fall to traditional "full employment" levels of less than 5 percent.

Findings

1. UI trust funds were included in the unified Fed-

eral budget as a part of an overall policy of budget unification rather than from a consideration of UI funding indicating that such treatment was appropriate.

2. The unified Federal budget still does not reflect the overall operation of Federal revenues, since finances of important activities that are funneled through the Treasury are still excluded.

3. While the Federal Government increasingly is examining UI finances, the decisions of States remain the dominant factor in determining revenues and disbursements of the regular UI program.

4. The main focus of the Federal attention on UI financing has been cost-cutting. This indicates lack of understanding of the intended countercyclical nature of the UI program, which is intended to have an excess of outgo over income during periods of higher than normal unemployment.

5. The major portion of the employer contributions are State moneys.

Recommendation

The Federal unemployment trust fund, which includes the State trust fund accounts, should not be included in any totals of Federal income and disbursements in the unified Federal budget.

Footnotes

1. U.S. Office of Management and Budget, *The U.S. Budget in Brief*, fiscal year 1963 (Washington, D.C., U.S. Government Printing Office, 1962), p. 57.

2. U.S. President's Commission on Budget Concepts, *Report* (Washington, D.C., U.S. Government Printing Office, 1967), p. 25.

7.0 Administration

7.1 Fraud, Error, and Benefit Payment Control

Background

Fraud and abuse in unemployment insurance (UI) are a widespread public concern and have been for a long time. Events in the last decade have heightened that concern. The onset of the 1974–75 recession put great pressures on the program, as reflected in annual payments of \$14 to \$17 billion. Certain mandated “timeliness” requirements for making first payments, though highly desirable and necessary, nevertheless augmented the pressures created by these claims loads. Extension of benefits to previously ineligible workers, as well as the temporary payment of benefits to claimants up to 65 weeks during the severe recession of the mid-seventies, further heightened public awareness of the escalating size and scope of the UI program.

The public concern about fraud and abuse is sometimes directed toward the law and policy—whether, for example, “suitable work” limitation is appropriate, or whether the existing concepts and rules are effectively administered. However, questions relating to possible policy changes are an entirely different matter from tight and effective administration. This chapter deals exclusively with the latter.

What is fraud? Mispayments in UI can be both overpayments and underpayments. Overpayments may be fraudulent or nonfraudulent. Although the definition varies somewhat from State to State, fraudulent overpayments are the result of willful misrepresentation by the claimant or others to obtain benefits illegally. A fraudulent overpayment typically involves unreported or incorrectly reported earnings, fictitious previous employment, a simultaneous benefit claim in two or more States, and false statements as to the reason for separation from work, availability for work, and efforts to find work.

All States have special disqualification provisions for fraudulently claiming benefits. While these provisions follow no usual pattern, they are typically more severe than for other disqualifications. Furthermore, obtaining benefits through misrepresentation is a crime in all States.

The term “fraud” is usually applied to claimant behavior, but an employer also can misrepresent the situation so that benefits are denied unfairly. There are few cases of prosecution of employers for fraud except fictitious employers, but instances of employer fraud have been alleged before the Commission.

A type of fraud that is extremely difficult to detect is a case where there is collusion between employer and employee. The employer may pay in cash to avoid taxes, and the employee avoids a record on liability for income tax payments. This type of fraud may be on the

increase with the increase in the number of small employers.

There are several kinds of nonfraud overpayments that do not involve willful misrepresentation. These result from (1) misunderstanding on the part of the claimant, or unintended misreporting (reporting when wages were paid rather than when they were earned, reporting net rather than gross, etc.); (2) failure of employers to provide necessary or current or accurate information; (3) administrative or mechanical errors and omissions by the State agency; (4) determinations holding the claimant ineligible with retroactive implications; (5) implementation of the U.S. Supreme Court’s finding in the *Java* decision, which held that the Social Security Act requires that benefits must be paid “when due.” If the award is contested and later reversed in the appeals process, the benefits already paid are overpayments.

In summary, when one is concerned about abuse in UI, it is important to distinguish between fraudulent overpayments and those that are nonfraudulent. It is an administrative responsibility to reduce the number of underpayments and overpayments, whether the latter are due to error or fraud. It is also an administrative responsibility to maximize the rate of recovery and restitution of all types of overpayment.

Detected fraud and overpayments. The primary responsibility for benefit payment control rests with each State employment security agency and with the Department of Labor Employment and Training Administration. There are 2,063 positions (as of 1978) in the State agencies allocated to benefit payment control. At the national office there is one full-time position, and each of the 10 regional offices has about one-half a position for this purpose.

The States use a variety of techniques to detect improper payments. The most productive and cost-effective detection method is the crossmatch of benefit payment records with individual wage information for the same quarter.

Only the 41 States that maintain quarterly wage records can use the crossmatch. Many of the remaining 12 request-reporting States, which do not maintain wage records, have substituted what is called a back-to-back check (see chapter 7.4 for a discussion of wage record versus request reporting). It involves comparison of base year wage information with benefit payments from the most recent prior claims to detect overlapping in wages and benefit payments. In two States, employers report all new hires. The date of hiring is compared with the benefit payment record to detect benefit payments beyond the date the individual started to work. States also make use of anonymous tips and leads, investigate employer protests of benefit payment charges, and verify partial earnings and back-to-work dates and wages.

TABLE 1. Detected overpayments¹

CY	Fraud cases			Nonfraud overpayments		
	Number	Amount (thousands)	Percent of first payments	Number	Amount (thousands)	Percent of first payments
1976	115,641	\$38,378	1.35	583,530	\$81,051	6.82
1977	122,842	44,743	1.54	552,059	83,963	6.91
1978	136,619	47,895	1.80	526,939	80,143	6.95
1979 ²	142,726	47,466	N.A.	488,913	80,395	N.A.

N.A. = not available.

¹ Paul L. Burgess and Jerry L. Kingston, "Estimating Overpayments and Improper Payments in the Unemployment Insurance Program" (Arizona State University, Apr. 1980).² Preliminary data.

What are the results of the system now in place for detecting fraud and overpayment? Table 1 shows the detected fraud or nonfraud overpayment rates for the most recent available years. In these years, there were 12,000 prosecutions for fraud, half of which resulted in convictions.

The State laws provide for the recovery of benefits paid to individuals who are later found to be ineligible. Sixteen State laws permit the waiver of overpayment recovery under specified circumstances. Although these provisions differ from State to State, typically recovery may be waived if the overpayment was not the fault of the claimant and restitution would be against equity and good conscience. Also, there are statutes of limitations that apply to overpayments. Experience in recovering overpayments is shown in Table 2.

Interstate cooperation is needed to detect overpayments to interstate claimants. By prior arrangement between one or more States, a claim filed in one State can be matched against the other State's wage record file. A State can assist other States in recovering their overpayments by employing the same effort it applies to its own claimants.

Estimates of undetected overpayment and fraud. The Commission sought to assess the validity of the available statistics but was able only to take soundings in a few cities.

Two studies were commissioned. One looked at the situation in Denver and Seattle, where data were available from negative income tax experiments. Data available from the experiment were compared with data available from the UI agency for the same individuals. This study suggests the possibility of larger misreporting of concurrent earnings than is usually thought to be associated with the program. It is important to recognize that misreporting may be due to error or it may be willful and fraudulent. Underreporting of earnings means more benefits than one is entitled to; overreporting means less or no benefits.

The estimated earnings misreporting in Seattle and Denver from 1971 to 1973 is shown below.

	Seattle	Denver
Sample size in person weeks	13,649	2,626
Earnings reported accurately	90.2 pct	83.9 pct
Earnings misreported	9.8	16.1
Underreported	7.6	13.6
Overreported	2.2	2.4

This study also revealed that in the two areas studied there were large differences in claimants' availability

TABLE 2. Overpayments¹ and recoveries (in thousands), CY 1976-1979

	1976	1977	1978	1979
Overpayments including nonfraud	\$128,013	\$136,083	\$133,913	\$135,600
Recoveries	62,474	59,603	58,357	65,200
Recoveries as percent of overpayments	49 percent	44 percent	44 percent	48.9 percent

¹ Includes amount due to administrative penalties.

and search for work between what was indicated in the quarterly interviews and what was detected in the UI office. That study was undertaken because the data were available for cross-checking.

In addition, the Commission contracted for a study of small, carefully selected samples of benefit weeks in seven large cities. The Commission and the contractor, in selecting sites for the study, chose seven large cities whose composite patterns would be reasonably representative of metropolitan areas in general. The cities individually are not necessarily representative of the nation as a whole nor of any other individual city. The State agencies involved participated in the study on a voluntary basis. (One city subsequently was eliminated.) Specially trained investigators were sent to each city to check the sample claims very intensively (far more so than would have been feasible in regular benefit payment control). From these investigations an estimate was made of the proportion of benefit weeks (and dollars) with fraud and nonfraud overpayments and the reasons for them. These overpayments can be compared with the overpayments from the regular crossmatch. The difference will give some idea of the extent of fraud and overpayment that is not detected.

The study will not be complete until January 1981. At that time, all data from two yearly quarters will be in, the crossmatching by the States involved will have been completed, and the results will have been analyzed.

Preliminary data for one quarter only have been available to the Commission. The crossmatch, however, has not yet been made for the quarter, which may make findings for that quarter underestimated, especially for fraud. The data at this time should be regarded as preliminary and not necessarily representative of the program as a whole. Data on an additional quarter and a crossmatch for both quarters will be added to the study findings early in calendar year 1981. Data currently available on the rate of overpayment weeks to total compensated weeks are presented below.

City	Overpayments	Fraud overpayments
1	26.87 pct	1.37 pct
2	3.89	2.47
3	15.87	1.19
4	8.68	.67
5	25.39	1.62
6	30.12	2.16
Simple average for the six cities	18.47	1.58

These preliminary returns show a relatively high rate of overpayments in the cities studied. The causes of overpayments in the six cities in sampled key weeks of the fourth quarter of 1979 are identified in the preliminary report as follows:

Reason for overpayment	Percent
Unreported earnings due to concealed employment	2.1
Unreported earnings due to other reasons	0.7
Overreporting and underreporting of key week earnings	0.7
Base period earnings incorrectly reported by employer	7.6
Base period earnings incorrectly recorded by agency	0.7
Base period earnings incorrectly estimated	0.7
Other errors in reporting or recording of base period earnings	0.7
Voluntary quit	9.0
Discharged for misconduct	2.1
Unavailable for work	7.6
No active job search or unable to work	54.4
Refusal of suitable work	2.7
Other eligibility issues	3.4
Reversals (appeal or higher authority)	0.7
Redetermination (at the deputy level)	1.4
Reporting requirements	0.7
Other	4.8
Total	100.0

Finally, the types of overpayments in the six cities are summarized below.

Type of overpayment	Percent
Fraud	9.7
Claimant error	46.9
Employer error	7.6
Agency error	22.1
Reversal (appeals or higher authority)	1.3
Uncertain	12.4
Total	100.0

The study also surveyed compliance with work registration requirements, that is, whether claimants were available for work or actively seeking work (where required) by registering either with the employment service (ES) office or the union hiring hall. In each city in the study, claimants are required to be registered with the ES or a union hiring hall, where appropriate, as a condition of receiving benefits, regardless of how effec-

tive or ineffective the ES may be in finding suitable work for UI claimants. Below are presented the results of the study in terms of compliance deviations with respect to work registration in the six cities.

City	Percentage of total sample required to register with job service that was not so registered	Percentage of total sample required to register with union hiring hall that was not so registered
1	26.2	23.1
2	31.1	0.0
3	0.0	0.0
4	0.0	0.0
5	40.8	19.4
6	12.6	5.3

Taken all together, these results suggest that the enforcement of work registration requirements varied greatly across the cities.

What can be done about overpayment and fraud? Even experienced and objective people differ about where the problem lies, and without a diagnosis it is difficult to make a prescription. All of the following points have been cogently made to the Commission and may be true in whole or in part:

1. Insufficient training and professionalism at the first level of claims intake is an important factor. Benefit control experts say an effective claims taker can detect a questionable case. This suggests the need for more training.

2. Exclusive emphasis is now put on the only explicit performance standard, that of timeliness of payments. When this objective is stressed to the exclusion of others, the quality will suffer. The timeliness objective is not thought by many local office personnel to include a quality dimension.

3. Benefit payment control personnel and functions are subordinated to such an extent in some States that the statewide authorities responsible for benefit claims control have no role in affecting policy on local office administration.

4. Many State agencies are simply unwilling to take a closer look at their real rates of fraud or overpayment for fear that the results would create a bad image of the program or their performance. (It was found, for example, that individual States were not willing to work with the Commission on an overpayment study where the city or State is identified with the findings.) These considerations may even be inhibiting the effective application of existing controls.

5. Despite the high error rates suspected to exist, many States have no effective programs for regularly assessing the quality of work done in making nonmonetary determinations and processing continued claims.

6. Insufficient attention has been given in many States to developing effective ways of administering the "active search for work" requirements.

Findings

The Commission is concerned about evidence from its studies that suggests a much higher incidence of overpayment and underpayment than the number ordinarily detected and reported.

Consideration should continue to be given to the vital importance of paying benefits promptly when due, even though this may mean, particularly during a period of high unemployment, that error rates are higher than otherwise would be acceptable. Both the prompt payment of benefits and the control of error and fraud are vital considerations.

Any development to improve one of these must be evaluated in terms of its impact on the other.

Recommendations

The Commission recommends the following.

1. Since some of the overpayments are due to agency error, more resources should be made available to administer the UI program so as to maintain low error rates compatible with prompt payment of benefits.

2. Comprehensive audits of selected cases should be introduced as a regular operational feature of the UI system, starting with a small number of comprehensive audits.

3. Consideration should be given to developing new and effective quality standards.

4. Local office (and mail claims center) personnel should receive training in the prevention of overpayments.

5. The Commission recognizes that the complexity of existing State law tends to increase State error rates and recommends that States reexamine technical provisions in State law and make such changes as are necessary to reduce the error rate.

6. States should consider a direct line of authority between local office benefit control personnel and the overall agency director (or the State UI director) rather than only through the local office manager, as is frequently the case.

7. The Department of Labor should begin a national study of different approaches to establish quality controls consistent with prompt payment of benefits, minimum error rates, and cost effectiveness.

8. The Secretary of Labor should require that each State submit an annual plan for the control of all error

and fraud from whatever source. The plan should include a self-appraisal of the benefit payment control function.

9. The Secretary should include, as part of the audit of State agency administrative expenditures or as part of the performance standards evaluation, a randomized audit of all functions that have an impact on the incidence and control of error and fraud.

10. The Secretary should include in recommendations to the Office of Management and Budget each year

a request for funds that, in the Secretary's judgment, provide adequate resources to control error and fraud in all aspects of the program.

11. The Commission recommends that the House and Senate Appropriations Committees include in each year's appropriations amounts to accomplish such control of error and fraud.

[See section 12.0, "Commissioners' Supplemental Statements."]

7.2 Auditing, Tax Compliance, and Reimbursement Financing

This chapter will discuss the experience and current issues in tax compliance, auditing, and reimbursement financing. A study of the total experience of tax compliance and employer tax auditing indicates that the States have done a reasonably good job in tax administration as indicated by the fact that unemployment insurance (UI) collections have amounted to 99.6 percent of all known dollars owed since the inception of the program.

Although the total record is good, some recent developments have created problems that require careful consideration. Coverage of small employers, the introduction of reimbursable employers into the system, and constraints on administrative funds for the tax program are responsible for contributing to several current problems.

Background on tax compliance

The principal elements of tax compliance are contained in a determination of an employer's tax liability under the law (employer status determination); an employer's failure to file tax reports on time (report delinquency); and an employer's failure to pay taxes in full (money delinquency). In addition, there is the important function of employer audits and special problems with employers who finance benefits on a reimbursable basis rather than through a tax on employee wages.

Employer status. The timely and accurate determination of employer status is vitally important as it is the first step in the tax procedure and other actions depend upon it. Inaccurate determinations may lead to delinquencies which could have been avoided. New coverage provided by PL 94-566 greatly increased the task of identifying new employers and establishing their liability, and some States have developed backlogs. The new coverage includes farmworkers, household work-

ers, State and local government workers, and elementary and secondary school employees. The new caseload presents more difficult problems than the traditional employer workload.

The Department of Labor's (DOL) standard for status determination is that 80 percent of new status determinations shall be completed within 180 days. In 1978, 37 States met the 80 percent requirement. In 1979 the number of States meeting the objective fell to 32 States—achievement ranged from 96.1 percent in California to 19.6 percent in Illinois. Data were not available for Massachusetts or Michigan.

Report delinquency. Delinquent or late filing of employers' tax reports have been on the increase, due again primarily to the extension of coverage to small employers. Many of these employers lack accountants or bookkeepers and the filing of reports is often neglected.

The DOL has set a standard requiring that no more than 5 percent of all employers be delinquent in filing reports by the end of the quarter. In 1979, there were 18 States where more than 5 percent of all employers were late in filing reports.

Money delinquency. Money delinquency represents the bottom line in the tax function. As previously indicated the overall record is good but there are some special problems. Delinquencies (accounts receivable) increased substantially between 1977 and 1979 but so did total tax collections in about the same proportion.

	Receivable as of 12/31	Annual increase in accounts receivable	Collections
1977	\$314.4 million	\$59.3 million	\$ 9.7 billion
1978	354.9 million	40.5 million	11.6 billion
1979	443.4 million	88.5 million	13.8 billion

Some of the new coverage has increased substantially the problem of money delinquency. Farm employers are scattered and less accessible. In addition, coverage is new to many farmers and their records are less adequate. Many employers of domestic laborers are housewives. A majority employ only one person, and tax collections can be difficult. In some cases, the employee requests that earnings not be reported, presumably because the employee is not reporting for income tax purposes.

Administrative underfunding of the tax program. Part of the failure of States to meet the goals set for several areas of the tax program can be attributed to administrative underfunding or staff underutilization. Too frequently the tax program is raided to take care of functions thought by the State to be more important at the time. This usually includes paying benefits when that load increases or taking care of nonpersonal costs that have been greatly increasing. Shifting of resources from tax to benefits or nonpersonal functions is partly due to inadequate allocations by the DOL to the non-tax functions and partly due to failure on the part of States adequately to manage their total funds. States have a weak case for more administrative tax funds when they fail to utilize 7 to 9 percent of the funds allocated, as has been the experience in recent years.

Tax staff utilization was 93.9 percent in FY 1977, 93.5 percent in 1978, and dropped to 91.3 percent for the first quarter of 1979. Part of this underutilization is due to delays in the hiring process, which could be partially avoided by improvement in administration. In some cases, underutilization comes from an across-the-board freeze imposed by the Governor.

Tax staff diversion and money diversion to other functions is a major cause of the tax function shortages. The pressure to make these diversions would be relieved, of course, with more adequate administrative financing of the total UI program.

Background on auditing of employer tax accounts

The auditing of employer tax accounts is conducted on a sampling basis. The DOL's standard for audits requires that States audit at least 4 percent of all employers in the State each year. The scope of the audit is to cover four quarters of the year. States are encouraged to select employers for the audit that appear to be error-prone. A probability index has been developed to assist in this process. Selection of employers from within the error-prone group should be on a random basis to assist in improving employer compliance.

In FY 1979, 36 States met the DOL's criteria for conducting field audits of at least 4 percent of their subject employers, and 14 States fell below the 4 percent standard. The range was from 11.1 percent

in the State of Washington to 0.1 percent in Florida. Data are not available for Michigan and Louisiana. States auditing less than 4 percent of their employers need to bring their program up to at least that level. Most States need to improve their program for selecting employers to audit. This process can be helped substantially by use of computers, but only a few States now use them for this purpose.

Background on reimbursable employers

Federal laws (91-373 and 94-566) extending coverage to employees of State and local governments and certain nonprofit organizations allowed those employers to reimburse States' UI funds for the actual amount of benefits paid in lieu of paying UI taxes.

Data on reimbursable employers are sketchy because the DOL does not yet separate data for reimbursable employers but will do so beginning with the *fourth* quarter of FY 1980. The new data will be available in November 1980.

In the meantime, some information is available on reimbursable employer accounts from a questionnaire sent to the States by the Interstate Conference of Employment Security Agencies in March 1978. Information from that survey includes the following:

- two-thirds of the States require a wage listing from reimbursable employers
- in most cases bills for benefit reimbursement are submitted to employers on a quarterly basis
- most States consider reimbursements delinquent if not paid within thirty days
- reimbursable accounts average 1.6 percent of all accounts and range from 0.3 in the lowest State to 6 percent in the highest
- the questionnaire indicated that employers choosing the reimbursement option rather than payment of tax had a delinquency of \$62.2 million, which was about 17 percent of all delinquencies of employers in March 1978
- local governments account for the largest number of reimbursable employers, although a few States have more nonprofit employers

The 1970 change in Federal law requiring coverage and permitting nonprofit employers and State and local governments to choose to reimburse for benefits paid rather than pay a tax as required of other employers has been controversial.

Arguments for reimbursement. Arguments in favor of permitting reimbursement revolve around the cost factor for nonprofit and government employers. Many experience very low levels of unemployment and believe that they are entitled to the lower costs that go with lower benefits. They argue that if required to pay

the tax they would be subsidizing other employers. Most of those supporting the extension of coverage to the nonprofit group, including key members of the Congress, appeared to believe that the additional coverage would more than offset any problems with the reimbursement system. It was argued that unless employers were given the reimbursement option the coverage of State and local government employees would raise a constitutional question. There was reason to believe that opposition from the nonprofit employers might kill the coverage proposal unless they were relieved of paying a tax.

Arguments against reimbursement. Problems with the reimbursement system have been greater than anticipated at the time the law was passed. The principal problems are noncharging inequities and catastrophic unemployment.

Noncharging inequities. In most States, noncharged benefit costs include costs attributable to agency error, disasters, benefits paid after disqualification periods, and other payments generally not charged under most State experience-rating provisions. As originally interpreted by the DOL, reimbursable employers were required to reimburse all benefit costs whether or not the employer was at fault.

DOL policy on noncharging for reimbursable employers was changed by the Secretary in a bulletin issued on February 29, 1980. This bulletin advised State employment security agencies that "a reimbursing employer may be relieved of liability for benefits to former employees when it is reasonably determined under the provisions of the State law that the benefits are not attributable to service in the employ of a reimbursing employer." The Secretary's ruling permits States to noncharge benefits to reimbursable employers and eliminates the basis for conformity questions.

Catastrophic unemployment. This problem has emerged as a result of natural disasters and the dissolution or termination of nonprofit organizations. In many of these cases the organization was without resources to reimburse benefits. This shifted the financial burden to contributing employers. State efforts to deal with this problem have led to conformity issues in some cases.

To take care of this problem, the Unemployment Insurance Service of the DOL, in 1974, proposed a "third alternative" for reimbursing employers. This proposal would allow State laws to provide for limiting the liability of the reimbursing employer by setting a ceiling on the amount of the reimbursements required and to require a small contribution toward a reserve fund, established to finance the reimbursement costs that were noncharged to individual employers.

The specific proposal on limiting reimbursement lia-

bility would permit State laws to provide that an organization making an election may have the following further choice. It may choose to limit reimbursement to amounts of benefits that were:

- equal to the amount of benefits that would have been chargeable if the employer were subject to experience rating, thus excluding benefits normally non-charged and
- did not exceed in any calendar year 10 percent of the wages paid by such organization.

The supplementary payment by an employer choosing the third option, in any calendar year, would not be allowed to exceed the lesser of:

- 1 percent of the wages paid by the organization during the year or
- a percentage of such wages equal to the flat tax paid by all of the State's experience-rated employers as their share of the pooled cost liability.

Difficulties in collecting delinquent accounts. The collection of delinquent accounts from reimbursable employers is particularly difficult. Seizure and sale of property of State and local governments or nonprofit organizations is not practical. Some States require that the government or nonprofit organization post bond to assure payment, but this practice is not required by the DOL and not all States follow the practice.

Findings

The Commission finds that, while the long-term overall record of administration of the tax program has been good, there have been recent gradual increases in the overall delinquency rate and a serious problem of delinquency has developed in reimbursable employer accounts.

Information on the tax program indicates that:

1. Only about half of the States have adequate computer facilities permitting them to process accounts rapidly.
2. Many States do not develop adequate annual plans for control of employer liability and tax delinquency.
3. Some States do not maintain an adequate random sample audit of tax functions or effective enforcement of employer compliance.
4. The administration's request for funds for the tax program are not always adequate.
5. In many cases the States use tax unit resources for other programs.
6. State utilization is usually below potential due to delays in hiring of new personnel.

7. Delinquencies of reimbursing employers can be reduced by a State requirement that such employers post bond for delinquent reimbursements.

Recommendations

The Commission recommends the following:

1. Since only half the States have the computer facilities necessary to detect and process accounts rapidly, the other States should work rapidly in the direction of electronic data processing capability in this area.

2. The Secretary should require that each State submit each year a plan for control of employer liability and tax delinquency, including a regular program of audit of employer accounts and effective enforcement of tax collection. The plan should include an annual self-appraisal of these procedures.

3. The Secretary should include, as part of the audit of State agency administrative expenditures or as part of the performance standards evaluation, a random sample audit of tax functions that contribute to effective enforcement of employer compliance.

4. The Secretary should include in recommendations to the Office of Management and Budget each year a request for funds which, in the Secretary's judgment, provide adequate resources to allow for effective enforcement of employer liability, tax delinquency, and fraud.

5. The House and Senate Appropriation Committees should include, in each year's appropriation, amounts to accomplish effective enforcement of employer compliance.

6. *Possible third alternative for reimbursing em-*

ployers. The Commission discussed possible changes in current Federal limitations on State flexibility in this area and offered the proposal, with only a single dissent, to amend the Federal Unemployment Tax Act to permit States to offer to nonprofit and State and local government employers a third option (in addition to the present choice between contributions and dollar-for-dollar reimbursement of benefit payments) that would provide that an employer who selects the reimbursement option may choose also an option to pay a small supplemental tax, for which the employer would have the advantage of (a) setting a ceiling on the percentage of payroll that reimbursement charges can be to such employer in a given year, and/or (b) enjoying the same relief under certain circumstances that contributing employers in that State have under experience rating.

7. *Surety safeguards against delinquent reimbursing employers.* It has come to the attention of the Commission that in many States there are substantial delinquencies in the accounts of reimbursing employers. These delinquencies must be made up from taxes paid by employers in the private sector, and, if substantial, may have an adverse effect upon the rate structure of all contributing employers, since fund balance is a key factor in establishing schedules of variable rates.

a. Where there is no statutory provision that a bond for recovery of delinquent reimbursements be required of reimbursing employers, such requirement should be adopted; and

b. Prompt collection of reimbursements due should be considered part of proper and efficient administration of the State law.

[See section 12.0, "Commissioners' Supplemental Statements."]

7.3 Appeals Process and Claimant Representation

Background

Every individual whose claim for benefits is denied has a right to appeal the determination and have a "fair hearing" on the appeal. Employers have the same rights. The basis for claimants' right is Section 303(a)(3) of the Social Security Act, which requires, as a condition for administrative grants, that each State provide claimants who are denied benefits an "opportunity for a fair hearing, before an impartial tribunal." Federal law is the basis also for a corresponding right to a reasonably prompt decision. Section 303(a)(1) of the Social Security Act requires each State to provide "such methods of administration . . . as are found by the

Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due."

In interpreting the phrase "when due," the Supreme Court, in *California Department of Human Resources Development v. Java* (1971), stressed the importance of promptness. According to the Court, the congressional objective of unemployment compensation (UC) was "getting money into the pocket of the unemployed at the earliest point that is administratively feasible." Following the *Java* decision, the Department of Labor (DOL) issued a promptness standard requiring each State to issue decisions within the earliest time that is administratively feasible. This was translated into specific promptness criteria, which currently define an acceptable level of performance as issuance of at least 60 percent of first level appeals decisions within 30

days of the date the appeal was filed and 80 percent within 45 days.

Similarly, the DOL implemented the fair hearing requirement by evaluating the quality of each State's hearings and decisions. DOL staff monitor recordings of representative hearings and decisions of one-third of the States each year. The remaining States conduct self-evaluations using the same criteria of adequacy. Each referee's performance during the hearing and the written decision is measured against a set of about 30 adequacy criteria. These include such questions as, "Was the testimony taken in appropriate order and sequence?" "Did the referee provide parties and their representatives opportunity to interrogate their own witnesses?" "Were the necessary evidentiary findings of fact supported by the evidence in the hearing record?"

A State that does not achieve the desired level of performance is required to submit a plan of action to the DOL showing what steps it will take to improve its record. Continued failure to achieve a minimum adequate level of either quality or promptness would result in a notice to the Governor and an invitation to the State agency to attend a hearing on the question of whether the State law continues to conform to Federal law conditions for administrative grants. An adverse decision that survives judicial review would produce either improvement of the State's performance to the desired level of adequacy or termination of administrative grants.

Although some States' failure to achieve adequate performance has resulted in required plans of action, no State has been issued a notice of hearing to date for failure to meet the standard. Usually the State can demonstrate that, despite its failure to meet promptness criteria, it processed appeals as quickly as possible in light of sharp increases in workload, staff shortages, or other crises. A State's poor performance generates both formal and informal inquiries from the Unemployment Insurance Service to identify the reasons for the record. In most cases, mutually agreed on remedial action is enough to correct the problem. On occasion, Federal staff conduct a thorough analysis of a State's operation and recommend specific actions. Usually the State adopts the recommendations.

The three principal objectives of the appeals process are (1) issuing decisions reasonably promptly; (2) providing a hearing that is fair to all parties; and (3) providing a decision that reflects competent conduct of a hearing, development of the facts, and sound application of the law. These objectives are not now being satisfactorily achieved at adequate levels in all States.

Promptness. Unless paid promptly, benefits do not serve the purpose of helping people cope with unemployment when they most need the money. Poor appeals

performance undermines the effectiveness of the entire system. The greater the delay, the more difficult it is to provide a fair hearing: witnesses may no longer be available; claimants may have returned to work and may find it hard to take time off work to attend a hearing; heavy workloads and pressures on hearing officers can lead to poorer-quality hearings and decisions. In addition, overpayments increase when much time elapses in those cases where an employer's appeal of a benefit award is decided in the employer's favor. The longer it takes to decide the appeal, the more checks are issued to the claimant and the greater the amount that must be recovered if the employer finally prevails.

Since the *Java* decision in 1971, criteria for promptness of appeals decisions have been established. If met by a State, they will constitute substantial compliance with the requirement of Section 303(a)(1). If a State fails to meet the criteria, this does not necessarily mean that it has failed to satisfy the Federal law. If the failure is attributable to factors reasonably beyond the State's control (e.g., a sudden unexpected loss of critical staff, or a sharp, substantial rise in workload) and, in light of those factors, the State has done as well as administratively possible, it will be considered that the requirement has been met. If, however, the reasons were not beyond the State's control, remedial action would be sought. The reasons for the nature of the failure would be evaluated, and recommendations would be made for correction and improvement. Notice of and opportunity for a hearing on the withholding of certification for granted funds would be undertaken if the State failed to take necessary corrective actions.

Problems in achieving promptness. Following is a discussion of three problems involved in this area.

1. The Federal standard's acceptable level of promptness since 1975 has been the issuance of at least 60 percent of first level appeal decisions within 30 days, 80 percent within 45 days. When the standard was first developed, the criteria established for calendar year 1974 were 50 percent issued within 30 days and 75 percent within 45 days. These 1974 levels were understood to be temporary. The criteria proposed for 1975 and thereafter were to be 75 percent within 30 days and 85 percent within 45 days. These criteria were rejected. Some State administrators believed that they were too stringent in view of current heavy workloads, and the levels were set instead at 60 percent and 80 percent. Those who favored the higher levels were advised that the DOL would periodically evaluate the appropriateness of the criteria. This has not been done. Table 1 shows States' 1979 promptness performance.

2. The time lapse for decisions on interstate appeals (appeals involving claims filed from outside the State) has always been much longer than for intrastate. In

TABLE 1. Record of appeals promptness, 1979 (Criteria of adequacy: 60 percent within 30 days, 80 percent within 45 days—lower authority; 40 percent within 45 days, 80 percent within 75 days—proposed for higher authority)

State	No. of decisions	Lower authority appeals: percent decided within			No. of decisions	Higher authority appeals: percent decided within		
		30 days	45 days	75 days		30 days	45 days	75 days
Alabama	15,405	80.6	93.0	98.0	2,377	14.5	36.1	55.6
Alaska	1,653	44.2	60.8	88.6	209	31.1	42.1	68.9
Arizona	7,768	68.6	85.8	95.6	1,041	56.0	70.8	83.2
Arkansas	10,188	77.6	93.4	98.9	2,151	86.9	94.0	97.9
California	87,604	43.3	70.4	91.3	8,283	2.7	33.0	83.3
Colorado	14,980	59.9	84.0	95.8	2,209	26.6	34.7	61.9
Connecticut	21,526	13.7	40.7	80.1	2,306	.9	2.4	7.0
Delaware	2,149	60.3	92.1	98.9	433	17.8	64.4	94.7
Dist. of Col.	2,819	25.1	44.8	70.7	198	1.5	2.0	2.0
Florida	21,980P	42.6	59.5	87.6	3,509P	4.4	37.9	86.5
Georgia	12,612	63.1	82.0	90.0	2,514	1.4	12.0	40.0
Hawaii	2,337	72.7	85.5	92.6	—	—	—	—
Idaho	1,353	63.3	82.4	92.9	261	5.4	10.0	25.3
Illinois	54,653	52.2	71.5	86.3	10,805	6.0	11.5	28.7
Indiana	17,742	54.1	78.9	93.2	2,487	56.4	57.8	58.9
Iowa	13,093	52.1	77.4	92.8	2,030	10.3	37.6	80.5
Kansas	9,220	74.4	88.1	96.6	732	16.3	31.4	97.0
Kentucky	10,835P	89.8	87.2	96.0	1,923P	2.2	17.1	85.9
Louisiana	20,580	89.9	95.1	98.4	4,237	.7	31.4	95.0
Maine	5,899	65.7	85.5	97.7	951	42.8	59.4	68.9
Maryland	16,208	60.0	91.2	97.8	2,318	46.6	57.3	64.2
Massachusetts	18,615	65.8	88.9	97.2	3,384	66.5	68.0	74.0
Michigan	23,489	31.0	49.2	70.7	7,021	1.8	3.4	5.1
Minnesota	11,982	47.7	75.0	90.0	2,488	4.4	8.3	19.7
Mississippi	4,805	75.0	93.4	98.7	986	43.5	84.1	96.0
Missouri	20,774	69.8	87.1	96.1	2,691	7.2	29.8	61.1
Montana	749	77.7	89.6	96.4	143	1.4	20.3	55.9
Nebraska	2,671	51.8	77.9	92.3	—	—	—	—
Nevada	5,945	66.5	84.7	95.7	1,094	45.8	59.1	78.6
New Hampshire	2,971	72.5	88.6	97.1	—	—	—	—
New Jersey	30,022	75.7	87.4	93.9	3,564	36.8	59.9	79.3
New Mexico	4,617	67.6	89.6	97.4	714	13.2	34.5	75.6
New York	84,021	50.1	73.7	90.9	17,478	5.9	25.4	61.2
North Carolina	13,537	61.4	95.8	98.4	3,619	24.0	34.6	55.0
North Dakota	1,870	84.3	91.7	98.0	508	49.2	75.0	94.3
Ohio	11,350	57.7	80.9	92.6	6,107	55.6	73.9	81.6
Oklahoma	9,177	71.9	91.1	97.7	1,405	26.3	50.2	70.8
Oregon	9,779	62.4	85.0	96.2	1,145	45.0	84.0	97.6
Pennsylvania	48,197	65.2	60.9	91.9	13,790	18.4	50.2	79.8
Puerto Rico	4,910	55.4	76.4	87.7	490	.4	3.3	19.2
Rhode Island	4,074	42.2	77.8	95.4	653	.9	18.5	66.0
South Carolina	8,083	91.4	96.0	99.1	1,437	26.1	56.0	81.7
South Dakota	2,131	62.6	84.6	95.0	247	57.1	81.8	99.2
Tennessee	10,905	74.0	90.8	97.6	2,983	9.3	20.7	42.2
Texas	36,714	49.4	75.3	90.4	2,960	7.1	29.0	72.9
Utah	2,587	57.2	83.0	97.3	207	9.7	33.3	90.3
Vermont	1,123	64.2	80.7	94.7	271	7.4	38.7	81.2
Virginia	9,199	60.4	80.3	91.5	1,370	9.0	25.0	60.9
Washington	11,778	60.6	79.4	89.0	2,554	11.5	32.4	55.7
West Virginia	4,931	50.3	81.7	95.7	691	5.1	23.0	77.6
Wisconsin	14,088	64.3	84.2	92.9	2,716	12.3	13.9	17.7
Wyoming	797	55.8	72.0	90.0	125	64.0	88.0	97.6
Total	746,494P	57.7	78.1	91.8	134,793P	17.8	35.6	61.3

P indicates that the figure it follows contains data from a previous reporting period.

1979, only 22.5 percent of lower-level interstate appeals decisions were issued within 30 days of the date of the appeal; in contrast, 61.4 percent of intrastate decisions were issued within that time. Not a single State issued 60 percent within 30 days. The fact that separate hearings must be held for the former employer and the claimant, who has left the State, is the greatest source of delay. The most significant development in reducing the time lapse of interstate appeals has been the institution in a few States of telephone hearings. Thorough experimentation points to the desirability of conducting telephone hearings for claimants who are out of the State, provided that reasonable safeguards are established to ensure that due process rights are protected and that in-person hearings are conducted whenever feasible. Tables 2 and 3 show, respectively, States' interstate and intrastate appeals performance in 1979.

3. All States except Hawaii, Nebraska, and New Hampshire have two levels of administrative appeals. Although the performance requirement established by the Supreme Court in *Java* (issuance of decisions with the greatest promptness administratively feasible) applies to both first and second appeal levels, criteria of adequacy have not yet been developed for the second level authorities. Second level appeals decisions are not issued with the same promptness as those at the first level. In January 1980, the Commission contracted for a study intended to determine the feasibility of establishing a promptness standard for second level appeals ("The Factor of Timeliness in Deciding Second Level Unemployment Insurance Appeals," by Robert Owen and Edward Wood). The study indicated the feasibility of a promptness standard with criteria for adequacy requiring issuance of at least 40 percent of second level appeals decisions within 45 days of the date of the appeal and 80 percent within 75 days. (See Table 1.)

Fairness. There are several elements that most authorities agree must be present in order for an appeals process to be considered fair. First, all parties involved must be provided at least the following due process safeguards:

- right to a hearing tailored to the capacities and circumstances of those who are to be heard;
- right to be represented by a person of the party's own choosing;
- opportunity to present argument, to produce evidence and witnesses, and to offer evidence in explanation or rebuttal;
- compulsory process for obtaining necessary witnesses and records;
- right to confront and be confronted by opposing parties and their witnesses;
- right to cross-examine the other parties and their witnesses;

- right to a prompt and comprehensible written decision giving the referee's findings, reasons, and conclusions, with substantial evidence obtained at the hearing to support them.

Fairness also requires that claimants and employers, with the assistance of the referee when necessary, be able to understand and exercise their rights without the need for representation if they choose not to have representation or are unable to obtain it. The hearings must be tailored to the needs of the parties. Few claimants are knowledgeable in legal procedures, and most do not have the experience that would enable them to make formal presentations of their case. Accordingly, the hearing must be conducted simply and clearly with whatever assistance is needed from the referee. The referee's responsibility is to get the facts necessary to decide if benefits should be paid or denied. Accordingly, the referee must participate directly in the questioning, subpoena witnesses and records, and order investigations whenever these actions are necessary to get the facts. At hearings where only one party is represented, the referee must question unrepresented parties to develop the facts and to assist them in presenting their side of the case. The referee must also control the questioning of the unrepresented party by the representative of the other party and assist the unrepresented party to cross-examine. When no party is represented, the referee must be prepared to conduct the interrogation for both sides.

Issues in achieving fairness. Six issues in this area are discussed in the following paragraphs.

1. The Commission carefully considered proposals for providing claimants (and employers) a right to representation at no cost to them if they desire it. Under one proposal, accredited individuals who have agreed to represent UC parties would receive specified fees payable from administrative grants. Under an optional proposal, administrative grants would be used to finance contracts with legal organizations whose employees would represent parties at UC hearings.

Proponents of the proposal argued that claimants, particularly, suffer a serious disadvantage by not having representation at hearings, especially when the employer is represented. Employers' legal costs are tax-deductible as business expenses, but few claimants can afford competent lawyers, and few lawyers are willing or experienced enough in this area to take UC cases. They argue that, although the system is supposed to operate so that no one is disadvantaged by not having a lawyer, in actual practice many claimants, particularly those unable to articulate their version of the facts, do not get a fair hearing. They point to testimony before the Commission by legal service agency representatives and to personal experiences showing that represented

TABLE 2. Interstate appeals time lapse

State	No. of decisions	Lower authority appeals: percent decided within			No. of decisions	Higher authority appeals: percent decided within		
		30 days	45 days	75 days		30 days	45 days	75 days
Alabama	682	30.2	55.7	78.3	37	—	27.0	54.1
Alaska	428	11.0	34.1	79.4	49	14.3	10.4	51.0
Arizona	1,726	33.5	64.9	87.7	200	58.7	75.2	84.5
Arkansas	950	38.5	70.7	90.8	174	77.0	86.8	93.1
California	5,639	8.5	34.3	76.8	613	.8	34.3	90.2
Colorado	2,740	25.9	58.0	86.5	390	34.4	40.8	67.7
Connecticut	3,148	10.3	22.5	51.8	311	—	.3	5.8
Delaware	301	26.2	70.4	94.4	0	—	—	—
Dist. of Col.	374	.8	10.4	32.9	23	—	—	—
Florida	2,206P	33.5	39.4	64.6	278P	4.3	47.8	82.7
Georgia	1,096	20.9	38.9	56.0	180	2.2	12.8	49.4
Hawaii	312	34.3	56.4	74.4	—	—	—	—
Idaho	154	46.1	63.6	81.8	15	20.0	26.7	60.0
Illinois	4,990	5.9	11.6	32.3	647	3.7	10.2	26.4
Indiana	1,443	12.3	33.6	75.5	170	67.6	69.4	69.4
Iowa	1,156	35.8	62.8	88.1	134	13.4	41.8	85.8
Kansas	1,354	45.9	63.6	87.5	86	18.6	30.2	93.0
Kentucky	758P	50.8	73.1	86.3	25P	—	12.0	84.0
Louisiana	1,502	37.7	62.4	87.8	211	.5	17.1	91.9
Maine	785	32.4	59.1	90.3	87	39.1	59.0	74.7
Maryland	1,413	26.2	67.1	85.1	202	60.4	80.7	89.6
Massachusetts	1,760	32.1	64.1	85.9	289	62.3	63.0	70.6
Michigan	624	2.2	5.3	22.6	112	5.4	5.4	8.9
Minnesota	1,106	19.2	38.4	67.6	160	3.8	10.0	25.6
Mississippi	538	59.7	84.0	95.2	74	44.6	91.9	97.3
Missouri	1,620	36.7	62.3	83.0	235	9.4	31.1	69.8
Montana	150	46.0	72.7	94.0	14	—	35.7	64.3
Nebraska	483	25.1	55.5	82.4	—	—	—	—
Nevada	1,330	19.8	52.4	86.5	240	50.0	71.3	85.0
New Hampshire	434	20.3	53.7	65.9	—	—	—	—
New Jersey	4,351	28.2	54.2	76.4	546	47.3	70.0	85.7
New Mexico	467	58.2	79.4	94.2	50	12.0	30.0	80.0
New York	7,687	10.7	28.9	65.5	0	—	—	—
North Carolina	1,231	46.1	74.3	88.7	356	16.1	36.8	60.1
North Dakota	210	42.9	60.0	88.6	37	45.9	76.4	89.2
Ohio	655	4.4	18.5	53.3	206	46.1	69.9	78.6
Oklahoma	831	34.5	60.8	85.7	94	22.3	48.9	64.9
Oregon	1,067	30.6	60.9	85.8	61	37.7	77.0	98.4
Pennsylvania	3,305	11.7	25.6	53.9	856	5.5	20.9	56.4
Puerto Rico	195	5.6	14.9	30.3	0	—	—	—
Rhode Island	682	8.1	62.0	95.2	0	—	—	—
South Carolina	731	42.3	67.2	91.2	99	26.3	46.5	69.7
South Dakota	251	97.8	55.4	82.9	21	71.4	85.7	100.0
Tennessee	910	36.5	66.7	86.5	187	9.6	29.4	56.7
Texas	2,536	26.8	48.9	73.0	203	4.9	25.6	71.4
Utah	394	29.9	62.9	91.4	18	—	27.8	94.4
Vermont	146	27.4	50.0	81.5	23	4.3	30.4	69.6
Virginia	1,659	19.1	43.6	72.4	150	10.6	30.6	72.2
Washington	1,215	28.7	57.4	77.8	189	11.1	33.9	67.2
West Virginia	399	13.3	39.6	75.4	36	16.7	33.3	88.9
Wisconsin	702	18.2	40.5	62.4	133	17.3	20.3	24.1
Wyoming	362	53.0	69.6	87.6	48	64.6	89.6	100.0
Total	71,188P	22.5	44.6	72.0	8,305P	22.2	39.2	65.9

P indicates that the figure it follows contains data from a previous reporting period.

TABLE 3. Intrastate appeals time lapse

State	No. of decisions	Lower authority appeals: percent decided within			No. of decisions	Higher authority appeals: percent decided within		
		30 days	45 days	75 days		30 days	45 days	75 days
Alabama	14,273	82.9	94.7	99.0	2,340	14.7	36.2	55.7
Alaska	1,225	55.8	78.3	91.8	160	36.3	49.4	74.4
Arizona	6,042	78.6	91.7	97.9	835	55.3	69.7	82.9
Arkansas	9,238	81.6	95.8	99.7	1,977	87.8	94.6	98.3
California	61,965	46.5	73.7	92.6	7,670	2.9	32.9	82.7
Colorado	12,240	67.5	89.8	97.9	1,819	25.0	33.4	60.6
Connecticut	15,379	14.3	43.8	84.9	1,995	1.1	2.8	7.2
Delaware	1,848	72.8	95.6	99.6	433	17.8	64.4	94.7
Dist. of Col.	2,445	28.6	50.1	76.5	175	1.7	2.3	2.3
Florida	19,774P	43.6	61.8	90.2	3,231P	4.4	37.1	65.1
Georgia	11,516	67.1	86.2	93.3	2,334	1.4	11.9	39.3
Hawaii	2,025	78.7	90.0	95.4	—	—	—	—
Idaho	1,199	65.5	84.8	94.3	246	4.5	8.9	23.2
Illinois	49,663	56.9	77.6	91.7	10,158	6.1	11.6	28.7
Indiana	16,299	97.8	82.9	94.8	2,317	55.5	97.0	58.1
Iowa	11,937	53.7	76.8	93.2	1,896	10.1	37.3	80.2
Kansas	7,866	79.3	92.3	98.2	646	15.9	31.6	97.5
Kentucky	10,077P	71.2	88.3	96.8	1,898P	2.2	17.2	85.9
Louisiana	19,078	44.0	97.7	99.2	4,026	.7	32.2	95.1
Maine	5,114	70.8	89.6	98.6	864	43.2	59.4	68.3
Maryland	14,795	63.1	93.5	99.0	2,114	45.3	55.1	61.8
Massachusetts	16,855	69.3	91.5	98.4	3,095	66.9	68.5	74.3
Michigan	22,865	32.4	50.4	72.0	6,909	1.8	3.3	5.1
Minnesota	10,876	50.6	78.8	92.3	2,328	4.5	8.2	19.3
Mississippi	4,267	76.9	94.5	99.1	892	43.4	83.4	95.9
Missouri	19,514	72.3	89.2	97.3	2,456	7.0	29.7	60.2
Montana	599	85.6	93.8	97.0	129	1.6	18.6	55.0
Nebraska	2,188	57.7	82.9	94.5	—	—	—	—
Nevada	4,615	79.9	94.0	98.4	854	44.6	55.7	74.2
New Hampshire	2,537	81.4	94.6	99.0	—	—	—	—
New Jersey	25,671	83.8	93.0	96.8	3,018	34.9	58.1	78.1
New Mexico	4,150	68.7	90.8	97.7	664	13.3	34.2	75.3
New York	76,334	54.1	78.2	93.5	17,478	5.9	25.4	81.2
North Carolina	12,306	84.9	90.0	99.3	3,263	23.8	34.4	54.5
North Dakota	1,860	89.6	95.7	99.2	471	49.5	74.7	94.7
Ohio	10,695	61.0	84.7	95.0	5,901	55.9	74.1	61.7
Oklahoma	8,346	75.6	94.1	98.9	1,311	26.6	50.3	71.2
Oregon	6,712	66.3	87.9	97.5	1,084	45.4	84.4	97.6
Pennsylvania	44,892	69.2	89.0	94.7	12,934	19.2	52.2	81.3
Puerto Rico	4,715	57.5	79.0	90.1	490	.4	3.3	19.2
Rhode Island	3,390	49.0	81.0	95.4	653	.9	18.5	66.0
South Carolina	7,352	96.3	98.9	99.9	1,338	26.1	56.7	82.6
South Dakota	1,880	65.9	88.5	96.6	226	55.8	81.4	99.1
Tennessee	9,995	77.4	93.0	98.6	2,796	9.3	20.1	41.2
Texas	34,178	51.1	77.3	91.6	2,757	7.3	29.2	73.0
Utah	2,193	62.1	86.6	98.4	189	10.6	33.9	89.9
Vermont	977	72.0	85.3	96.6	248	7.7	39.5	82.3
Virginia	7,540	69.5	88.4	95.7	1,190	8.7	24.2	59.2
Washington	10,583	64.5	81.9	90.3	2,365	11.5	32.3	54.8
West Virginia	4,532	62.5	85.4	97.5	655	4.4	22.4	76.9
Wisconsin	13,386	66.7	66.5	94.5	2,583	12.0	13.6	17.4
Wyoming	435	58.2	74.0	92.0	77	63.6	88.3	96.1
Total	675,306P	61.4	81.6	93.8	126,486P	17.5	35.4	61.0

P indicates that the figure it follows contains data from a previous reporting period.

claimants fare better than those without representation.

Opponents of proposals to provide representation without cost point out that, if this right is to be extended to some claimants, it must be extended to all, and also to all employers who are parties to hearings. They argue that not only would the costs be prohibitive but, more important, the proposals would change substantially the character of UC hearings. They argue that instead of the current quick, informal proceedings at which the referee functions as a fact-finder, the hearings would become adversary proceedings, with formal and complicated procedures leading to delays and extended appeals. They argue that, if the system is not now functioning as it should, the remedy lies not in providing free representation but in improving the system by ensuring that referees are fully trained, that their performance is regularly evaluated, and that certain other obstacles to fair hearings are removed.

2. When a party files an appeal late because of reasons beyond the individual's control and the appeal is dismissed as untimely, it may reasonably be held that the individual has not had an opportunity for a fair hearing. In a number of States, however, any appeal filed beyond the State's statutory appeal period is automatically dismissed regardless of the reasons for the delay, and no hearing is held on the merits of the case.

3. In several States, representation of a claimant or employer at a UC hearing is considered the practice of law. Practicing law is limited to attorneys in these States. Claimants and employers who believe they need someone to represent them must hire a lawyer. The result is to deprive individuals of help they could otherwise receive from a friend, a relative, an employee, or a union official. This could amount to no more than support during a hearing, aimed only at helping individuals overcome intimidation they might otherwise feel if left completely alone, or helping them deal with problems in making themselves understood. In many cases, this kind of representation is of equal value to the referee, since it often leads to speedier and more complete development of relevant facts.

4. Non-English-speaking claimants have experienced difficulties in understanding the process and making themselves understood. Some States are helping to meet this problem by making informational material available in other languages and by developing sources of trained interpreters.

5. Workers unfamiliar with the claims and appeals process often have a difficult time understanding and following procedure and frequently cannot find anyone available who can explain the system to them or who will ensure that they get courteous and reasonably prompt help and direction. Some States have incorporated an office of ombudsman to provide these services.

6. Workers who have returned to work before a hearing has been held on their claim may find it necessary either to miss the hearing or lose a day of work.

In recognition of this problem, some States have scheduled hearings on Saturdays or after normal work hours.

Quality. Referees are State employees subject primarily to State laws and regulations. The manner in which hearings are conducted and decisions prepared is under the control of State authorities. The quality and quantity of the referees' work, however, is monitored by the DOL. Department staff evaluate the quality of State hearings and decisions, with a review of recorded hearings and written decisions from one-third of the States each year. Failure of a State to attain minimum adequate levels of quality could result in denial of administrative grants on the grounds that the State is not in substantial compliance with the Federal fair hearing requirement.

Difficulties in establishing quality. Two difficulties in establishing quality are discussed below.

1. There are substantial differences among the States in the quality of referees' performance, as has been shown by the DOL's ongoing evaluation of State hearings and decisions. To some extent, this is due to differences in how referees are trained. Some States have developed comprehensive training programs; others provide no formal training, and the new referee is expected to learn solely by observing experienced referees. There are differences also in the quality and amount of relevant materials made available to referees. In some States, there is wide circulation of second level appeals decisions and precedent court decisions; in other States, there is virtually no effort made to provide for interchange of materials or information.

2. The DOL has neglected to distribute to referees its interpretations of the fair hearing requirements of Section 303(a)(3) of the Social Security Act. Although some interpretations have been issued as program letters, in most cases they appear only in memoranda to individual States in response to specific conformity issues. The DOL document "A Guide to Unemployment Insurance Benefit Appeals, Principles and Procedures" contains only recommendations rather than interpretations of what the DOL believes the law requires. The DOL intends to discontinue the "Benefit Series Service," which provided a clearinghouse for the distribution of decisions from different States on important issues and State and Federal court decisions affecting the UC program. The result is that State referees are denied information that would improve the quality of their performance.

Findings

Promptness. Since the issuance of the Federal standard for promptness in first level appeals decisions, the States' performance has improved dramatically. Most

States satisfied the current adequacy criteria in 1979, and 10 States substantially exceeded the minimum required performance. Clearly, the States have now established an operational framework that permits prompt processing of appeals. In light of this experience, the DOL should review the criteria of adequacy to determine if the requirements can reasonably be made more stringent. Stiffer promptness requirements, however, must not detract from the need to retain high-quality hearings and decisions.

There are two areas where improvements in promptness must be emphasized. The processing of interstate appeals lags far behind intrastate appeals performance, primarily because of the need to hold separate hearings for the employer and the claimant. Research and experience with telephone hearings in some States suggest that this is a practical means of speeding up the processing of interstate appeals without sacrificing necessary due process rights of any party. Accordingly, telephone hearings conducted under procedures designed to protect the rights of all parties should be used in interstate cases instead of separate hearings.

The second area where promptness must be given a higher priority is second level appeals. Second level promptness performance is far slower than first level promptness performance in most States and is unacceptably slow by any reasonable measure in several States.

A comprehensive report prepared for the National Commission on Unemployment Compensation documents the reasons for this record and concludes that the situation will not change without direct and intensive effort.¹ Specifically, the report calls for establishing the same kind of Federal performance standard for second level appeals as that which now applies to first level appeals, with specific criteria of acceptable performance recommended for the initial period. This should be acted on as quickly as possible, and there should be public notice of intent and an opportunity for States to react to the proposal for a standard and the proposed specific criteria of adequacy.

Fairness. The Commission identified two provisions in some State laws that prevent claimants from receiving fair hearings. The first denies parties to a UC hearing the right to be represented by anyone other than an attorney. This contributes nothing to the appeals process and deprives claimants and employers of the support and assistance that friends, paralegals, employees, business agents, relatives, and others could otherwise provide.

The second provision that constitutes a denial of the right to a fair hearing is one that bars consideration of any appeal that is filed beyond the statutory time limit, regardless of whether the individual had good cause for filing late or even when the delay was due to circumstances beyond the individual's control.

A number of States have adopted certain practices

that contribute to better understanding of the appeals process. Some States provide informational material in languages other than English and otherwise attempt to accommodate non-English-speaking claimants. Some States make available to the public precedent decisions and other information of use in preparing for appeals. These practices should be adopted by every State.

Quality. The quality of referees' work needs to be improved to ensure that no parties to a hearing go without a full opportunity to present the facts before an impartial referee and to exercise their rights. No party should be disadvantaged by not having representation. Every referee should be exposed to thorough training in all facets of the appeals area, and the performance of all referees should be evaluated regularly to ensure that the fair hearing requirements are implemented in all cases.

Recommendations to the Secretary of Labor

1. *Performance standards.* The Secretary of Labor should reexamine existing performance standards (both promptness and quality performance) relating to claims and appeals, with a view to increasing the acceptable criteria of adequacy in light of recent experience and States' demonstrated potential for improvement. Such criteria should be reexamined periodically. Any proposal for changes in the criteria should be developed in consultation with the States and be subject to public reaction before its adoption.

2. *Training.* The Secretary should maintain a comprehensive training program for State referees and members of State second level appeals authorities, and opportunities to participate in such training should be available to representatives of employers and employees and to organizations offering assistance to employers or employees in the claims or appeals process. Such training or equivalent training by a State program should be made a condition by each State for referees to continue to perform functions as a referee.

3. *Ombudsman.* The Secretary should make available to States administrative grants to fund an office of ombudsman in each State to provide claimant and employer assistance and counseling.

4. *Nonlawyer representatives.* The Secretary should require, as a condition for a fair hearing, that all States permit all parties to a hearing to have representatives of their own choosing, irrespective of whether such representatives are members of the bar.

5. *Acceptance of late appeals.* The Secretary should require, as a condition for a fair hearing, that all States provide for acceptance of appeals filed after the statutory time limit, if the late filing is due to reasons beyond the appellant's control, or for good cause, as the State so determines. The Secretary should encourage States

to establish 30 days as the minimum time for appealing adverse rulings.

6. Interpretative regulations. The Secretary should promulgate and circulate regulations describing how the fair hearing and “methods of administration” provisions of the Social Security Act have been interpreted in relation to the hearings and decisions processes.

7. Pilot projects. The Secretary should make available to the States administrative grants to fund pilot and demonstration projects relating to innovations or improvements in the claims and appeals process—for example, information resource centers, claimant and employer counseling, legal services and legal aid to claimants and employers, and claimant and employer representation.

8. Conferences. The Secretary should conduct periodic regional or national conferences of State and Federal personnel involved in the appeals process, and opportunities for participation should be available to representatives of employers and employees and to interested organizations and individuals.

9. Appeals publication. The Secretary should periodically publish nationwide statistical information concerning all significant aspects of the appeals process, reports of and rationale for various court and significant appeals tribunal and referee decisions on UC, and any other matters concerning State appeals experience.

10. Non-English-speaking claimants. The Secretary should take account of the needs of non-English-speaking claimants by providing funds for making informational material available in other languages and, where available, providing personnel trained in other languages.

11. Adequate funding. The Secretary should ensure that staff and other resources are available at the national, regional, and State levels to maintain an adequate level of performance, to ensure continued improvement in both promptness and quality, and to implement the Commission recommendations.

12. Second level appeals performance. The Secretary should establish specific criteria of adequacy for second level appeals performance. The Secretary should consider, as initial criteria, the disposition of 40 percent of second level appeals decisions within 45 days of the date the appeal was filed and 80 percent within 75 days. The criteria should be reevaluated periodically in light of the States’ experience, with a view to continuing improvement in both the promptness and the quality of States’ performance and without deprivation of due process.

Recommendations to the States

1. Fair and prompt hearings. States should take all necessary steps to ensure that every element of a fair hearing is provided to both employees and employers who are parties to an appeal and that the administrative

methods adopted will ensure the issuance of decisions and the payment of benefits to those eligible at least as promptly as required under the Secretary’s performance standards. At present, the adequacy criterion in the appeals standard is issuance of at least 60 percent of first level appeals decisions within 30 days of the date the appeal was filed and 80 percent within 45 days.

2. Representative of party’s own choosing. States should permit all parties to any hearing or appeal process to have representatives of their own choosing, whether or not such representatives are members of the bar.

3. Acceptance of late appeals. States should provide for acceptance of appeals filed late for reasons beyond appellant’s control or for good cause, as the State so determines.

4. Telephone hearings. States should adopt appropriate procedures for conducting interstate telephone hearings to avoid the necessity of separate hearings. There should be reasonable safeguards to ensure that due process rights are protected, that telephone hearings are not substituted for in-person hearings when the latter are feasible, and that parties are informed that they may have representatives of their own choosing present.

5. Information on rights. States should provide each party in all claims and appeals processes with written information indicating in clear terms that it is not necessary for any individual to be represented at a hearing and that it is the responsibility of the referee to ensure that the facts are presented regardless of whether or not the parties are represented, although there is a right to representation of the party’s own choosing. The name and address of available free legal assistance should also be provided.

6. Non-English-speaking claimants. States should take account of the needs of non-English-speaking claimants by making informational materials available in other languages and by making trained interpreters readily available from agency staff or other sources.

7. After-hours hearings. States should provide, where feasible, for hearings in the evenings or on Saturdays to accommodate claimants who, for good cause, cannot participate in hearings during regular working hours.

8. Hotline. States should establish a toll-free hotline to enable claimants and employers to present questions about UC, including questions about their individual claims and rights.

9. Information centers. State agency UC libraries or library sections that are now usually available only to State personnel should be open to claimants, employers, and their representatives for the purpose of helping them to understand the law and its administration and to assist those who are or may be involved in appeals in preparing necessary support for their position. The library should include relevant Federal and State UC laws, regulations, and policy positions; State and Fed-

eral court cases; precedent appeals tribunal and referee decisions; and all other relevant documents on UC. Library assistance should be available to the public on both a telephone and an in-person basis.

10. Individual assistance. States should establish an office of ombudsman to provide claimant and employer assistance and counseling.

Adopted by recorded vote of 8 yeas, 2 nays (Commissioners Cooper, Hill), 1 abstaining (Commissioner Sanchez).

11. Responsibilities of the referee. The States should take necessary steps to ensure that no party to a hearing is disadvantaged by failure to have representation. To this end, the State should ensure that the hearings officers are fully instructed as to their responsibilities. This includes emphasis on the need for the referee to conduct full interrogation for both sides when no party is represented. When only one party is represented, the referee must question each unrepresented party to develop the facts and to assist in presenting each side of the case. The referee must also control the questioning of the

unrepresented party by the representative of the other party and must assist the unrepresented party to cross-examine. When both parties are represented, the referee must actively participate to maintain control, guide the development of the case, and develop the necessary facts that the representatives fail to elicit.

12. Second level appeals. States should take all necessary steps to ensure the prompt disposition of second level appeals. States should aim at issuing at least 40 percent of second level appeals decisions within 45 days of the date the appeal was filed and 80 percent within 75 days.

[See section 12.0, "Commissioners' Supplemental Statements."]

Footnote

1. Robert I. Owen and Edward A. Wood, "Timeliness in Deciding Second-Level Appeals," *Unemployment Compensation: Studies and Research* (Washington, D.C., National Commission on Unemployment Compensation, 1980).

7.4 Quarterly Wage Record Versus Wage Request

Background

This chapter considers the advantages and disadvantages of the two principal unemployment insurance (UI) reporting systems: wage request and wage record. Currently, 11 States use wage request reporting; the other States use wage record reporting, except Hawaii, which uses separation/accession reporting.¹

Both systems have existed since the program was established in the late thirties. Both systems have their strong supporters. Those favoring wage request reporting claim lower costs, less employer burden, more relevant base periods, and fewer administrative headaches. Wage record supporters also claim lower costs, in addition to built-in fraud protection, better service to claimants, material more adaptable to computerization, and better data for research and policy development.

The Commission authorized a study of the advantages and disadvantages of the two systems.² The study was based upon a comprehensive review of the literature and a detailed analysis of the experience of four wage request States—New York, Ohio, Utah, and Wisconsin—and five wage record States—California, Georgia, Missouri, Pennsylvania, and Wyoming.

Description of wage request and wage record reporting. The two systems are described briefly below.

Wage request. Claimants are asked to identify their base period employers. Wage and separation information is then requested of the employers. If an employer fails to provide the information within the specified time, a claimant affidavit giving wages and weeks of employment is taken. The claim is computed upon the claimant's work experience during the 52 weeks immediately preceding the claim or, depending on the State, the most recently completed four quarters prior to the time the claim is filed. After the claimant is determined to have enough base period work to qualify, all base period employers are notified. They then can appeal the determination.

The request reporting States are Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Rhode Island, Utah, Vermont, and Wisconsin. All other States are on the wage record system, except Hawaii, which uses separation/accession reporting. The Hawaii system has some aspects of request reporting and is so classified by the Department of Labor (DOL).

Wage record. Employers submit to the State UI agency a list of all employees with wages earned each quarter. The UI State central office posts the wage data

onto a computerized wage data file. The monetary determination is made, based usually on the first four of the last five completed quarters prior to the filing of the claim. When the claim is filed, a request for separation information is mailed to the separating employer. Employers are notified of the monetary determination, and they may then appeal.

Eligibility and benefit issues. Assuming the same provisions of the benefit formula, most claimants derive some advantages in eligibility and benefits when the most recent wage base is used. Under request reporting, employers submit data covering employment up to the date of termination. By contrast, in wage record States employers report to the State agency on a quarterly basis and the availability of data is delayed generally from 3 to 6 months.

Some of the specific differences between the two systems follow. It should be kept in mind that these differences can be offset by changes in the benefit provisions of the State law.

Claimant eligibility. In comparisons made in the study proportionately more claimants were found eligible under the 52-week base period of wage request States than under the first four out of five quarter base period wage record States. However, this difference can be offset if a wage record State changes the claimant eligibility requirements, for instance, by lowering the weeks of work requirement.

Weekly benefit amount (WBA). The use of the most recent 52-week base period (wage request) results in a higher WBA—from \$2 to \$5 higher than wage record. This is because the most recent wages, which tend to be higher, are taken into account. This assumes similar WBA formula and maximum.

Benefit duration. No appreciable difference exists of average potential duration allowed to claimants between the two systems (assuming about the same duration formulas).

Maximum benefit amount. Assuming no difference in statutory maximum between the two types of States, the 52-week base period (wage request) produces a larger average maximum WBA than do the first four out of the last five quarters (wage record). However, wage record States may increase the average maximum WBA by making law changes. The Pennsylvania system uses the most recently completed four quarters for wage information if a claimant does not qualify under the rule of the first four of the last five quarters. A second alternative is to adopt a benefit formula that takes account of the likelihood that claimants' base period wages do not reflect their higher, more recent wage levels.

Fraud. Which reporting system is more effective and efficient in detecting fraud, and is the fraud detection sufficiently timely to assist in collections and to deter additional fraud?

Fraud tends to be somewhat higher when the monetary determination is based on wage information provided by the claimant. This happens more frequently in wage request States. In wage record States, wage and employment duration data are already available in the State UI agency when the claim is filed, and this information is routinely checked against the claim.

If employment was terminated under disqualifying conditions and the claimant fails to identify the employer, a fraudulent claim can occur. Again, this occurs mainly in wage request States, but it is a problem only in those States where separations other than the most recent are used to determine eligibility.

Some fraud occurs when claimants fail to report income during the periods they collect benefits. Both systems identify some fraud cases through tips and leaks, but the availability of wage records also permits crossmatch of benefits against wages. The crossmatch probably uncovers more overpayments than any other detection method. However, the crossmatch generally is delayed from 4 to 6 months, and by that time most cases have run their full duration and collections are more difficult. A measure of the advantage of crossmatch is demonstrated by New York. Although New York is a wage request State, it now has available a wage data file for crossmatching. By use of crossmatching, detection of overpayments in New York increased by 17 percent for the third and fourth quarters of 1978.

Other issues. Seven pertinent issues are discussed in the following paragraphs.

Error rates. Error rates by employers and State agencies are greater in wage record States. Primarily, this is due to the processing of a large volume of data under the wage record system.

Burden on claimant. The claimant burden is not large with either system.

Employer burden. The amount of data employers submit is greater in wage record States. However, wage record States may accept data in a variety of forms as long as social security number and wage information are included.² The primary alternative form is employer tapes, and this practice is on the increase.

Administrative burden. The total administrative burden is less in wage record States, as less time is required to process claims.

Timeliness of first payments. Not much difference exists in timeliness of first payments on intrastate claims,

but timeliness for interstate claims is better in the wage record system.

Data base for research. Wage record States have a more comprehensive data base, which yields advantages for UI research.

Comparative costs. The wage record system operates at a substantially lower total cost. This is because the expense of obtaining and retrieving quarterly wage data is less than the administrative cost of requesting information for individual claims. The study concluded that, based on the 1978 workload, a saving of \$7 million to \$12.5 million would have occurred if all wage request States were converted to the wage record system. An increase in costs in the range of \$21 million to \$33 million would have occurred if all wage record States were converted to wage request. The difference in non-personal service costs per claim between the two systems was estimated at \$0.67 per claim.

Findings

Some advantages accrue to claimants in the use of the most recent wage base (request reporting) in claimant eligibility, weekly benefit, and maximum weekly benefit amounts. However, these advantages can be attained in the wage record system by modification of the appropriate provisions of State law.

The wage record system is superior in detecting fraud and overpayment because it uses crossmatch.

Wage records make detection of fraud and overpayment more effective because they permit crossmatch of benefits against wages.

The timeliness of first payments is better for interstate claimants under a wage record system.

Converting to a wage record system is costly initially, but these costs are eventually recouped through lower

operating costs of the wage record system. These savings increase proportionately with the workload.

Recommendations

The Commission recommends that all States require employers to submit quarterly wage records to the State UI agencies. Such reports should include the name, address, telephone number, and identification number of the employer and the name, social security number, and amount of wages paid to the employee.

The collection of such employer wage reports is not intended to require States to determine benefits solely on a high-quarter basis or discourage use of weeks in formulas. States should be free to determine benefits in relation to weeks worked or full-time weekly wages and to utilize or not utilize request reporting from employers.

In the judgment of the Commission, quarterly wage reporting will assist in reducing incorrect payments and fraud and give States the information necessary to monitor the system on a cost-effective basis.

Footnotes

1. The Hawaii Employment Security law requires all covered employers to report to the State agency all new hires and separations from employment within 5 working days. The purpose of the hire report is to help in identifying claimants who continue to claim benefits after returning to work. The purpose of the separation report is to speed up the processing of new claims and to detect and prevent fraudulent benefit claims.

2. Management Engineers Incorporated, "Comparison of Wage Record Reporting and Wage Request Reporting," *Unemployment Compensation: Studies and Research* (Washington, D.C., NCUC, 1980).

7.5 Benefit Costs of Federal UC Programs

Background

Unemployment Compensation for Ex-servicemen (UCX) and Unemployment Compensation for Federal Employees (UCFE) are both Federal programs operating under Federal law. Both programs are administered by the Department of Labor (DOL) through agreements with the 53 State employment security agencies (SESA's). In order to process the claims filed by applicants for benefits, the State requests employment and separation data from the last employing Federal agency. The Federal law provides that conditions of eligibility for benefits and benefit amounts

generally shall be the same as those under the law of the State where the claim is filed.

The States are reimbursed for benefits paid to employees of the Federal agencies from a fund financed from appropriation to the DOL from general funds of the Treasury and administered by the DOL. The one exception is the U.S. Postal Service (USPS), which is required to reimburse the DOL for benefits paid to postal workers.

Under the current system, the Federal agencies pay no tax and are not responsible for financing benefits. A major criticism is that Federal agencies thus have no incentive to review carefully the eligibility of claimants or to help get claims processed expeditiously. As indicated, the exception to this system, USPS, is re-

quired to reimburse the DOL for benefits paid to its employees.

To reduce the time for processing claims and to eliminate ineligible claimants, it has been suggested that the Federal law be amended to provide a system that would require each Federal agency to reimburse its costs from its appropriations for benefits paid to its separated employees—that is, include the benefit costs in the individual agency budgets.

The Comptroller General's June 1979 report to the Congress referred to UCFE benefits as hidden personnel costs and seemed to favor including these costs in agency budgets. The report further recommended that the Secretary of Labor and the National Commission on Unemployment Compensation study the matter and report to the Congress. The Commission authorized a study of the problem by Booz-Allen and Hamilton, which submitted a report to the Commission in May 1980.¹ The information developed by both the Comptroller General's report and the Booz-Allen report is discussed below.

Arguments in favor of an agency budgeting system. Following are five arguments supporting this system.

1. The system could reduce improper payments by providing a financial incentive for Federal agencies to investigate carefully the validity of claims. The USPS reported that, through an active review of employees' claims and followthrough appeals on questionable cases, benefit savings in FY 1978 of \$13.7 million were achieved.

Most Federal agencies do not appeal claims. In a sample study conducted by Booz-Allen and Hamilton, the Federal agencies studied initiated no appeals and provided personal testimony in fewer than 1 percent of appeals brought by claimants at the first appeals level. By contrast, the USPS initiated appeals in 20 percent of its cases and provided personal testimony in 51 percent of the first level appeals cases involving former employees.

2. The system could provide a basis for better work force management. A real incentive would exist to keep reliable personnel records and improve reporting if individuals in the agencies were assigned the responsibility of monitoring their layoff and hiring decisions and the full benefit costs of these decisions.

3. The system could reduce fraud and abuse and help improve public confidence in the UC system.

4. The system could give Federal agencies an incentive to provide accurate, timely, and complete wage and qualifying information to State agencies. The USPS responds to a State agency's Request for Wage and Separation Information in an average elapsed time of 10 days, compared to 19 days in other agencies. Excessive delays have led to widespread dissatisfaction

on the part of State personnel administering the program and hardship for many claimants.

5. Under this system, each Federal agency could become responsible for the cost of benefits and thus reduce program costs. The 1979 Federal and State cost of administering the UCFE program was \$14,712,000. If all Federal agencies switched to individual agency budgeting for UCFE benefit costs, a system under which each Federal agency is responsible for its own budgeted item for UCFE, the start-up administrative costs are estimated at \$9,794,000 and ongoing costs at \$3,805,000. Based on USPS experience with such a system, the maximum potential benefit savings of the UCFE program are projected to be between \$7 and \$13 million annually, exclusive of USPS. These estimates indicate clearly that such a system is cost-effective. However, this conclusion is challenged by authors of the Booz-Allen study on the grounds that, unlike USPS, other Federal agencies do not work under a cost-center concept with a profit motive. Even assuming that for this reason other agencies would have less incentive and accordingly the savings might be somewhat less than the above estimate, it is believed that some net savings would occur.

Arguments against the agency budgeting system. Following are five arguments in opposition to the system.

1. Increased administrative costs would appear to offset benefit savings. One year start-up costs of an additional \$9.8 million and annual ongoing additional costs of \$3.8 million are estimated. These costs would be in addition to present administrative costs of \$14.7 million.

2. The assumption that an agency budgeting mechanism is sufficient motivation for Federal agencies to assume USPS's level of program participation is questionable.

3. It is estimated that, if the USPS experience with the agency budgeting system were extended to all Federal agencies, benefit savings would be \$7 to \$13 million annually (exclusive of USPS). There is some question, however, whether the savings would be that high due to two factors giving USPS an advantage:

- USPS works under a cost-center concept with a profit motive.

- USPS has a relatively centralized and effective payroll and personnel system that allows efficient and thorough response to the information requirements for establishing UCFE eligibility.

4. There is some question as to whether an agency budgeting system can be demonstrated to be more cost-effective. Benefit savings may be substantially less than the estimated \$7 to \$13 million and might be

no more than or possibly less than the increased administrative costs.

5. The present system can be improved to meet major weaknesses. The following proposals have been suggested:

- Forms furnishing wage and separation information should be revised to include data on the reasons for separation and wage information.
- The DOL should undertake training of Federal agency personnel and take steps to ensure Federal agency attention to the UCFE program.
- More intensive monitoring should be done of UCFE expenditures in the SESA's to identify which Federal agencies create problems and what corrective efforts are appropriate.

Findings

The Commission finds that, under the present UCFE program, Federal agencies are not providing SESA's with accurate, timely, and complete information needed to establish eligibility for benefits.

The Commission believes that a system under which each Federal agency would get its own budgeted item for UCFE and be responsible for appropriate reporting of its participation and costs would provide an incentive for Federal agencies to take a more active role in reviewing claims.

The Commission concludes that such a system properly administered will produce some net savings on ineligible benefits over increased administrative costs.

The Commission further believes that such a system will, through improvement of administration, reduce abuse and help to improve public confidence in the UC system.

The Commission believes that the conditions exist-

ing in UCX are in most cases different from what they are in UCFE. Separation from employment is not at the discretion of military personnel except upon completion of their period of service, and there are few separation issues. Recent actions by the Department of Defense and the DOL have greatly improved the claims process. Military personnel at time of separation are now presented by the military service with full information in writing, enabling them to complete the nonmonetary and monetary claims requirements. The result has been a great improvement in the timeliness and accuracy of the claims process. In the period from October 1979 through June 1980, 87 percent of former military personnel were being paid within the period of 14 to 21 days.

Recommendations

Each Federal department should get its own budgeted item for UCFE (and, where applicable, UCX), and each agency should be responsible for appropriate reporting of its participation and costs.

*Adopted by recorded vote of 9 yeas,
1 nay (Commissioner Seidman), 1 ab-
staining (Commissioner Daniels).*

The Commission recommends no change in the current arrangement under which State benefit and eligibility provisions apply to claimants for UCFE and UCX.

Footnote

1. Booz, Allen & Hamilton Inc., "The Feasibility of Alternative UCFE Chargeback Systems," *Unemployment Compensation: Studies and Research* (Washington, D.C., NCUC, 1980).

7.6 Financing the Administration of the UI Program

Background

The administrative financing of unemployment insurance (UI) is described in the Social Security Act, Titles III and IX. Federal financing of 100 percent of State administrative expenses was originally expected to provide adequate funds and produce a better-administered program.

Initially in the program the Federal Government collected 0.3 percent on covered payrolls and deposited these proceeds in general Treasury funds. The Congress appropriated the Employment Security administrative costs from general Treasury funds. The funds initially were not earmarked.

In 1954, the Employment Security Administrative Financing Act provided that Federal Unemployment Tax Act (FUTA) proceeds be placed in an earmarked fund from which administrative funds could then be appropriated.

Unemployment insurance administrative funds all come from FUTA. At present, FUTA funds are provided from a tax on the first \$6,000 of covered wages. The total Federal tax rate is 0.7 percent, of which 0.45 percent is available for administration. Federal grants to States are limited by law to an estimated 95 percent of the annual yield from the 0.45 percent. The remaining .05 percent goes to finance Federal administration expenses. The appropriation can, of course, be for less. The administration's request for funds is based on what is necessary "for proper and efficient administration."

Adequacy of administrative funding. The adequacy of administrative funds for UI is affected by several things. One of these is that Federal officials fail to request the funds and justify the need. The failure to request funds is motivated frequently by nonprogram considerations arising from UI inclusion in the unified Federal budget (see chapter 6.6).

At times, shortage of administrative funds is due to an inadequate FUTA tax yield. In recent years, the FUTA tax yield has not produced an adequate margin for State UI administration. For example, from 1975 to 1979, FUTA funds available for State administration exceeded the trust fund appropriation by only \$101 million in 1976, \$120 million in 1978, and \$77 million in 1979. In 1975 and 1977, the FUTA tax yield was actually less than the appropriation for State administration.

The basic problems that cause a shortage of administrative funds are the failure of the tax base and/or tax rate to keep up with wage increases, the growth of the program, and price inflation. Since the program began, the taxable wages as a percentage of total wages declined from 98 percent in 1939 to 45 percent in 1977. Periodic shortages will persist unless the wage base is indexed with changing average wages or frequent action is taken to adjust the tax base or rates as wages rise.

An administrative fund shortage of \$270 million is predicted for fiscal year 1981. Permanent legislation, however, authorizes an additional amount of budget authority for administration for a fiscal year in which there is a 15 percent increase in the insured unemployment rate (IUR) in corresponding quarters for successive years. Additional budget authority as well as an appropriation will be required to deal with the shortfall of fiscal year 1981. A fund shortage of \$230 million is predicted for fiscal year 1982, and the 15 percent increase in workload is not expected to apply. The Department of Labor (DOL) proposes to meet this shortage by asking the Congress to suspend the 95 percent limitation for 1 year.

A serious drain on FUTA resources is caused by statutes under which employers are not required to contribute to the costs of administering the UI program. Employers in this category are Federal (civilian and military are covered under Title 5, U.S. Code), State, and local government entities and certain nonprofit organizations.

The administrative costs attributable to claims from employees of these categories of employers are expected to amount to \$208.4 million for FY 1981. This cost element, along with the fact that private sector employers (except certain nonprofits) shoulder the entire cost, has provoked reexamination of the original reasons for relieving the above employers from liability of administrative costs. State and local government entities originally were exempt from the Federal tax because of ap-

prehension of raising constitutional issues. With respect to the nonprofit organizations, freeing them from FUTA liability avoided tampering with their Internal Revenue Service (IRS) tax-exempt status. Furthermore, when coverage first was extended to nonprofit organizations and some State government workers by Federal law (1970 amendments), ample funds then were available in the Employment Security Administration Account, and it was anticipated that sufficient funds would continue to exist in the future.

The only attempt to deal with this issue came in 1976 in consideration of H.R. 10210, the bill that later became Public Law 94-566, the Unemployment Compensation Amendments of 1976. As passed by the House, the bill provided that grants made to States for administration of their UI laws would no longer include payments for administrative costs attributable to State and local government employees. The bill also provided that the Federal Government would no longer pay one-half the costs of extended benefits paid to State and local government employees. The Senate struck the above House provisions. In conference the two Houses compromised, following the Senate in deleting from the bill the House cutoff of administrative costs (i.e., grants would continue to be made for administrative costs attributable to State and local government employees). The conference adopted the House provision regarding the cutoff of funds for certain extended benefits. Nonprofit organizations were not affected by any of the proposals dealing with administrative costs or extended benefits.

Losses in collection of FUTA; authority for State collection. Almost complete duplication now occurs in the collection of Federal and State UI taxes. The annual Treasury collection costs about \$38 million. A recent study by the California Employment Development Department states that for 1980 the IRS will collect between \$200 and \$250 million less than the full national potential tax yield.¹ If States were authorized to collect FUTA taxes, however, most of this would be collected, the study concludes. Since the estimated additional cost of State collection is \$12 to \$14 million, an estimated \$24 to \$26 million would be saved on collection costs from the \$38 million being paid to the Treasury. Therefore, State FUTA collection might increase availability of administrative funds by some \$200 to \$250 million a year.

UI budgeting and allocation problems. The UI administrative financing system is unique in that the Federal Government is responsible for raising and allocating the funds for administration, and the States are responsible for administration of the program. This division produces disagreement between Federal and State officials on allocation policy, adequacy of funds, quality of service, and administrative flexibility.

The Federal Government has adopted extensive fiscal regulations that introduce some rigidity into the system. Problems are exacerbated by the increasingly complex program requirements.

The Commission believes that the Federal Government's objective should be to allow the States as much administrative flexibility and discretion as possible, consistent with Federal fiscal responsibility. The Commission believes that incentives for cost reduction and quality performance, combined with more efficient use of automation, can improve the system and that these improvements should be accelerated.

Base and contingency funding. Currently each State is allocated a base (guaranteed) staff level at the beginning of each fiscal year. Staff needed above this level are allocated quarterly on a contingency basis, depending on the workload that occurs. The present practice is to set the base staff level at a percentage of the staff projected for the lowest quarter of workload activity in the year. This results in funding a substantial portion of State workers from contingency moneys. These workers are hired on a temporary rather than a permanent basis. Temporary workers tend to have less training and to be less experienced than permanent staff, resulting in lowered efficiency and quality of service.

Adequacy of funding for administration, staff, and technical service and nonpersonal service. The administration, staff, and technical service (AS&T) and nonpersonal service (NPS) funds are budgeted and funded separately from regular workload activities. In recent years, AS&T has represented about 6 percent and NPS about 15 percent of the grants appropriation. In general, AS&T includes administration, fiscal, personnel, management support, and automatic data processing. NPS, in general, covers supplies, communications, travel, equipment, premises, and services. In recent years NPS cost allocations have been inadequate, forcing States to transfer funds from other functions. For instance, during fiscal year 1977, budgeted NPS was 15 percent of the grants appropriation, whereas actual costs were 20 percent. Employment security programs have experienced rapidly increasing NPS costs, especially due to expanded use of computers, extraordinary increases in communications and utility costs, and rental and building costs.

Federal criteria for State guidance and for Federal allocation to the States present very difficult problems due to wide variations in State policies and practices. While most of these variations can be justified, they do complicate the allocation process.

A major study of the AS&T-NPS problem has been conducted recently. Based on this, State and Federal officials have reached substantial agreement on the formula for distributing these resources to the States and, to some extent, on the standardization of State prac-

tices. Agreement also has been reached on the inadequacy of NPS funds. A mutual study effort continues to develop an objective budget justification model for both AS&T and NPS funding.

Quarterly recapture of contingency workload earnings. The volatile character of the UI workload demands that the availability of administrative funds be flexible enough to meet the fluctuations of the workload. The contingency workload concept was designed to meet this problem, and by and large it has done it well. Along with the contingency concept, however, the DOL has followed a practice of recovering unspent funds at the end of each quarter. This practice creates serious administrative problems for the States. It causes the State to operate on a 3-month cycle. This introduces an element of inflexibility into a system where program considerations require constant adjustment. Another undesirable aspect of quarterly recapture is that it creates an incentive for the State to spend rather than to keep expenditures as low as is consistent with good management.

Program deficiencies as a result of shortages of administrative funds—arbitrary reduction in cost model. The DOL cost model "minutes per unit" (MPU), developed through extensive work-measurement performance studies, is designed to indicate what resources a State needs to process its UI workload. Due to inadequate funds or other reasons, the DOL has imposed arbitrary reductions in the MPU's. For example, in fiscal year 1980 the approved State MPU's were applied to the predicted base workload; that process produced a requirement for 36,623 staff years. Only 34,747 staff years were allocated, however, which is a reduction of over 5 percent. These arbitrary reductions nullify the validity of the cost model and result in inferior service.

Need to bring State employment security systems up to date in computer technology. Because of the limited availability of funds, progress in State automation capability has largely stopped in the past 2 years. At present, 21 States have on-line benefit systems installed, and 21 have at least partially automated tax systems. The Unemployment Insurance Service (UIS) estimates a cost of \$62.4 million to complete the automation plan for all States over the next 5 years. In addition, \$20 million is needed for automation of the Interstate Benefit Program.

The Employment Service estimates that to place terminals in all local offices with entry into applicant and job order files would cost about \$22 million. This would not include an extension of job matching.

Termination of Reed Act authority. The Reed Act, passed in 1956, provides for the distribution of surplus

funds after the several separate funds established under FUTA have reached the legal maximum.

Reed Act funds have given the States some needed flexibility in the construction of office buildings for their employment security programs. In 1977, \$11.5 million of Reed Act funds were spent by the States for building purchases. The rental cost for the same space would have been \$35.4 million.

The Reed Act, however, is scheduled to expire over 3 years, beginning in 1982. In addition, Reed Act funds were exhausted in those States that borrowed from the Federal Government to pay benefits.

Need for more staff in national offices of UIS. In recent years a steady decline has occurred in the UIS national and regional staff. The Washington, D.C., staff is now down to 127 professional and clerical positions from a strength of 221 in 1973. Regional offices have dropped from a total of 100 to 81 in the same period. This staff is responsible for a benefit expenditure of over \$14 billion in 1980 and an estimated \$23 billion in 1981. By contrast, the number of State personnel is 59,000 for fiscal year 1981, with State administrative funds of \$1.43 billion. The Federal staff is too small to meet the responsibilities that go with a program of this size. With the Federal staff reductions, the important function of providing technical assistance to the States has been increasingly neglected.

Findings

The Commission finds that the availability of adequate FUTA administrative funds is reduced in several important ways:

- The tax base is static and fails to keep up with wage increases.
- Duplication occurs in the collection of Federal and State UI taxes.
- Non-FUTA employers and certain special programs are not required to pay their share of administrative costs.

The Commission recognizes the difficulties involved in increasing the unemployment program costs of non-FUTA-subject employers (i.e., requiring that they also pay an appropriate share of administrative costs). However, the Commission believes that it would be reasonable, taking into account all the circumstances surrounding this situation, for such administrative costs to be paid from Federal general revenues.

The Commission is concerned that State administrative discretion and flexibility are severely restricted and provide little incentive for cost reduction and quality improvement. The practice of setting the base budget at the workload level of the lowest quarter of the year results in the loss of some efficiency. Short funding of

AS&T and NPS results in the transfer of resources from other functions, to the detriment of the program.

The Commission believes that the quarterly recapture of unspent workload earnings reduces desirable State flexibility and removes an important incentive for better administration.

The Commission finds that arbitrary reduction in the cost model time factors has undermined this important budget tool and tends to nullify the validity of the cost model concept.

The Commission finds that the Employment Security program is underfinanced in a number of crucial areas. The Commission has reviewed these areas carefully. In some cases it is not now possible to arrive at a precise estimate of the amount of additional funds needed.

The Commission finds a need to strengthen the basic claim procedure (including interstate benefits) and to improve the program for placement of UI claimants. Administrative error and lack of vigilance cause a serious problem in control of overpayments, underpayments, and fraud. The appeals functions, particularly second level appeals, need strengthening, and the employer tax audit program is in need of improvement.

The Commission also finds that the entire ES system needs to be brought up to date in computer technology. This includes UI claims functions, tax systems, ES local office files, and administrative statistics and data.

The Commission finds a major need for extending computer capability. Fewer than half the States have on-line benefit systems and automated tax systems. The estimated startup cost is \$62.4 million, with an additional \$20 million for the interstate benefit program.

The Commission finds that the Reed Act has provided some leeway for States on use of administrative funds, particularly for the construction of buildings, and should be continued. In addition, a way should be found to reinstate Reed Act balances in those States that had to borrow to pay benefits.

The Commission finds that there is a need to provide technical assistance to the State programs. The number of personnel available at the Federal level (national and regional offices) to assist the States in improving the financing and benefit provisions of State laws has significantly declined.

Budget responsibilities take up a major portion of time and energy of Federal employees in the program. The Commission recognizes the importance of the budgeting process and its relation to the quality of administrative performance. But the Commission also believes it is important to assist States in management, auditing, training of personnel, research, and the improvement of the solvency and actuarial aspects of the program. With the increased load and added functions, the national office of the UIS should be staffed with at least 200 jobs. The 10 regions now have 65 professional staff and a minimum estimated need of 135.² The 16 clerical staff would need to be increased proportionately.

Recommendations

The Commission recommends the following:

1. *Taxable wage base indexing.* To ensure adequate administrative funding (combined with other program objectives), the wage base should be indexed at 50 percent of the annual average wage in 1983–84 and rise by steps to 65 percent in 1989–1990. (See also chapter 6.2, which is on the taxable wage base.)

2. *1982 shortfall.* No change should be made in FUTA tax rate or taxable wage base in 1981 and 1982. Present authorization language in Title IX of the Social Security Act will cover part of the needed increase in appropriations for Grants-to-States for administrative costs for FY 1981. Additional authority will be required for the rest of the increase. To avoid an estimated shortfall of \$230 million for FY 1982, a one-time authorization should be approved to make available any funds not otherwise committed in the ES administration account for State grants. Estimates are that up to \$130 million would be available for appropriation. To meet the total estimated shortfall it will also be necessary to secure a repayable advance of \$100 million from general revenues. (This is also contained in the recommendations in chapter 6.2.)

3. *FUTA taxes/State collection.* A change in Federal law should permit the IRS to contract with State employment security agencies to have them collect employer FUTA taxes jointly with the collection of State UI contributions.

4. *Base budgeting and contingency funding.* A more reasonable base staff level would be an average of the staff projected for the four quarters rather than the staff for the lowest quarter.

5. *Quarterly recapture of workload earnings.* The DOL should not recapture unexpended funds until the end of the third quarter of the fiscal year.

6. *Use of cost model criteria in funding UI operations.* Properly monitored productivity measures should be fully funded in the cost allocation process and should not be reduced.

7. *Computerization.* The continued growth of the labor force and the cyclical volume of claims necessitates use of the most modern computer facilities in

order that the system can promptly and efficiently handle the workload. The DOL should proceed expeditiously to complete an appropriate and efficient computerization of the UI and the ES systems in every State. Annual appropriation laws should include sufficient funds to complete this computerization within 5 years. The computerization should not be funded out of general revenues but from the FUTA.

8. *Technical assistance and the UIS.* The funds available for administration of the UIS should include adequate support for technical assistance to the States through both the national and regional offices. Such technical assistance should also be available to employers, employees, and the public.

9. *Nonpersonal service (NPS) and administrative, staff, and technical service functions (AS&T).* NPS and AS&T functions should be fully funded and not subject to percentage reductions.

10. *Extension of Reed Act provisions.* Present provisions of the Reed Act should be made permanent. Legislative authority should be granted to permit States to recoup from surplus tax collections, after loan repayments, the amounts of any Reed Act funds that had been expended for benefit payment purposes as a condition to receiving loans from the Federal loan account.

11. *Administrative costs of non-FUTA-subject employers.* When the Congress included Federal, State, local, and nonprofit employers in the program, it required that they finance only the benefit costs. No legislative authority was enacted for financing of their administrative costs. At the present time the costs for all of the administrative aspects of such coverage are borne by all private, for-profit (and some few nonprofit) employers through the FUTA. The Commission recommends that such administrative costs should not continue to be borne entirely by private sector employers from FUTA taxes.

Footnotes

1. Ralph Layne, "State Collection of FUTA—Revenue Estimate" (State of California Employment Development Department, Employment Tax Branch, Technical Services Division, March 28, 1980), mimeo.

2. Ibid.

7.7 Employment Service

Background

History and goals. The United States Employment Service (USES) is an integral part of the Employment Security system. However, the legislation that estab-

lished it (the Wagner-Peyser Act) preceded the Social Security Act, and many of the responsibilities of the Employment Service (ES) are the consequence of separate congressional acts.

The Wagner-Peyser Act of 1933 created a Federal-State partnership. It established the USES bureau in the Department of Labor (DOL) and made it re-

sponsible for promoting and developing a national system of State employment offices. As a condition for participation and funding, each State was required to vest in a State agency the powers needed to cooperate with the USES and to submit to the Secretary of Labor detailed plans for carrying out the provisions of the Act. The Act also required that reports on expenditures of the funds received be submitted to the Secretary.

Title III of the Social Security Act of 1935 established the present system of unemployment compensation (UC). It required that benefits be paid by the States "through public employment offices or such agencies as the Secretary of Labor approves." The Social Security Board determined that this function should rest with the USES.

In World War II, Congress federalized the system so that it would become the operating arm of the War Manpower Commission. Yet Congress provided for the maintenance of the State salary structure, indicating the temporary nature of the federalization. During the war years the USES was the major instrument for recruiting workers where needed and for placing unemployed workers, including many women who entered the labor market for the first time.

In 1946 the ES was returned to the States to resume the former Federal-State structure. At this time emphasis was on service to returning veterans. The Wagner-Peyser Act provides that the system of public employment offices shall assist men, women, and youth "who are legally qualified to engage in gainful occupations." It specifically requires "services for handicapped persons," maintenance of a "farm placement service," and "a service to be devoted to securing employment for veterans."

In the sixties, partly at congressional urging, the USES made a major shift from its focus on general placement functions, including veterans' placement, to an emphasis on finding jobs for the poor or disadvantaged. The shift had a negative impact on the placement of job-ready workers, including UC claimants.

The emphasis on the disadvantaged and minority groups resulted in their receiving a higher proportion of services than their incidence in the applicant population. This tended to make employers and workers generally lose confidence that the ES should or would provide good service to any but the disadvantaged. This situation led to a realization of the need for further change.

During the early seventies, it became clear that, if the ES were to serve a diverse public and meet the different needs of the UC system (including the increase in covered employers and workers) as well as the needs of the disadvantaged, it must greatly increase and improve its labor exchange operations.

The requirements for placing the job-ready unemployed are not the same as the requirements for helping individuals (including new entrants) who need job

preparation. Execution of placement and other labor exchange functions at the State level depends upon the nature of the employment market, the funds available to each State, and the other responsibilities allocated to the ES by special legislation.

Altogether, the USES and the State agencies are involved in the administration of 22 laws other than the Wagner-Peyser and Social Security acts, 19 Executive orders, and 15 agreements with Federal agencies other than the Employment Security agency. These programs include the Comprehensive Employment and Training Act (CETA), the Work Incentive Program (WIN), the Airline Deregulation Act, the Trade Policy Act of 1974, and various arrangements for legal aliens admitted for employment as well as for migrant workers covered by the Ritchie Court Order (NAACP, Western Region, et al., Aug. 9, 1974). These all affect the responsibilities of the ES and its capacity to carry out its traditional duties.

In addition, special functions have been allocated to the ES to administer work tests and job searches not only for UC eligibility, but also for eligibility for welfare benefits and food stamps.

Nevertheless, the general purposes of the ES, as defined in the Wagner-Peyser Act, remain basically the same today as in 1933. The DOL draft regulations published in January 1980 provide the following summary:

The Employment Service performs essentially a labor exchange function. That is, the system provides no-fee employment services to applicants seeking employment and to employers seeking applicants. Among the services provided applicants are job information, referral to job openings listed with the Employment Service, employment counseling, employment testing, job development and referral to training. Among the services provided employers are referral of qualified applicants to job openings listed with the Employment Service system; labor market information; and assistance in meeting affirmative action obligations under legislation, court order, consent decree, government contracts, or other fair employment practice authority rulings.¹

Primary functions (allocated by the Wagner-Peyser and Social Security acts).

Labor exchange operations and placement activities. Much of the criticism of ES operations stems from the interpretations that have been made, at different times, of the placement role of the ES and what has become known as the "numbers game." Because the level of funds received by the States has been tied to a large extent to the numbers placed, the local ES offices in several States have tended to direct their efforts and services to individuals who can be "placed" quickly—even on a short-term basis. This has had a negative impact on the provision of other employment, training, and support services by the ES to UC claimants, covered employers, and other groups wishing to use the ES as a labor exchange.

Statistics for 1979 indicate the size and cost of the placement operations of the employment service. In 1979, 15.5 million job seekers were registered and 4.5 million job seekers were placed. Of those registered, 3,400,000 were UC claimants and 665,000 of these people were placed. In 1979 the cost per individual placed was \$166. (The cost in 1978 was \$127.) Of an estimated 20 million individuals unemployed during the year, 75 percent were registered with the ES.²

Employment-related services to applicants. While training, counseling, and preparing applicants for placement are clearly essential services for employment applicants, questions have been raised about the capacity of the ES to fulfill these functions adequately.

One of the arguments for establishing CETA was the feeling that in many parts of the country the ES was not organized to provide such services effectively.³

The issue is whether the ES should be strengthened to make it the appropriate agency to provide such services, or whether it should limit its activities to initial screening, some counseling, and referring applicants to other agencies (e.g., CETA prime sponsors and subcontractors) and should provide assistance to employers to help them undertake some aspects of training and job preparation.

Examples of suitable employment services include intensive programs to orient applicants to the requirements of work, including behavior and attitudes, promptness, attendance, and even dress. One of the programs successfully carried out in a number of areas is the establishment of job seekers' clubs. Here applicants meet together for testing and help each other in interviewing skills, resume writing, and use of labor market information to find jobs. Special guidance counselors—or staff with special responsibility—are assigned to groups of from 10 to 15 applicants. A number of "Group Job-Seeking Models" have been developed to guide the expansion of this component as an Intensive Employment Operation.⁴

A problem with the ES using this procedure is that the ES local offices do not receive placement credits for jobs found by individuals on a self-help basis. Because WIN offices get the same credit in evaluations of their placement productivity for self-placements as they do for direct placement transactions, they are more apt to use the program.

Another example of intensive services for job finding has been the use of local office "teams" set up by the ES and the UC system to work with the individual claimants. These teams have been authorized, on a demonstration basis, to do whatever is needed, even though the training provided and the use of the additional staff may involve an increase in cost. These experiments showed substantial savings in removing claimants from the unemployment rolls, but they were costly

in terms of staff. A significant experiment is the Nevada Claimant Placement Project, on which a report was made by John P. Steinman of the Nevada Employment Security Department in June 1978.

Special services are often needed to deal with the problems of displaced homemakers, especially when they lack labor force attachment or any experience in job seeking. Such intensive services may also prove useful for new entrants or reentrants in general.

Followup services are needed to evaluate the quality of the placement and the need for training and support services (including, for example, day care and transportation). Followup services may be undertaken on a periodic basis or for specified periods (e.g., 90 days, 6 months, 18 months). Followup programs are needed for training as well as employment; and under some programs, such as the WIN and food stamp programs, they are a requirement affecting eligibility. The major issue is whether the ES is the proper agency to undertake followup.

Services to employers. The most appropriate and effective services to be offered to employers by the ES depend both on the characteristics of the employer's business or enterprise and on what the employer wants and believes the ES is capable of undertaking. Since funding is derived from the employer's taxes, covered employers can claim that they should both determine the services offered and have priority in their receipt.

Almost all of the services to employers derive from the basic Wagner-Peyser/Social Security legislation and from legislation relating to mandatory job listing by employers.

Services normally provided to employers include:

- screening of applicants to avoid unsuitable referrals or too many referrals to a limited number of jobs;
- recruiting workers in shortage occupations, such as farmworkers and skilled workers;
- stationing ES staff in plants or in conveniently located places, such as shopping centers;
- providing space in ES offices for employers to screen and interview applicants;
- providing appropriate labor market information on a local, regional, and/or national scale;
- aiding employers in setting up training and apprenticeship programs and in locating "support" services (such as child care).

ES statistics for 1979 indicate the nature and amount of services currently provided to employers: 9.5 million job openings were listed, and, of these, 6.5 million were filled. The number of employers served was 1.5 million, which was 40 percent of all employers and 70 percent of all major employers. Job openings that

were filled were 34 percent services, 18 percent manufacturing, 18 percent wholesale and retail trade, and 11 percent public administration. ES reported 3.5 million contacts—1.7 million by personal visits and 1.8 million by telephone. Each month over 1,000 employers in 30 States received technical assistance in dealing with turnover and absenteeism.

A special effort to increase employer participation in the ES, in consequence of recommendations made by the National Employers Committee (formed in 1971), resulted in the creation of the Job Service Improvement Program. Under the auspices of this program, approximately 1,100 local Job Service Employer Committees, representing 22,000 employers, have been established to improve the relationships between employers and the ES and to emphasize those services of greatest local need. Many States also have statewide Job Service Employer Committees.

Determining the most effective services to employers raises operational and policy problems that affect both the willingness of employers to cooperate with the ES and the day-to-day use of the staff of the local ES offices.

The issue of whether all employers should be required to list all or some of their job openings has been debated almost from the initiation of the program. It has been argued that only on the basis of mandatory listing is it possible for the ES to have full knowledge of the labor market and develop effective job banks. It is also argued that in many cases job listing will not increase appropriate referrals and may be a waste of effort. There is a series of related issues: Should employees who regularly list all vacancies with the ES have priority for service? Would employers accept mandatory listing if they were assured of better screening and selection of applicants? In any case, should covered employers be required to list only their current vacancies or, in addition, their expected vacancies? Should some specified groups (as is the case with Federal contractors) be required to list their openings? Is the operation of mandatory listing cost-effective or administratively sound at the present time? Should the ES place greater emphasis on promoting the advantage to employers of voluntarily listing their employment openings?

Current mandatory listing derives from legislation that requires employers with Federal Government contracts or subcontracts of \$10,000 or more to list all their job openings with the USES and take affirmative action to employ and advance qualified disabled veterans and Vietnam-era veterans.

Legislation and subsequent Executive orders provide the following exemptions from such mandatory listing: jobs that are covered by civil service registers; jobs that employers fill from within as an "in-house" promotion; professional or administrative employment paying

\$25,000 or more; jobs covered under hiring provisions of union contracts; openings that will be filled by persons laid off and on recall lists; openings for temporary employment of 3 days or less; and any special exemption decided upon at the discretion of the Secretary of Labor.⁵

Multiple problems have arisen in the implementation of the program. This is partly because the extent of employer cooperation has been related to the current economic situation and to the nature of the employers' government contracts. For example, should a conglomerate be covered in its entirety? Rulings indicate that, where an enterprise within a conglomerate is unrelated to the government contracts concerned, it does not need to be included in job listings. In most cases, however, all vacancies must be covered.

The basic difficulty concerns the nature of the enforcement. In many cases there is only pro forma processing, and in almost all cases the program has been implemented by persuasion and not by penalization. In many cases where employers conform, the jobs are filled before the ES can include them in the job bank.

Labor market information. On the assumption that a major responsibility of the ES is to provide labor market information, how much emphasis should it give to the collection and distribution of national, State, and local data as a tool for effective operation? Should this be paid for from employers' taxes, or should it come from general revenues, on the grounds that labor market information has wider uses than that of the UC system?

Is the ES the most appropriate agency to undertake labor market information collection (now divided among a number of agencies, including the Bureau of Labor Statistics and, in some areas, CETA)? Some suggest that such information should be purchased from public or private agencies. Others would give the ES much wider authority to serve as agent for information-gathering organizations and to strengthen its own local knowledge and facilities.

Knowledge of the existing and potential local labor market is essential for all ES placement and broader labor exchange operations. Wider State, regional, national, and even international knowledge is also needed for interstate and intrastate clearance and for study of the labor market economic factors that frequently determine the employment potential of applicants.

Special activities. A number of ES functions are the result of legislation other than the Wagner-Peyser or Social Security acts.

Job search activities. The role of the ES in administering the work-search requirements that determine eligibility for UC benefits, food stamps, and welfare benefits is controversial. It calls for reconsideration be-

cause of its effect on the capacity of the ES to undertake its placement and other labor market responsibilities. The ES plays a different role and uses different sources of funds for each of its job search programs. An additional issue is to determine how these functions can be coordinated.

1. *The work test for UC claimants.* A UC claimant must be available for suitable work, and the unemployment insurance division is responsible for determining whether a valid job search has been made and whether a job offer has been refused for a legally valid reason. The conditions of job search, what constitutes availability for work, and what work is defined as suitable vary by State.

In each case, the ES must certify that an applicant has registered for work and must, if work has been refused, inform the unemployment insurance division of the action. In cases where the applicants have special skills, are seeking unavailable jobs, or are in areas where unemployment is high and suitable jobs are not likely to be offered, the ES registration, referral, and certification (the work test) may be a formality at best or may be a waste of staff, applicant, and employer time. In a number of situations, such as temporary layoff, no action is required of the ES.

UC claimants, because of their previous work experience, were traditionally believed to be the easiest to place. Recent studies indicate, however, that the UC job-ready claimants may not need or want the assistance of the ES, may be the hardest to place in periods when they are eligible for benefits, and are in a position to refuse jobs that do not meet the State's concept of a suitable job.

Nevertheless, the ES is expected to make registration a significant function for the following reasons: job search is a legal requirement in most States, there seems to be a public desire to ensure that all UC beneficiaries are required to seek work, and job search is FUTA-funded.

Some argue that registration could be carried out more appropriately by UC staff familiar with the UC benefit requirements. The issue is whether the ES should continue to have sole responsibility for this function, whether it should be made a UC function, or whether it should become a joint operation.

2. *Food stamp work search.* The ES receives from the Department of Agriculture special funds to administer the job search required for food stamp eligibility. If applicants for food stamps (between 16 and 65) are able to work, they must be certified by the ES as not having refused suitable work that would have brought their income above the eligibility level. The income tests involved in the program usually mean that the applicants seeking jobs have little attachment to the

labor force and therefore, if employable at all, are available for categories of jobs that may be unsuitable for UC claimants. However, similar labor market information, interview and referral skills, and employer cooperation are required. In addition, UC exhaustees, and in some cases UC claimants, may become eligible for food stamps and then become subject to food stamp job search requirements.

3. *WIN participation requirements and proposed work tests.* Applicants for benefits under the present Federal program of Aid to Families with Dependent Children (AFDC) under Titles IV A and IV C of the Social Security Act are in most instances required to participate in a WIN training and employment program, operated by the Department of Labor and the Department of Health and Human Services. There are specified exemptions, such as caretakers of children under 6 or of elderly dependents. In some circumstances, exempt people may "volunteer" to participate in WIN.

Local ES offices operate job search and training programs in which applicants must participate as a condition of eligibility for AFDC benefits. The WIN work requirements involve ES activities similar to those of the food stamp work search and call for many of the same transactions as does the UC claimant work test. While the WIN program does not currently require acceptance of a suitable job, the participation requirements call for much the same concerns by the ES. In addition, there are tighter requirements for followup of WIN placements than for UC claimants.

If the ES continues to have at least its current (and possibly greater) responsibility for job search and work requirements, efforts should be made to ensure that job-search records are centralized in local offices and that individuals who have made a search under one program with work requirements do not have to make double or triple efforts of the same nature. Frequently, where the programs are carried out in the same offices, coordination is adequate, but this is not always the case, primarily because of different reporting requirements to different funding or administrative sources.⁶

Enforcement and compliance operations. Functions allocated to the ES by Congress that have only marginal relationship to the UC system have been classified as "policing" responsibilities. Many believe they are inappropriate activities for the ES. These responsibilities relate, for example, to the housing of migrant workers; certification of aliens for employment in the U.S. for both permanent and temporary work; certain aspects of fraud elimination; and implementation of mandatory registration by Federal contractors. (An example of such activities undertaken in 1979 was the processing of 42,445 permanent migrant worker appli-

cants and certification of 32,544 of these workers as well as of 18,277 additional workers for temporary work in agriculture and logging.)

These functions are said to conflict with the overall best interests of UC employers and claimants. In some cases, such as housing inspection of migrant quarters, the activity would not have been undertaken initially by any other agency, although today some inspections are carried out by the Occupational Safety and Health Administration on a random basis. Such activities were not envisaged originally as the role of the ES.

The DOL, in its current report to Congress on the Wagner-Peyser Act, indicated that it is about to review these activities and "identify those that seriously dilute its basic mission." The DOL report suggests that the solution is either to discontinue some of these functions or to obtain increased resources to carry them out.

Targeted jobs tax credit. This function, which is essentially administrative, involves issuing vouchers and certifications to employers who hire eligible low-income workers. As of January 1980, 250,000 vouchers and 141,000 certifications have been issued.

Administrative organization and structure. The structure and administrative organization of both the ES and the UC divisions affect the operation of the whole system. Many of the problems that have arisen are a direct consequence of the Federal-State partnership. One problem arises from determining the parameters of authority of the DOL with respect to the operation of State (and therefore local) ES programs. The DOL requires (under the Wagner-Peyser Act) that the appropriate State agency submit plans for Federal approval and makes funding dependent on these plans. The Act does not indicate the specific content of the plans.

Some States object to Federal regulations that set standards and provide for monitoring, reporting, and goal setting. They consider that this prevents them from tailoring an ES program to be fully responsive and effective in meeting local needs. Other States are more concerned with the duplication of effort that has resulted from local placement services established by special congressional programs (CETA, Vietnam Era Veterans, etc.) and with the need to develop formal agreements to cope with these problems.

In its 1980 report to Congress concerning the Wagner-Peyser Act, the DOL indicates its intention to alter and decentralize the planning process of the ES and to define more clearly the Federal role so as to reward good performance and innovation at the State and local levels.⁷

The administrative relationships of the ES and the UC divisions have affected the operations of the ES at each level. For example, when the Federal Bureau of

Employment Security, which had responsibility for both the UC system and the ES from 1948, was abolished in 1969, two separate program units were established within the DOL. One result was a reduction in ES staff in the regional offices, and in particular the elimination of a single senior official with direct responsibility for overseeing the operation of the ES and the UC system at the State level. The current reorganization is expected to deal with some of these issues.

The administrative structure has also varied from State to State, ranging from full integration of services to complete separation of responsibility.

The advantages of administrative separation or integration are still a matter of debate. At the national level, consideration is being given to redefining relationships to ensure more joint planning, programing, research, and evaluation; a single regional administration with equal authority for both programs; an advisory committee structure at each level (including Employer Advisory Councils) to deal with appropriate policy issues of both programs; and a single unit responsible for regulations issued by both programs.

The present distribution of functions, funds, and staff often results in an information exchange gap between the two programs, leading to some duplication, some competition between providers (public and private), and frustration, particularly at the State level, on issues such as job search implementation and demonstration projects. Similarly, the diversity in the advisory structure has lessened its local effectiveness.

The States receive little guidance as to the optimum structure or use of advisory committees or councils as coordination tools. Where they are adequately staffed, the advisory councils have played a constructive role. However, there has been no systematic analysis or evaluation of the work—at either the regional or Federal level—of the State and local committees, and their recommendations seem to have largely local impact. If their structure were strengthened and their reports given serious consideration, they could again become a useful planning, coordinating, monitoring, and public relations instrument.

Administrative difficulties have increased as a result of legislative and administrative actions that made the ES responsible for things not directly related to the UC system (job search to determine food stamp eligibility, the WIN program requirements, etc.). Legislation, on the other hand, has established separate structures to carry out employment-related activities, such as CETA.

Accomplishment of these duties often requires additional funding and staff, neither of which has been adequately provided. It also necessitates clearer linkages among the responsible agencies.

Current development: plant shutdown. Only one jurisdiction, Puerto Rico, now makes special provision for

workers whose jobs are terminated because of the permanent shutdown of the plant where they are employed. The commonwealth law provides a 32-week extension of unemployment benefit duration in "special unemployment situations" in which a specified minimum number of jobs in an establishment (100), industry (500), or occupation (200) are eliminated. The Puerto Rico law also directs the commonwealth secretary of labor to determine if a special unemployment situation exists when an employer of 100 shuts down with no notice (within 10 days) of plans to resume operations within 3 months.

Special unemployment assistance programs have been enacted by the Congress to provide special protection to workers whose plants have shut down because of Federal action or changes in Federal policy. These include workers displaced by railroad mergers, airline deregulation, expansion of the Redwood Park, and, by far the most significant, changes in Federal trade policy. These programs, however, do not touch victims of the many plant shutdowns caused by a variety of economic factors not contemplated by the special program legislation.

The permanent shutdown of a plant has implications for the displaced workers and the community that are different from temporary layoff situations. It can signal economic disaster for a community. A permanent shutdown of a plant often involves separation of relatively older workers with long attachment to the employer and, consequently, specialized skills that are not easily transferable to other employment. These are workers who have particularly difficult problems in finding new jobs.

Realization of these implications has provoked the introduction in the Congress and State legislatures of bills aimed at relieving the consequences of plant shutdowns. Many have the following features in common:

- encouragement of employers contemplating either permanent plant shutdowns or other action that will result in displacing large numbers of workers to give early warning of their proposed action to their employees, to the State employment security agency (UI and ES) and to the community;

- development of a task force composed of ES and UI personnel ready to provide on site (if appropriate) the following services in advance of the shutdown date if possible—determination of training needs, cataloging of skills, location of jobs, preliminary processing of UI claims, and availability of other sources of assistance and funds;

- provision for retraining allowances, job search allowances, and relocation allowances.

Functions. The Commission considered both the primary functions that the ES should undertake to carry out the basic mandates of the Wagner-Peyser Act and

the Social Security Act and special functions or operations required by other congressional or administrative actions.

The Commission stressed the importance of labor exchange operations, including direct placement, penetration of the labor market, and followup on referrals to ascertain the quality and duration of placement.

In dealing with labor market information, the Commission distinguished between local and national needs and noted the role of the Bureau of Labor Statistics in providing the labor market analysis needed for an effective system.

The Commission reviewed various forms of intensive services and urged wider use of joint ES/UC programs to meet the special problems of UC claimants; closer cooperation with CETA in dealing with CETA-eligible applicants; and extension of job preparation, self-help, and group efforts for new entrants, reentrants, and individuals facing special problems, such as displaced homemakers.

In considering the employer services that should be offered by the ES, the Commission supported more extensive development of State and local employer committees, including coordination of ES committees with those established in Title VII of CETA.

The Commission discussed the pros and cons of mandatory listing of job openings by employers. Existing Federal law requires all employers with Federal contracts or subcontracts of over \$10,000 to list their job openings with the Employment Service. Proposals have been made to extend such requirements to other employers. The Commission, after careful consideration, felt it would not be desirable to require all employers to list job openings. The Commission felt it would be desirable for the Federal agency and/or States to conduct pilot projects in this area to see if any useful and practical results could be obtained from mandatory selective listings, on the basis of occupation, size of establishment, or nature of the industry.

The Commission discussed ES functions not directly related to the labor exchange role. It favored continuation of the job search responsibilities allocated to the ES by different provisions of the Social Security Act (for UC claimants and for the WIN program) and by the Food Stamp Act (for food stamp applicants). It suggested that means be found to coordinate these programs.

Although suggestions were made that the ES be relieved of its enforcement and compliance functions, the Commission limited its recommendations to the proposal that these functions should be financed from separate sources. It took the same stand with respect to ES functions derived from the Trade Policy Act of 1974 and similar legislation.

Structure and administration. The Commission considered a number of administrative problems that af-

fect the total operation of the ES and are, in part, the consequence of its Federal-State structure. At present, partly because of the limited discretionary funds available, few incentives are provided to State governments to improve operation of the system as a whole.

The Commission supports the view that States should be given greater financial incentives to strengthen the operation of the State and local offices through increased discretionary funds and the view that there should be greater flexibility in the use of funds to allow the States to undertake activities conducive to good program execution. The Commission notes that problems involved in coordination of operations extend from the Federal and regional offices to the State and local offices. The Commission was informed of a current reorganization of the Employment and Training Administration of the DOL at the national and regional levels, which may facilitate coordination.

ES/UC relationships vary at the State and local level. In some areas, co-location of offices, joint responsibility for reception and interview of claimants, common processing of reports, and similar procedures have proven useful. In other areas, particularly during periods of high layoff, clear separation of functions has been advocated. The Commission thinks provision should be made for full cooperation at the national and regional levels.

There is need for closer linkages among the ES, CETA, and agencies concerned with employment, training, and job search.

Plant shutdown. Plant shutdowns represent emergency situations because they produce an unusual volume and severity of unemployment. It is vital that the employer give notice as much in advance as possible of the proposed action. The early warning, however, will be useful only if there exists a capacity on the part of the ES and the UI agency to take quick and effective action to find new jobs and prepare workers for reemployment and to ease their transition to new jobs. The advance notice to community and State groups can serve also to trigger whatever assistance may be available to help the employer either avoid the shutdown or minimize its consequences.

Recommendations

Goals and objectives. The Commission defined the goals that should govern the operations of the Employment Service.

- There is need for a public, non-fee-charging agency that should continue, in accord with the Wagner-Peyser Act, to be structured as a Federal-State partnership.

- The agency should continue to be named the United States Employment Service, rather than the Job Service or Manpower Agency.

- The Employment Service should serve all persons seeking assistance in obtaining employment and should serve all segments of society. It should be blind as to the persons who wish to use its services and should assist them irrespective of funding and program relationships.

- The Employment Service should be strengthened to enable it to serve more effectively as the major Federal and State labor exchange agency. It should provide free placement, counseling, testing, job development services, labor market information, and other employment-related activities (such as job search and work tests) as needed.

Functions. The basic functions of the ES should include:

- Labor exchange services and related activities, such as the following: registering all applicants and UC claimants (with the exception of UC claimants on recall or claimants subject to other special hiring arrangements); entering applicants in job banks; making referrals to employers with known vacancies; counseling and making referrals to training and/or supportive services; testing skills; establishing job seekers' clubs; and providing workshops for job employability.

- Job search and work test programs for UC and, as appropriate, for other programs requiring job search as a condition for eligibility.

- Mandatory listing, limited at present to employers with Federal contracts or subcontracts of \$10,000 or more, as required by Federal law. (The Commission did not recommend extending this function.)

Adopted by recorded vote of 8 yeas (Commissioners Bivins, Coleman, Cooper, Crosier, Hill, Sanchez, Sullivan, Cohen), 4 nays (Commissioners Daniels, Morris, Oakar, Seidman).

- Intensive programs and services, including, but not limited to, outreach, orientation to labor market needs, self-help, followup counseling, and career guidance for individuals who are difficult to place or who face particular disadvantages.

- Employer services, including, but not limited to, listing jobs, screening applicants, providing information concerning affirmative action guidelines, and giving aid in the development of training programs and in the use of labor market information.

- Labor market information designed to assist individual job seekers and employers on local available job markets and to facilitate area and national labor market analysis.

Structure. The structure of the Federal-State partnership should be strengthened to enable the system to:

- provide, through increased discretionary funds, greater incentives to States to improve the operation of State ES offices;

- permit greater flexibility at the State levels in the use of funds as an incentive to improve execution and develop appropriate linkages with other agencies;

- provide, insofar as it is both feasible and reasonable, for joint UC and ES operation;

- take account of other employment and training programs (such as WIN, CETA, USDA/food stamps) and, where feasible, assure coordination and at some levels integration of job service, placement, and training programs;

- encourage experimentation and/or demonstration efforts to determine the value and efficiency of innovative ideas, such as common staff, universal registration/data systems, and program variations that allow for adaptations to local labor markets or populations served.

[*Commissioners Daniels, Morris, Seidman*: Just as we believe in the ultimate goal of federalization of the unemployment insurance system, we also believe that a federalized employment service would be more effective than the present fragmented Federal-State system.]

[See section 12.0, "Commissioners' Supplemental Statements."]

Plant shutdown. The Commission recommends that the Secretary of Labor encourage employers to give appropriate notice to State employment security agencies, employees, representatives of any affected labor organization at an establishment, and units of general local government when they either (1) intend to close down an establishment or (2) take action that results in serious unemployment in such establishment. The Secretary should establish arrangements to assist employers in carrying out this recommendation. The ES and the UI agency should provide appropriate resources to assist employers and employees in such instances when the employer has provided such appropriate notice.

The Secretary of Labor should consider the effect of plant shutdowns on employee benefit rights and employer opportunities for Federal and State assistance.

[See section 12.0, "Commissioners' Supplemental Statements."]

The Commission recommends that a system of job search and relocation allowances, identical with those now provided in the Trade Policy Act of 1974, should be established in accordance with DOL regulations, to be paid from general revenues.

*Adopted by recorded vote of 10 yeas,
1 nay (Commissioner Sullivan).*

Footnotes

1. *Federal Register*, vol. 45, no. 8, January 11, 1980.

2. The following is a breakdown of placement operations in 1979:

	<i>Registered</i>	<i>Placed</i>
UC claimants	3,400,000	665,000
Welfare claimants	1,300,000	381,000
Food stamp applicants	1,300,000	209,000
CETA applicants	600,000	443,000
Youth (under 22)	5,100,000	2,000,000
Older workers (over 45)	2,000,000	389,000
Women	7,200,000	1,900,000
Veterans	2,200,000	705,000
Handicapped	800,000	212,000
Migrant and seasonal farm-workers	200,000	79,000
Economically disadvantaged	4,300,000	1,500,000
Minorities	4,600,000	1,500,000

3. In some States, such as California, emphasis has been placed on measures to strengthen the ES to give it capability in the training field. In other States, the ES has been considered insensitive to many of the needs of "targeted" clients, and, particularly at local levels, alternative agencies have been preferred for these tasks. One alternative is to subcontract to private agencies. Another alternative for training is to use the school systems, including vocational education.

4. *National Coordination Committee Operating Memo No. 14-79*, issued by the National Coordination Committee of the Work Incentive Program (Department of Labor/HHS, April 1979). See also Nathan H. Azrin, Final Report to the U.S. Department of Labor, *The Job-Finding Club as a Method for Obtaining Employment for Welfare-Eligible Clients: Demonstration, Evaluation, and Counselor Training* (Department of Labor, July 28, 1979) and Robert A. Wegmann, *Job-Search Assistance: A Review* (University of Houston at Clear Lake City, Houston, July 1979).

5. PL 92-54, the Vietnam Era Veterans' Readjustment Assistance Act of 1972. This Act was amended by PL 93-508 in 1974 to meet some of the problems that have arisen. An Executive order issued on June 16, 1971, and amended in 1973 and 1974 complemented the legislation with respect to its implementation.

6. Subsequent to the preparation of this chapter, new proposed regulations were issued by the Department of Agriculture (see *Federal Register*, August 8, 1980) clarifying the job search requirements for food stamp eligibility. The introduction to these guidelines states that they were developed jointly with the DOL (Employment and Training Administration) and that they include specific delineations of the roles assigned to the State agencies of the Department of Agriculture and the State employment security agencies. Funding

levels to administer the program as well as the specific job search activities, including exemptions from work search, a new classification system for applicants, and reporting procedures, are to be contained in an Inter-agency Agreement between the Department of Labor and the Department of Agriculture.

7. *Report to Congress on Wagner-Peyser, June 12, 1980.* The report says:

“In summary, the Federal role involves the following services related to State operations:

- Establishing policy, goals and objectives for employment and training programs, including broad goals for the Job Service system.

- Reviewing and approving State Plans, against these guidelines.

- Monitoring Job Service performance against approved State plans.

- Providing technical assistance and training in such areas as efficient management, quality of service, computer-assisted matching programs, coordinating Job Service/CETA activities, employer services, etc.

- Maintaining a labor market information program.

- Providing for compatible reporting systems among the States.

- Conducting a Research, Demonstration, and Evaluation program.

- Coordinating State efforts and encouraging interstate and regional cooperation.”

7.8 Financing the Administration of the Employment Service

Background

Sources of funds. The funds for the Employment Service (ES) come from a number of sources, but the major source remains the Unemployment Trust Fund.

Initially, the Wagner-Peyser Act authorized Federal and State funds on a matching basis. Subsequently, the Wagner-Peyser Act was amended and the matching provisions eliminated. Today, while a State may provide additional funds for functions undertaken by the State ES, it is not required to do so.

The funds appropriated by the Congress for the regular functions of the ES are distributed as Grants-to-States. These come primarily from the Federal Unemployment Tax Act (FUTA) assessed on employers and partly from general revenue funds.

The funds are appropriated to the Department of Labor (DOL) to meet “the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933, as amended” (29 U.S.C. 41–49n). In determining the appropriate amount of funds, according to Sec. 901(d)4 of the Social Security Act, the President, after consultation with the Secretary of Labor “shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.” It is not clear that these factors have been followed in determining the policies which in practice have changed from time to time.

Under Sec. 5b of the Wagner-Peyser Act the Secretary of Labor is authorized to certify for payment to

each State “such amounts as the Secretary determines to be necessary for the proper and efficient administration of its public employment offices.” The proportion of funds for the basic Grants-to-States (as well as for the central administration of the USES) that came from FUTA and from general revenues has changed a number of times. The 1970 Employment Security Amendments first provided for a “mix” of FUTA and general revenue funds, and in 1973 the mix was set at 85 percent from FUTA and 15 percent from general revenues, solely on the basis of the percent of persons in covered employment. In 1975 the mix was changed to 86/14. Then, as a result of the 1976 amendments to the Social Security Act extending the coverage of unemployment compensation (UC), the proportions were changed to 87/13 and in 1978 to 92/8. Currently, the Grants-to-States for most ES activities are 97 percent from FUTA and 3 percent from general revenues.

In addition to the funds available from these sources, additional appropriated funds cover some of the operations carried out by the ES for other programs, such as CETA, WIN, and food stamps.

About 64 percent of the \$1.1 billion of total Federal resources provided in 1979 for the support of the State ES system came from the Unemployment Trust Fund.¹

Levels of funding and of staff. In 1966 the level of staff years for the ES as a whole was set, for the first time, at 30,000. This figure includes ES employees working in the individual States or territories and covers not only the staff required for the regular functions of the ES but also staff working on special demonstration projects, research and planning, evaluation, and similar activities. It also includes staff assigned to additional functions such as management improvement, compliance activities, and frequently some of the special programs (such as the Trade Policy Act [TRA] of 1974)

required by statute, executive order, or regulation. In a few cases only, special budget allocations have permitted the employment of additional staff, outside the maximum of 30,000 staff years. (The 30,000 does not include staff paid under the separate appropriations for CETA, WIN, and some other programs.)

Since 1966, the determination of the maximum staff levels has not taken account of changes in the civilian labor force, unemployment rates, and demography, nor does it take account of the number of staff that are needed to obtain maximum placements and at the same time carry out related activities.

In 1967 a ratio of 4 ES staff years per 10,000 civilian labor force provided 30,605 staff years. At present, the ratio is 2.88 ES staff for 10,000 civilian labor force. If the ratio was brought back to 4, it would result in a staff level of 42,000. If the increases in the civilian labor force since 1967 are taken into account, an approximate level of 50,000 staff years would be required for the ES by 1985.

Allocation of funds to States. From 1933 to 1975, the allocation of Title III funds to the States was determined by agreements worked out by the appropriate Federal officials with the individual States. In 1975 a new system was devised, adapting the Performance Based Budgeting Process to the needs of the ES by the use of a formula known as the balanced payment formula (BPF). In 1977 this formula was modified and became known as the resource allocation formula (RAF).

The RAF was designed to reward States that increased their performance and obtained a higher placement rate, but in practice it often penalized urban States that—because of high unemployment, large numbers of disadvantaged residents, and few expanding industries—could not achieve higher placement rates. The RAF also penalized States that already had a good placement record since bonuses were given for improvement.

Because of the criticisms of the RAF, the DOL developed a new formula for the 1980 allocations, but 98 percent of the funds were still distributed in accordance with the criteria of the RAF; a “hold harmless” provision prevented any State receiving less than the previous year. Currently, the formula for allocation is deemed unsatisfactory by both Federal and State officials and is under review. The results of a number of studies and proposals for change in weighting of the various components will be used as a basis for a new formula.² It is possible that more weight will be given to the requests of the individual States than is presently the case.

Findings

Level and sources of funds needed by the ES. The Commission discussed the level of funds available to

the ES and found them inadequate to provide the staff needed to carry out the responsibilities delegated to the system by the Wagner-Peyser and Social Security acts. It indicated that the funds should be increased so that the level of staff years, currently fixed at 30,000, would be raised to an approximate level of 50,000 by 1985.

The funds needed for these responsibilities should continue to be made available 97 percent from FUTA and 3 percent from general revenues.

Functions undertaken by the ES in response to other legislation, Executive orders, court decisions, or special programs such as the TRA should be funded from separate appropriations of general revenues. Since some of these activities, such as migrant housing, seasonal farmworker protection, or TRA have greater impact on some of the States than on others, different formulas should be used in determining the amounts needed. The levels of these funds should be based upon the specific activities required by the programs in individual States.

Allocation of funds to States. The Commission found that the present system of allocating funds to States is unsatisfactory. The current formula (the RAF) for allocating the Grants-to-States is based on a weighted system that gives the major weight (over 60 percent) to placement (with bonuses for increased productivity). The Commission suggested that this formula be revised so as to give greater weight to the need for additional labor exchange and related services provided by the ES.

The Commission indicated that a revised formula should allow for variations among the needs of the various States, as measured by the size of the civilian labor force, the effectiveness and need for intensive services, special technical services for employers (such as meeting equal opportunity guidelines), the number of unemployed in a State, and the number of low-income adults. In arriving at a formula for weighting factors, it should be made clear that placement may be more difficult and require more time and staff in an area with high unemployment and few vacancies than in an area with an equal civilian labor force but with more job opportunities and lower unemployment.

Recommendations

Because the functions of the ES are the consequence of diverse legislation and congressional action, its funds should come from a variety of sources corresponding to the legislative authorization of functions.

1. Funding of the basic Grants-to-States for the operation by the States of the regular functions of the ES as authorized by the Wagner-Peyser and Social Security acts should continue to be 97 percent from FUTA, with 3 percent coming from general revenues.

2. The 30,000 limitation on ES positions in effect for the past 15 years should be eliminated. The level

of these funds for basic Grants-to-States should be increased to take account of the increase in the civilian labor force since 1967. The increase should be phased in so as to reach by 1985 approximately 50,000 staff years, based on estimates that at least 4 ES staff years per 10,000 civilian labor force are needed to achieve basic ES goals.

3. To the extent that the ES is assigned functions that go beyond the regular functions, they should be separately and adequately funded from general revenues. Examples of such functions are: enforcement of compliance with immigration legislation; inspection of housing of migrant workers; issuance of work permits; special educational services for migrant farm families; services including job search, provided by the ES for programs with separate appropriations—such as CETA, WIN, and food stamps; and labor market information designed for general distribution.

4. In the allocation of funds to States, the weights given the components in the current RAF for allocating Grants-to-States should be revised to allow for variations between the needs of the various States as measured by the size of the civilian labor force, the effectiveness of intensive services, special technical services for employers, the number of unemployed in a State, and the number of low-income adults.

5. Funds that reimburse the ES for other than the regular functions, such as migrant housing, compliance

issues, seasonal farm employment, or TRA, should be allocated according to the level of each individual State's activities under the particular program.

6. The methods of allocation of all funds should be reviewed by the DOL and the Congress regularly to take account of changing needs and circumstances, including the level and the composition of the labor force and the numbers of unemployed.

Footnotes

1. The balance of the \$1.1 billion was made up from:

- \$178.5 million from CETA, through contractual agreements between prime sponsors and State agencies;
- \$160 million from the Department of Health and Human Services for activities in connection with WIN;
- \$27 million from the Department of Agriculture to help meet the cost of administering the work test required for receipt of food stamps (this figure has been substantially increased in 1980); and
- \$4 million from the Bureau of Labor Statistics for labor market information, surveys, and so forth.

2. Abt Associates, Inc., *A Performance and Needs Based Methodology for Allocating Employment Service Grants* (Cambridge, Abt Associates, Inc., 1980), Contract No. 20-25-79-64.

8.0 Intergovernmental Relations

8.1 Federal-State Regulations

Background

Statutory framework. The relative responsibilities of the Federal and State governments for unemployment insurance (UI) were first established by the Social Security Act in 1935. The distribution of authority has not changed significantly since then.

In its 1935 *Report to the President*, the Committee on Economic Security appointed by President Franklin D. Roosevelt described in broad terms three major recommendations for the division of authority between the Federal and the State governments:

- (1) The States shall have broad freedom to set up the type of unemployment compensation they wish. We believe that all matters on which uniformity is not absolutely essential should be left to the States.
- (2) The State [as a condition for employers' credit against the Federal tax] is cooperating with the Federal Government in the administration of unemployment compensation, expending the money raised solely for benefits, and is depositing all contributions as collected in an unemployment trust fund in the United States Treasury.
- (3) To encourage efficient administration, without which unemployment insurance will fail to accomplish its purpose, we believe that the Federal Government should aid the States by granting them sufficient money for proper administration, under conditions designed to insure competence and probity.

The Committee's recommendations were incorporated into the original Social Security Act, and they continue to represent the basic division of responsibilities under that Act and the Federal Unemployment Tax Act (FUTA).

With few exceptions, substantive UI provisions are determined solely by the States, including the amount of work experience needed to qualify for benefits, the weekly benefit amount, the method of computing benefits, the number of weeks benefits may be paid, the conditions claimants must satisfy to become and remain eligible for benefits, and the circumstances under which benefits shall be denied. The State programs are administered entirely by State personnel responsible to State officers and State law. The scope of State authority over the program is broad, but it is not unlimited. Federal conditions for tax credit and administrative grants represent restrictions on State discretion, and they have increased in number and significance over the years.

Sources of Federal-State conflict. Any division of authority between different levels of government represents a source of dispute. The distribution of powers prescribed originally in the Social Security Act and

described above has given rise to the following five categories of issues:

1. Federal requirements that States must meet for tax credit of State legislators to amend State UI laws.
2. Particularly during periods of severe budgetary restraint, many States have considered the Federal allocations of administrative grants among the States both inequitable and inadequate.
3. Subject only to the very few requirements in Federal law, the State authority substantive provisions they consider desirable has resulted in great diversity among State UI provisions, particularly in the areas of benefit amounts, duration, and disqualification. This has produced disagreement between those who favor Federal minimum basic protection requirements in all States and those who support complete State autonomy in these areas.
4. Failure of the system to assign clear-cut and independent responsibility for monitoring the condition of both Federal and State funds, to alert the Congress to potential problems, and to plan for sound financing has caused disagreement between the Federal Government and the States, particularly during financial crises, over issues as to responsibility for the crisis and appropriate steps to remedy the situation.
5. The sanctions available to the Federal Government if a State is found out of conformity with Federal requirements are so severe that they would, if applied, probably mean the end of the program in the State. Accordingly, they have never been applied (with one exception involving the temporary withholding of grants). Nevertheless, their existence has caused apprehension in States involved in conformity issues and inhibited the Federal agency in pursuing some issues. The sanctions have thus produced frustration and conflict as a result of both reactions.

Federal requirements for tax credit. States must meet 21 specific requirements in the FUTA if their employers are to receive all the credit against the Federal unemployment tax to which they are otherwise entitled. States must meet nine additional administrative requirements in the Social Security Act to qualify for Federal grants to cover the cost of administering the UI program.

In addition, although not usually considered requirements, the Federal law definitions of wages, employment, and employer are compelling on the States. If certain kinds of employment, for example, are covered under Federal law but a State neglects to adopt corresponding coverage, the employers in the State will be liable for the full Federal tax (3.4 percent) on wages paid for such services, and the workers performing such services will not be protected if they become unemployed. This provides considerable incentive for

States to define wages, employer, and employment at least as broadly as the Federal law does.

Existing requirements vary considerably in significance. The requirement of section 3304(a)(2) of the FUTA, for example, that no benefits shall be paid until there have been at least 2 years during which taxes have been required under the State law is, of course, now obsolete. In contrast, Section 3304(a)(4), which requires that moneys may be withdrawn from the unemployment fund only (with few exceptions) to pay "compensation," is vital to maintaining the integrity of State unemployment funds. Since 1935 this provision has prevented the dispersion of this money for a variety of purposes other than to pay compensation.

As discussed in chapter 3.2, certain Federal requirements enacted in 1976 have generated considerable Federal-State friction. These include the between-terms denial and equal treatment requirements for employees of educational institutions, the required prohibition of benefits to undocumented aliens and professional athletes, and the mandated reduction of claimants' weekly benefits by the weekly amount of any pension or retirement pay they receive.

Administrative grant allocations. Before any granted funds may be available to a State, over the years the State must meet Federal requirements described in the Social Security Act. Several specific Federal administration performance standards have been required of the States, usually based on the Department of Labor (DOL) interpretations of the two very broad requirements of sections 303(a)(1) and 303(a)(8) of the Social Security Act. The first requires that the State provide methods of administration that the Secretary of Labor finds reasonably calculated to ensure prompt payment of benefits when due. Section 303(a)(8) requires that grants be spent solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of State UI law. These sections provide the authority for a variety of standards—on State procedures for claimant reporting, registering and claim filing, benefit-determination procedures, tax auditing and collecting practices, fraud detecting methods, and many other subjects.

In the *Java* decision of 1971, the U.S. Supreme Court interpreted the phrase "when due" in section 303(a)(1) as requiring payment of benefits to eligible claimants as quickly as is administratively feasible. This resulted in new DOL promptness standards for issuing first benefit payments and appeals decisions, thereby adding two new and significant Federal standards for grants.

A major source of Federal-State friction is not the existence of Federal administrative standards but the lack of sufficient administrative funds. Many States

believe that the allocations are unfair and inadequate not only to permit the States to perform at satisfactory levels but also to permit them flexibility needed if potential improvements are to be tested. The source of administrative grants is the net Federal tax (now 0.7 percent) on employers. The States that object most to the inadequacy of Federal allocations are usually those allocated less in administrative grants than the revenue collected by the Federal Government from the State's employers.

Recommended approaches to ensuring adequate administrative funds and providing States more flexibility are discussed in chapter 7.6. These approaches include (1) indefinite extension of the Federal time limit within which Reed Act funds (certain excess funds States could use either for benefits or administrative purposes) may be expended for administrative purposes and (2) legislation to permit States to recoup from surplus tax collections the amount of Reed Act funds used for benefit purposes when their unemployment funds became depleted during the 1974–76 recession.

Higher yielding investments of State unemployment funds are another possible means of increasing available funds. On August 30, 1978, the Commission received testimony from Wisconsin Employment Security officials urging that the responsibility for investing unemployment fund moneys include an option for State investment, governed by appropriate U.S. Treasury safeguards to protect the integrity of the fund and its availability for benefit payments. The testimony and later updates alleged that, from 1972 through June 1980, if Wisconsin instead of the U.S. Treasury had invested Wisconsin unemployment funds, the result would have been an additional \$52.6 million, or 38 percent more than the actual yield. These figures presume an investment of all Wisconsin unemployment funds, not only a part. It is also not clear how the investment result would have been changed by a Federal requirement or safeguard that the moneys also be available for benefit purposes when needed. The Commission recommended that a Board of Trustees to be established to set policy for the unemployment trust fund examine the feasibility of permitting States to invest part of their unemployment funds.

State autonomy. Another major source of conflict arising from the statutory division of responsibilities concerns the almost exclusive authority each State has over substantive areas of UI, such as qualifying requirements, benefit amounts, and eligibility conditions.

The result has been substantial diversity among the States in every important aspect of UI. State autonomy has led to sharp contrasts in treatment of claimants. States producing the least generous benefits and the harshest disqualifications have provoked concern over the lack of nationwide minimum protection. A study

of the 1978 provisions of 13 representative States¹ documents some of the differences, as follows.

1. A claimant earning the 1978 State average wage (\$242.06) can qualify for 28 weeks of benefits with about 5 weeks of work in West Virginia, while a claimant in Florida making double that wage needs 52 weeks of work to qualify for 26 weeks of benefits.

2. A claimant earning the 1978 U.S. average wage level (\$233.30) with 26 weeks of work would qualify for \$95 per week for 13 weeks in Florida (total benefits, \$1,235). The same claimant would qualify for \$123 per week for 30 weeks in Pennsylvania (total benefit, \$3,690).

3. Claimants earning the 1978 U.S. average wage with 52 weeks of work would qualify for \$74 for 26 weeks in Indiana (\$1,924). In Utah they would have qualified for \$117 for 36 weeks (\$4,212).

States have also legislated a wide variety of disqualification provisions. For example, individuals who quit work without good cause must wait a maximum of 7 weeks before becoming eligible for benefits in Kansas. The claimants can then collect as much as 26 weeks of benefits if they qualified for that duration. In Texas, claimants who quit work without good cause may be disqualified for 25 weeks with an equal reduction in benefits, resulting in only 1 week of benefits. The claimants could draw no more at least until the expiration of the current benefit year, about 6 months away, and then only if they have qualifying wage credits in a new base period.

Responsibility for fund adequacy. Failure of the system to establish effective responsibility for ensuring that adequate funds are available to pay the cost of benefits has contributed to serious financial crises and has strained both the system's resources and Federal-State relations.

Sources of friction according to the States include:

1. Failure by the States with the most serious unemployment problems to receive any help, aside from repayable loans, from the Federal Government or elsewhere to ease a burden they view as caused by nationwide factors but borne by only a few States.

2. Resentment by some States over the availability to other States lacking fiscal responsibility of interest-free loans and legislation delaying automatic Federal tax increases designed to recover outstanding loan balances.

3. Failure of the Federal Government to provide necessary technical assistance, training, and resources to States lacking the capability for financial planning.

4. Federal imposition of certain solvency measures as conditions States must meet in order to have automatic Federal tax increases temporarily deferred.

5. Active congressional consideration of new Federal requirements aimed at cost-saving that States must meet to qualify for Federal sharing of the costs of extended benefits. These include a waiting week requirement for regular benefits and a disqualification method based on duration of unemployment for voluntary quits and discharge for misconduct.

Federal sanctions. The law provides severe sanctions for States that do not conform or comply with Federal law. A conformity issue occurs when a provision of State law is inconsistent with the Federal law requirements. A compliance issue occurs when the State law conforms to Federal law requirements, but the administration of that law (i.e., the State agency's practices or procedures) is inconsistent with those requirements.

For example, in the appeals area, section 303(a)(1) of the Social Security Act has been interpreted to require that the State law provide for prompt handling of appeals. All State laws explicitly or implicitly provide the same requirement. However, the actual performance in some States falls short of specific numerical promptness criteria spelled out in the DOL standards. The compliance question this poses is whether the State has taken every feasible step to ensure the greatest promptness possible and has fallen behind only for reasons beyond the agency's control, such as an unforeseen loss of critical staff or a substantial rise in workload. If the State has not taken appropriate steps, the compliance question becomes a conformity question of whether the State law provides the methods of administration required by section 303(a)(1).

If a State is not certified for the tax offset credit, all employers in the State subject to the FUTA are required to pay an additional 2.7 percent tax (as well as the 0.7 percent already required to the Federal Government). In most States, employers would continue to pay the same State tax they would have paid if certification had not been withheld. Denial of offset credit would also result in withholding of administrative grants since they are available only for programs approved under the FUTA.

If a State is not certified for additional tax offset credit—that is, if the State's experience-rating provisions do not conform to the requirements of FUTA section 3303(a)—all employers in the State subject to the FUTA would be required to pay to the Federal Government the difference, if any, between what they paid to the State and 2.7 percent (as well as the 0.7 percent already required).

If a State does not meet the requirements of the Social Security Act, administrative grants would be withheld. Such withholding would terminate State operations unless the State provided the necessary funds from some State source.

The risk of forfeiting administrative grants or tax credits has often inhibited many States from challeng-

ing Federal interpretations that they believe are arbitrary and thereby from pursuing innovations that they believe desirable. Reluctance to impose the sanctions has caused the Federal Government to accept minor violations of the law and to permit States to postpone for several months amending or deleting nonconforming provisions. On many occasions State legislatures have reluctantly abandoned an amendment they favored, or adopted what they considered an undesirable change, because of DOL advice that any other action would present a conformity problem. On occasion sponsors of an alleged nonconforming amendment have prevailed, encouraged perhaps by the fact that relatively few issues have ever reached the hearing stage and no State has yet been denied tax offset credit for its employers.

Some argue that sanctions that were less formidable would be more effective. Lesser sanctions would be imposed more frequently and would, therefore, lead to greater compliance with Federal requirements. Such lesser sanctions could take the form of reducing tax offset gradually instead of withdrawing it completely. For example, the tax offset could be reduced from 90 to 80 percent for the first year a State fails to conform and to 70 percent for the second year. If at the end of the second year the State law still did not conform, the offset would be disallowed entirely. The result would be an increase in the employers' net Federal tax from the current 0.7 percent to 1 percent the first year, to 1.3 percent the second year, and to 3.4 percent the third year, in addition to the State taxes they owe. A second type of lesser sanction could take the form of a denial of additional credit offset only. Under this approach, employers would receive Federal credit for the State contributions they made but not for the difference between the rate they paid and 2.7 percent. An employer whose State rate was 1 percent, for example, would be liable to the Federal Government for a rate of 2.4 percent (1.7 plus 0.7) instead of 0.7 percent.

Opponents of lesser sanctions accept the assumption that they would be applied more frequently. They reject this approach for that reason, arguing that more frequent Federal application of sanctions would inevitably lead to greater conflicts within the system.

Recent conformity issues. The 1976 amendments (PL 94-566) generated a number of issues culminating in four conformity hearings in 1979. Several of the issues involved Federal law provisions requiring States to deny benefits to employees of educational institutions during the period between school terms.

Pennsylvania had extended the denial not only to school employees but also to individuals (school-crossing guards) not employed directly by a school. In addition, Pennsylvania had added a provision for

retroactive payment of benefits to school employees denied benefits during the summer if, despite reasonable assurance of reemployment, the job promised for the following term failed to materialize. The Secretary of Labor found these practices inconsistent with the Federal law, and Pennsylvania agreed to modify its State law.

The Secretary of Labor agreed with Pennsylvania and three other States—Delaware, New Jersey, and New York—on another provision of Federal law that permits nonprofit organizations and governmental entities the option of either paying taxes on the same basis as other employers or financing benefits paid their former employees on a dollar-for-dollar reimbursement basis.

The DOL position had been that, once a decision was made to elect the reimbursement approach, the employer then became liable for *all* benefits paid, based on wage credits earned from that employer—with no exceptions. The States argued, and the DOL agreed, that State law must determine what benefits are attributable to individual employers. Benefits that are not attributable, under State law, to individual reimbursing employers may be charged to the fund to be financed ultimately by all tax-liable employers in that State.

The Supreme Court may soon decide several issues involving constitutional questions concerning the division of authority between the Federal Government and the States. The Court has been asked to review a case argued on behalf of the National Institute of Municipal Law Officers representing a few States and several political subdivisions. The suit argues that the Federal law provision requiring States to cover State and local government workers as a condition for tax credit violates the 10th amendment to the Constitution, which reserves to the States powers not expressly or implicitly delegated to the Federal Government. The plaintiffs argue that the cost of coverage and the administrative burden are so heavy that they represent a significant and unconstitutional Federal intrusion into local budget and personnel practices.

The Supreme Court has also been asked to review a determination by the Secretary of Labor to deny tax credit certification to New Hampshire for 1978 on grounds of nonconformity with Federal law, including the coverage requirement. The First Circuit Court of Appeals (Boston) rejected New Hampshire's contention and upheld the Secretary of Labor's position.

The Supreme Court may also be asked to review an issue that was raised during a 1979 conformity hearing with Alabama and Nevada that actually concerns many more States. In 1976 the Congress extended coverage to employees of private nonprofit schools at the primary and secondary levels by deleting a former specific exclusion of such schools. The issue raised is whether in deleting the exclusion the Congress intended to cover church-related primary and secondary schools as well as other private, nonprofit schools.

The two States argued that the schools fall within the scope of two un repealed exclusions—employees of a church and employees of church-run organizations operated primarily for religious purposes. The Secretary's position is that coverage is consistent with the goal of protecting under the program all persons exposed to the risk of unemployment and that, when congressional intent is unclear, as in this case, remedial social legislation should be construed liberally in favor of the workers it was designed to protect.

The constitutional issue this also raises is whether coverage (and therefore taxing) of church-related schools violates the first amendment.

Findings

Some factors described in the section of this paper entitled Sources of Federal-State Conflict have also produced other problems. The Commission considered these factors usually in the context of these other problems rather than as a way to reduce intergovernmental conflicts. The findings and recommendations on these other problems are in other chapters in this Final Report. They are mentioned here because their adoption would also help reduce Federal-State disagreements.

Federal requirements. The Federal requirements causing many Federal-State disagreements deal with subjects of widespread dispute and no compelling need for nationwide uniformity. This includes the FUTA provisions of section 3301(a)(6) requiring denial of benefits to school employees during school breaks. Other section of the FUTA—3304(a)(14) and 3304(a)(13)—that have generated controversy include the requirements prohibiting the payment of benefits to undocumented aliens and to professional athletes between sports seasons. The requirement, in section 3304(a)(15), that weekly unemployment benefits be reduced by the weekly amount of any pension or retirement pay the claimant receives also causes friction. These FUTA requirements are treated in detail in chapter 3.2.

Administrative grant allocations. The continual lack of sufficient funds to permit acceptable levels of performance in all areas and the consequent lack of sufficient flexibility to permit State administrators to exercise discretion and innovation are treated in detail in chapter 7.6. That chapter evaluates these issues in terms of their implications for effective administration, but there is no question that the allocation of administrative grants has long been a major source of Federal-State disagreement. This disagreement can be relieved by taking Commission-recommended steps to ensure adequate administrative financing.

Another way to relieve the conflict is by providing additional administrative funds more subject to State

than Federal control. Two possible sources of such funds are renewed Reed Act moneys and interest from State investment of unemployment funds. Authority to use Reed Act moneys for administrative purposes, which expires in 1982, should be extended indefinitely. States that expended Reed Act moneys for benefits during the 1974–76 recession should be permitted to recoup this money from surplus tax collections after repaying outstanding loans.

State investment of State unemployment funds should be explored. If such investment is determined to be feasible, given appropriate U.S. Treasury safeguards, interest on it could represent an additional source of administrative funds.

State program diversity. State autonomy over substantive program areas has permitted experimentation and innovation. However, State autonomy has also produced so great a diversity in the treatment of claimants from State to State as to engender real controversy over the need for establishing minimum benefit standards.

If credit against a Federal tax is granted employers in a State on the basis of the State's having a viable UI program, it seems reasonable to require that the State program provide at least a minimum degree of protection to unemployed workers even at the cost of forfeiting some degree of State autonomy. Minimum benefit protection is treated in chapters 4.1 and 4.2, and discussion of limits on the severity of disqualifications is contained in chapter 4.4.

Responsibility for fund adequacy. Several of the Commission recommendations aimed at ensuring the current and future availability of adequate funds to pay the administrative and benefit costs of the program would, if adopted, remove an important source of Federal-State conflict. These recommendations relate to reinsurance, charging interest on outstanding loans, removing UI funds from the unified Federal budget, and strengthening Federal staff capability for providing technical assistance (see section 6.0).

Also needed is an independent high-level body, a Board of Trustees responsible for regularly evaluating the adequacy of State and Federal funds and recommending to the Congress and to the President measures necessary to maintain solvency and a sound program. Since the Social Security Act did not assign responsibility for this function to either the Federal or the State governments, such a continuing body would fill an important gap.

Although the condition of State and Federal UI funds is now subject to congressional review because of inclusion of their funds in the unified Federal budget, the focus of the Congress seems more oriented to short-range budget considerations than to a healthy UI system. Adoption of the Commission recommenda-

tion to remove UI funds from the unified Federal budget would also remove the basis for regular congressional review of these funds. Such an action would emphasize the need to establish an independent Board of Trustees to set policy for the unemployment trust fund and to review and report regularly on the condition of both State and Federal unemployment funds.

Federal sanctions. The consequences of the present Federal sanctions are so severe that neither Federal nor State officials can regard their imposition lightly. The Federal Government is no less apprehensive than the States about the implications of existing sanctions. No State has been denied tax credit, and only one State was denied (temporarily) administrative grants. But the existence of these heavy sanctions has been a spur to mutual efforts to determine how issues may be resolved best. In effect, the existing standards appear to exert more influence for cooperative action than would occur with lesser sanctions.

The DOL now relies primarily on advice, persuasion, and admonition to forestall and resolve conformity issues. Hearings are confined to significant issues. From the Federal standpoint, it is desirable for the States to adopt certain legislative provisions or follow certain procedures because they are convinced of their merit rather than because they are required to accept them.

If lesser sanctions were available to the Federal Government, they would most likely be applied more frequently. In this case, Federal officials are more likely to be inclined to impose more detailed requirements on the States since the consequences of State violation would be less catastrophic. This would not improve Federal-State relations.

Review needed. Although Commission members are not necessarily in agreement on the present Federal-State relationship, the above findings do not indicate a major overhaul is needed of the basic Federal-State system at this time. The conflicts inherent in the system could, however, become disruptive if not relieved. For this reason, and because it is vital to the economy that the system continue to operate effectively in the future, a review of the system similar to the study undertaken by this Commission would be desirable.

Recommendations

Federal requirements. The Commission recommendations described in chapter 3.2, if adopted, would remove unnecessary sources of Federal-State friction. These recommendations involve repeal of four Federal law provisions requiring that States deny benefits between terms to professional employees of educational institutions, deny benefits to certain undocumented aliens, deny benefits during the off-season to professional athletes under contract, and reduce weekly bene-

fits by the weekly amount of any pension or retirement pay received by the claimant.

Administrative grant allocations. The Commission recommendations, described in chapter 7.6, would provide for adequate administrative grants and greater State administrative flexibility—thereby relieving a major cause of Federal-State conflict. In addition, the Commission received testimony in favor of amending existing Federal and State laws to permit States to invest part of their unemployment compensation reserves in State-approved investments other than obligations of the Federal Government. The Commission has studied this proposal. Because it is important that State reserve funds are available to meet unforeseen demands, the Commission believes it is essential for the reserve funds to be invested in obligations of the Federal Government that can be liquidated promptly without major adverse effects on the fund.

The Commission has recommended that each State pursue a prudent and conservative financial policy in the establishment of adequate reserves to meet the future obligations of the State UI law.

The Commission explored a proposal to allow a State reserve fund to invest a small amount of its trust fund account in non-Federal obligations with a view to earning a higher rate of interest than that earned by Federal obligations. For instance, an amount equal to 10 percent of its average annual benefit disbursements in the prior 15 years could be permitted to be invested in non-Federal obligations. Such a policy might be authorized under regulations established by the Board of Trustees. In addition, specific responsibility could be assigned to the Board to study and evaluate such experience and to recommend the continuation, amendment, or repeal of such authorization. The Commission recommends that the Board of Trustees study such a proposal.

State program diversity. The Commission recommendations—described in chapters 4.1, 4.2, and 4.4—relating to Federal benefit amount, qualifying requirement, and disqualification standards are mentioned here because their adoption would establish a minimum floor of protection in all States.

Responsibility for fund adequacy. Commission recommendations, described in several chapters, that are intended to provide a sound financial footing to the program would contribute also to greater Federal-State harmony. To these should be added the following:

By unanimous vote the Commission recommended establishment of an independent Board of Trustees to set investment policy for the unemployment trust fund. Members of this Board would be the Secretary of Labor, chairperson; Secretary of the Treasury; Secretary of Health and Human Services; and representatives

of employers, employees, and the general public. The Board would:

1. Hold the trust funds;
2. Report to the Congress not later than the first day of April each year on the operation of the State and Federal funds and accounts during the preceding fiscal year and their expected operation and status during the ensuing 5 fiscal years;
3. Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount in any fund or account of the system is unduly small;
4. Review the general policies followed in managing the trust funds and recommend changes in such policies, including necessary changes in the legal provisions that govern the way in which available funds are managed;
5. Report annually the estimates of the amounts necessary to finance the unemployment insurance and employment service operations with a view to ensuring a high standard of proper and efficient administration; and
6. Recommend from time to time to the President and the Congress amendments that, in the Board's judgment, will improve the financing, administration, and benefits of the unemployment insurance and employment service programs and any other programs administered by or through the Board.

[*Commissioner Cohen*: See my comment on 6.2 (Federal Taxable Wage Base). Under present Federal

law, the 0.7 Federal UI tax rate automatically will be reduced to 0.5 percent when the Extended Unemployment Compensation Account (EUCA) advances from general revenues are repaid. Adoption of the Commission recommendation reimbursing, from general revenues, the EUCA for costs incurred under national extended benefit triggers (1975–78) would result in a Federal tax rate reduction shortly thereafter. If such reduction does not occur in the near future, I hope the Trustees will be able to consider and recommend a reduction in the 0.7 percent Federal tax rate at an appropriate time.]

Federal sanctions. No recommendations were adopted for changing current sanctions now provided in the Federal Unemployment Tax Act and the Social Security Act.

Periodic national commissions. The Commission recommends that the Congress provide, as part of ongoing Federal unemployment compensation responsibilities, legislation for the establishment of a statutory National Commission on Unemployment Compensation in 1988, and at 10-year intervals thereafter, along the lines of the 1976 law.

Footnote

1. Saul J. Blaustein, "Diverse Treatment of Claimants by States," *Unemployment Compensation: Studies and Research* (Washington, D.C., National Commission on Unemployment Compensation, 1980).

8.2 Interstate Benefits

Background

The prompt payment of interstate benefits (IB) has presented difficult problems since the program began. The problems are rooted in the State responsibility for payment of benefits, differences in State laws, and the highly mobile character of the work force.

Joint efforts of the States and the Department of Labor (DOL) led to the development of uniform procedures incorporated into the *Employment Security Manual* in 1951. These procedures have remained basically unchanged since that time. However, not all States complied with the procedures until the Federal law was amended in 1970. Section 3304a(9)A of the Social Security Act, which took effect January 1, 1972, now provides that:

Compensation shall not be denied or reduced to an indi-

vidual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such contiguous country) at the time he files a claim for unemployment compensation.

The 1970 law also contains a requirement for wage combining. Section 3304a(9)B requires that

the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the unemployment compensation agencies as reasonably calculated to assure the prompt and full compensation in such situations.

The IB payment process and the interstate appeals process operate under uniform procedures designed to define specifically the responsibilities of each State in-

volved with an interstate claim. The State in which the claim is filed is the agent State. The State against which the claim is filed is the liable State.

The agent State's basic responsibilities are to obtain, record, and transmit information on employment, eligibility, and claims to the liable States so that the liable States can make decisions and advise the claimants of their rights and obligations. *The Handbook for Interstate Claims-Taking* contains the basic statutory provisions of each State UI law and is available for the benefit of the agent State local office staff.

The liable State is responsible for making the eligibility and entitlement decisions and for paying the weekly benefit amount.

In recent years the number of IB claims filed in the program has greatly increased. Initial IB claims increased from 570,000 in 1969 to 965,000 in 1978. As a percentage of the total national initial claims, IB initial claims average about 5.6 percent. The varied incidence of IB claims among the States is suggested by the wide ranges in the rates:

Interstate initial claims as a percentage of total initial claims

	1971	1973	1975	1977	1979
High State	26 (FL)	29 (FL)	24 (WY)	23 (AZ)	22 (AZ)
Low State	2 (NY)	2 (NY)	2 (MI)	2 (NY)	2 (MI)

Prompt payment. The largest single problem with IB payments is the failure of the States to make payments promptly, especially in times of high workload. During the 1975 recession, only 26 percent of IB first payments were made within 14 days, although the Federal criterion then in effect called for 60 percent being paid within 14 to 21 days. Beginning September 1, 1978, States with a waiting period were required to issue 65 percent of first IB payments within 14 days after the end of the first compensable week, and those without a waiting period were required to issue 65 percent within 21 days of the end of the first compensable week.

Effective April 1, 1979, the promptness standard was raised to require that 70 percent of first IB payments claims be paid within 14 to 21 days, and 87 percent of intrastate claims had to be paid within this time.

From April 1, 1979, to March 31, 1980, 17 States did not meet the standard. One large State was as low as 32 percent. For intrastate claims the record was slightly better: 40 States met the standard of 87 percent, but 13 States did not meet it.

Criteria for State compliance. To improve operations, the DOL established criteria on IB payments for compliance by the States. In 1978 these were revised as follows:

- It is required that 70 percent of the IB payments be made within 14 to 21 days, effective April 1, 1979.
- The DOL is to perform an annual review of State operations for State compliance or a periodic review when there is reason to believe a compliance failure has occurred.
- It is required that an annual plan be submitted by the State when a State's average performance over a 12-month period does not meet the criteria.
- It is required that the State plans set forth corrective actions, performance, evaluation plans, and other matters as the DOL directs after consultation with the State agency.
- When the State agency fails to meet the standards for an extended period, the DOL is to take remedial steps, including discussion with the State agency and consultation with the Governor.
- After all remedial steps have been taken, the Assistant Secretary of the DOL is to recommend to the Secretary that the State be notified of a conformity hearing.
- The DOL rules and regulations also provide the following: "Where it is demonstrated that failure to meet the criteria of adequacy is attributable to factors reasonably beyond the State's control and, in light of those factors, the State has performed at the highest level administratively feasible, it will be considered that the State is in substantial compliance with the Standard for Conformity."

These criteria undoubtedly have brought improvement in the payment of IB claims. There were, however, 17 States that did not meet the criteria for the measurement period ending March 31, 1980. In addition, improvement generally has been recorded for periods with relatively low total workloads. Performance is expected to worsen if the workload increases to the level experienced in 1974-75.

Improvement of the IB program. To improve the IB operation, analysis is needed of the reasons for delays under the present system. The basic weakness in the current IB system is centered in the split responsibility of the agent State and the liable State and the inevitable delays in the exchange of information between them. Because of delays involved in the use of the mails and the movement of forms from one desk to another, processing of an IB claim usually takes from 2 to 6 weeks.

A Texas-Louisiana experiment with a computer hookup between the two States and an experiment in Regions 9 and 10 on the West Coast using a telecommunications and double-bypass system indicate that

the use of a computer system or telecommunications can eliminate some common IB delays.

With the Texas-Louisiana computer hookup, data can be obtained between the States in seconds. The telecommunications and double-bypass system reduces the time for processing the claims by substituting telecommunications for the mail in transmitting information between States. The double bypass provides for direct contact between the claimant and the liable State during the weekly certification process. It also provides that the agent State notify the last employer of the claim filing and request that separation information be sent to the liable State.

In the West Coast seven-State telecommunications operations, States do not have direct access to the files of the other States but have access to the information through a computer lab located in Nevada. Information in this system is available within 24 hours.

Costs. The DOL estimates that the start-up costs for full computerization of the IB program for all States will be about \$20 million spread from 1982 to 1985. The ongoing operating costs are estimated at \$6.8 million per year. Computerization will produce savings in personnel needed in the IB system. The DOL estimates that the \$20 million for start-up costs will be recovered from personnel savings in 3 to 5 years.

Actual total costs for Texas and Louisiana linkage from April 1979 to March 31, 1980, were \$129,000, of which \$120,000 was a one-time cost. In the seven-State project, start-up costs were estimated to range from no cost (in States where facilities and personnel were already in place) to \$20,000 per State. Start-up costs for the Nevada computer facility that serves all seven States totaled \$592,000, including hardware, software, and personnel.

Findings

The Commission is concerned that in another recession States might fail to make IB payments promptly, as occurred in 1975-76.

The Commission strongly urges that promptness and quality performance in the handling of IB claims be as nearly equal as possible to that in intrastate claims.

The prompt and accurate payment of IB claims is an important facet of the Federal-State UI system. Federal and State UI administrators must exercise continuing leadership to assure a consistent policy of maintaining prompt and accurate payment of IB claims regardless of workload.

In the national office, sufficient professional and clerical staff should be available to coordinate the program responsibilities on a timely basis. A clearinghouse should be instituted in the national office to recognize innovative approaches being tried between and among various States.

The Commission is impressed by the experimental efforts in the use of telecommunications and computer linkages. These efforts improve promptness of payment by reducing time needed for communication between States and simplify the process by allowing direct contacts. This permits fewer opportunities for error. Such systems even improve fraud detection and prevention through more efficient procedures and by giving liable States the opportunity to crossmatch IB claims with wage records in the agent States.

An adequate legal base exists for meaningful Federal conformity standards for the payment of IB claims. Existing procedures, however, permit excessive delay in their application. Significantly, even though close to a third of all States now fail to meet the Federal criteria (by a large margin in some States), the issue of conformity on payment of IB has not yet been formally raised in any State.

Recommendations

The Commission recommends that the DOL and the States extend the principles involved in the telecommunications and double-bypass system as rapidly as feasible and eventually to all States with substantial IB problems. This would include:

- The double-bypass system, in which IB initial claims go from the agent State's local office to the liable State's central office and weekly certification goes directly from the claimant to the liable State's central office
- The star network arrangement, in which telecommunications are used to reduce transmittal time
- Computer hookup between agent State and liable State, reducing time needed to process claims
- The stationing of liable State personnel in the agent State's local offices where volume warrants, and the use of liable State claim forms in the agent State's local offices wherever feasible
- A clearinghouse in the national office to catalog innovative approaches used between and among various States.

The Commission recognizes that full installation of the computer telecommunications system will require several years, even if the additional funds can be made available. In the meantime, the Commission recommends the following to improve operation of the program:

- State administrators should exercise continuing leadership to maintain a consistent agency policy that recognizes the importance to the Federal-State UI system of prompt and proper handling of IB claims.

- Adequate funding should be provided to States for the IB process at the State level. Grants to States should include the full costs of the IB system.

- Improved staffing at the Federal level at both national and regional offices is essential. At least one position in each regional office should have responsibility for reviewing and assisting in improving the IB process in the region.

- The performance appraisal project should be tightened up by the DOL Unemployment Insurance Service as it affects promptness in paying IB claims.

- Data should be collected on the need for a prompt payment standard for subsequent payments, and if a

sufficient problem exists, steps should be taken to broaden the performance standards to include subsequent payments in addition to first payments.

- Combined wage claims should be separately identified in the budget process in the same way as unemployment insurance for Federal employees and ex-service personnel.

- Whenever labor market areas overlap State borders, liable State personnel should be stationed in the agent State's local offices and/or liable State claim forms should be made available.

- The IB budget items should be clear and separately identified in the budget process.

9.0 Relationships With Other Programs

9.1 Special Employee Protection Programs

Background

Most American workers (97 percent) are on jobs covered under the regular Federal-State unemployment insurance (UI) system. A number are eligible also for additional benefits under about 20 separate programs currently in place. Depending upon the program, the additional benefits can mean to an eligible worker either a higher benefit each week than a UI check; benefits for a longer period than UI provides; special cash payments in the form of relocation, job search, or training allowances—or all of the above (see Table 1).

An unemployed worker eligible for both UI and trade adjustment assistance (TAA), for example, would receive the regular UI checks plus sufficient TAA to bring the total weekly amount to 70 percent of the average weekly wage (not to exceed the current \$250 maximum). When unemployment insurance is exhausted, normally after 26 weeks, the same total weekly amount would continue for 26 more weeks, made up entirely of TAA. In addition, the worker may qualify for relocation allowances in an amount equal to 80 percent of moving expenses plus a maximum lump-sum payment of \$500 and training allowances or job search allowances up to \$500.

Characteristics of special programs. Most special programs are intended to soften the impact on workers of Federal legislation that makes basic changes in their industries (e.g., expanded imports, consolidation of railroad carriers, deregulation of airlines, deinstitutionalizing of mental patient treatment). Only two of the more than 20 currently effective special programs do *not* represent indemnification for Federally caused job losses: disaster unemployment assistance and unemployment assistance under the Public Works and Economic Development Act of 1965 (as amended in 1974).

There are three characteristics that most special programs have in common: (1) most represent indemnification for Federally caused disruptions, (2) all pay benefits for more weeks than does regular unemployment insurance, (3) all provide assistance such as training allowance and relocation assistance not available under regular UI. However, in many important respects, they differ from each other, as illustrated by the following examples:

- *Impact.* There has yet to be paid a single dollar in unemployment assistance under the Public Works and Economic Development Act, for example, while

over \$258 million was paid in trade adjustment assistance in fiscal year 1979 alone.

- *Benefit Levels.* The weekly benefit amount under disaster unemployment assistance is the same as regular UI and is payable for a maximum of 52 weeks. In contrast, the Conrail and Redwood programs, for example, pay weekly benefits to some workers equal to 100 percent of their prior weekly wage. The benefits are payable until the individual reaches age 65.

- *Program Duration.* Railroad Unemployment Insurance, Conrail, and Disaster Unemployment Assistance are of indefinite duration. In contrast, the Airline Employee Protection Program, the Redwood program, and the Trade program, for example, have expiration dates (1989, 1984, and 1982, respectively).

- *Administration.* The Trade and Disaster Unemployment Assistance programs are administered by State unemployment insurance agencies acting as agents for the Federal Government. Some of the railroad programs are administered by the Railroad Retirement Board. Those programs aimed at deinstitutionalizing treatment for mental patients, disabled individuals, and juvenile delinquents which result in layoffs of personnel are administered by the former employing institutions, usually under guidelines established by the Federal agencies responsible for the programs.

The programs are also different from UI in the following basic areas:

Qualifying requirements. Under UI, an individual must meet a minimum statutory requirement of recent past work, measured in terms of time or income, but the work need not have been performed for any employer in a specific industry or for any one employer. In contrast, benefits under most special programs are conditioned upon the claimant's having been employed in a particular industry at a particular time. Some (Airline, Redwood, Trade) require, in addition, a minimum number of years of service with the industry.

Eligibility conditions. UI claimants must be unemployed, able to work, and available for work as a condition for benefits. They must demonstrate availability by seeking work, and they may not continue to receive benefits if they refuse suitable jobs without good cause. Benefits will terminate also under most special programs if the claimant refuses, without good cause, an offer of suitable employment. However, few special programs require testing a claimant's ability to work or an active search for work. Benefits are payable under some special programs to individuals who are actually employed full time: either those who are receiving a lump-sum payment or those who have not been laid off but have been displaced to lower-paying jobs.

Weekly benefit amount. The UI weekly benefit amount payable below the maximum is usually established as 50 percent of the claimant's average weekly wage on the assumption that this level of wage replacement will generally be enough to cover nondeferable expenses without adversely affecting work incentive. Every State has a ceiling on the maximum weekly amount payable to any claimant. The ceiling, particularly when it is relatively low, prevents significant numbers of claimants from receiving a 50 percent wage replacement. Under most special programs, the benefit amount is evaluated in terms of whether it represents reasonable indemnification for job loss incurred by reason of Federal action. The dominant consideration is that the individual be restored as completely as possible to former status.

Benefit duration. All special programs pay benefits for a longer period than under any State's UI program. Given that the object is to indemnify the worker for loss of investment in the former job, duration varies with the worker's length of service (investment) with the affected industry. Under regular UI duration may vary with employment, but the work history measured is usually confined to a one-year base period.

Rationale for special programs. Federal actions that have impact on entire industries usually include provisions compensating all injured parties, including direct and indirect subsidies for owners and unemployment benefits and other assistance for workers. The terms of indemnification are often the product of legislative bargaining. In this context, it seems no more reasonable for workers to relinquish special protection provisions than to expect owners or shareholders to forfeit interest-free loans and subsidies, also bargained for in return for support of the Federal action.

Most of the special programs provide compensation for job or career loss rather than only for wage loss. This takes into consideration not only the individual's lost wages but also lost fringe benefits. More important, it compensates the individual for the loss of time invested in the industry, the loss of expectations of future employment in it, and the obsolescence of specialized skills.

Current State UI laws are not structured to accommodate these workers. They are likely to be unemployed for longer periods than average and likely to be more in need than other workers of specialized retraining, job search, and even relocation assistance. The special programs can offer the kind of individualized attention that these workers particularly need.

Issues. The enactment of several new special programs in recent years and substantial increases in the volume of benefits paid under these programs pro-

voked a hearing on the subject February 15, 1980, before the House Ways and Means Committee's Oversight Subcommittee. The particular concern expressed by Chairman Gibbons was the impact that special programs may have on the basic unemployment insurance system.

Opponents of special programs argue that they divert efforts to strengthen the regular UI program. There is, however, no way to tell if efforts on behalf of special programs would otherwise have been applied to improving the regular program or whether undesirable changes in the regular program would have been prevented if energies had not been focused instead on particular special programs.

The most serious objection to the special programs is that they accentuate inequities by treating some unemployed workers differently from others.

It is true that unemployed workers with similar employment records already receive different treatment because State benefit structures are different. However, special programs increase the disparities, particularly between the treatment of unemployed workers under the least generous State programs in contrast with other unemployed individuals who qualify for special program benefits that sometimes closely approach their former wage levels. In addition, not all unemployment caused by Federal action is covered by special programs, and even among workers who do receive special protection there are substantial differences in benefit levels and eligibility conditions. The result is that involuntarily unemployed workers with identical work experience may qualify for significantly different treatment, depending solely upon whether or not their layoff was the result of some Federal action or national policy.

Special programs are usually complex enough to require a specialized staff to administer. Regulations, requirements, forms, and procedures are different for each program, thus making each special program claim considerably more costly and time-consuming to process than a regular unemployment insurance claim. The difficulty in processing these claims also leads to errors that result in delays in payment. The unpredictability of the special programs claims load makes budgeting and administrative preparation particularly complicated and difficult. The costs of administering special programs are not always provided for in separate appropriations. Accordingly, administrative costs are sometimes financed from Federal Unemployment Tax Act (FUTA) revenues instead of from general revenues or from the source that pays the benefit costs of the special program.

Findings

The Commission was very closely divided on the issues posed by special employee protection programs.

TABLE 1. Employee protection provisions enacted into Federal law

Title	Eligibility	Benefit amount	Duration	Other benefits	Administration	Funding source	Cost
<i>1887</i>							
Interstate Commerce Act, 49 USC 1(5) (2)(f) as amended in 1940. Also amended in 1976 to establish Rail Passenger Service Act (Amtrak) protections as minimum standards for railroad employee protection plans.	Any railroad employee affected by a transaction involving a railroad carrier or carriers, such as merger and consolidation.	Income protection option: Monthly income to equal former wages, reduced by any UI or income from other employment. Severance payment option: 3 months pay for 1–2 years service; 6 months pay for 2–3 years; 9 months for 3–5 years; 12 months for over 5 years.	Equal to the workers' length of service, up to a maximum of 6 years (4 years from 1940 through 1976).	(1) All relocation expenses. If employee is furloughed within 3 years of relocation and chooses to return to site of previous employment, railroad will pay all relocation expenses. (2) Fringe benefits preserved.	Interstate Commerce Commission.	Benefits funded by the railroads involved.	Not available.
<i>1938</i>							
Railroad Unemployment Insurance Act of 1938.	New employees: At least 5 months of employment and earnings of at least \$1,000, with not more than \$400 earned to be counted per month. Others: at least 3 months of employment and earnings of at least \$1,000, with not more than \$400 earned to be counted per month.	60 percent of daily wage rate up to \$250 for 14-day period. Minimum of \$12.70 per day.	Regular duration 26 weeks (130 compensable days). Extended duration for employees with 15 years service, 26 weeks; with 10–14 years, 13 weeks; with less than 10 years, 13 weeks only in periods of high unemployment (4 percent IUR). Benefits may not exceed base year wages.	(1) Cash sickness benefits (including maternity benefits).	Railroad Retirement Board.	Payroll tax on railroad employers.	Approximately \$4.14 billion from 1939 to June 1979 (includes both unemployment and sickness benefits).

1943

Federal Communications Act amendments of 1943 (Public Law 78-4) 47 USC, sec. 222 (f).	Any employee earning less than \$5,000 per year affected by consolidation or merger of communications carriers.	Individuals whose employment began on or before Mar. 1, 1941, receive 100 percent wage protection, including fringe benefits.	4 years	(1) Moving and relocation allowances for transferred employees. (2) Preference in hiring. (3) Maintenance of pension, health, and insurance benefits.	National Labor Relations Board responsible for enforcement of provisions to be implemented by communications carriers.	Communications carriers involved.	Not known.
		Individuals whose employment began after Mar. 1, 1941, discharged within 4 years of merger approval receive severance pay at 4 weeks pay per year of continuous service.					

1964

Urban Mass Transportation Act of 1964 (Public Law 88-365) 49 USC sec. 1609.	Any employee affected by Federal UMTA grants to a public body to improve mass transportation.	Provisions identical to IC Act of 1887, as amended.	Provisions identical to IC Act of 1887, as amended.	(1) Paid training and retraining. (2) Reemployment priority. (3) Continuation of collective bargaining rights. (4) Preservation of rights and benefits under existing bargaining agreements.	Secretary of Labor certifies employee protection provisions, administered by the bodies receiving UMTA grants.	Public bodies receiving UMTA grants.	No substantial cost.
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TABLE 1. Employee protection provisions enacted into Federal law—*Continued*

Title	Eligibility	Benefit amount	Duration	Other benefits	Administration	Funding source	Cost
<i>1965</i>							
Public Works Economic Development Act, 42 USCA sec. 3243 (benefit provisions added by Public Law 93-423 in 1974), expired Sept. 30, 1979, but is pending renewal.	Individuals employed in area determined by Secretary of Commerce as experiencing (or threatened by) rise in unemployment or other economic problems or an area that has demonstrated long-term economic deterioration.	Up to maximum UI benefit payable in State. Reduced by any UI received.	Maximum duration of 1 year after unemployment begins.	Relocation expenses including travel and living expenses plus compensation for loss of selling house (or an amount equal to closing costs) plus payments for loss due to cancellations of lease.	Grants by Secretary of Commerce transferred to Department of Labor.	Congressional appropriation.	No money expended as yet.
High Speed Ground Transportation Act of 1965 (Public Law 89-220), 219 U.S.C. 1631.	Any employee of an entity receiving DOT grants to research and assist development of high-speed trains, who is directly affected by such grants; i.e., whose worsening of position can be shown to be a direct result of such grants.	Same as UMTA of 1964.	Same as UMTA of 1964.	Same as UMTA of 1964.	Secretary of Transportation must specify terms and conditions of employee protection as determined by the Secretary of Labor to be administered by the grantees.	Entities receiving DOL grants.	No substantial cost.
<i>1966</i>							
Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89-754). Employee protection provisions added by amendment of National Mass Transportation Assistance Act of 1974.	Any employee affected by transportation-related programs funded by the act.	Same as UMTA of 1964.	Same as UMTA of 1964.	Same as UMTA of 1964.	Same as UMTA 1964.	Entity receiving grants.	No substantial costs.

1970

Rail Passenger Service Act of 1970 (Amtrak) Public Law 91-518, 45 USC 501 et seq.	Employees adversely affected by National Rail Passenger Service's (Amtrak) takeover of intercity rail operations.	Income protection option: Monthly income to equal former wages reduced by any UI or income from other employment. Fringe benefits also preserved. Severance payment option: 3 months pay for 1-2 years; 6 months pay for 2-3 years; 9 months pay for 3-5 years; 12 months pay for over 5 years.	Up to 72 months.	(1) Training and retraining. (2) Reemployment priority. (3) Preservation of collective bargaining rights and benefits.	Railroad involved.	Railroads absorbed by National Rail Passenger Corp. responsible for absorbing cost.	Records not readily available.
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1973

Regional Rail Reorganization Act of 1973, 45 USCA sec. 771 (Public Law 93-236) (Conrail) indefinite.	Workers adversely affected because of railroad reorganization.	100 percent of average pay for prior 12 months. Reduced by any UI or railroad earnings and by 50 percent of any other earnings. Separation allowance up to \$20,000 depending upon years of service, age, position.	Until age 65 for workers with 5 or more years service; period equal to prior service for those with fewer than 5 years.	Relocation expenses including travel and living expenses plus compensation for loss in selling home (or an amount equal to closing cost), plus loss due to cancellation of lease.	Railroad Retirement Board reimburses carriers for benefits.	\$250 million appropriated by Congress into Northeast Rail Transportation Protective Account.	\$248 million by January 1980.
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TABLE 1. Employee protection provisions enacted into Federal law—*Continued*

Title	Eligibility	Benefit amount	Duration	Other benefits	Administration	Funding source	Cost
Federal-Aid Highway Act of 1973 (Public Law 93-87) 23 U.S.C. 101 et seq.	Employee affected by urban mass transportation projects supported by Highway Trust Fund and Interstate Transfer moneys.	Same as UMTA of 1964.	Same as UMTA of 1964.	Mass transportation entity involved, under guidelines as approved by Secretary of Labor.	Mass transportation entity involved.	Entity involved.	No substantial cost.
<i>1974</i>							
Trade Act of 1974 (Public Law 93-610) (supersedes Trade Expansion Act of 1962) through Sept. 30, 1982.	Workers certified as adversely affected by increase in imports and either laid off or on 80 percent or less of average weekly wage and hours. Qualifying work: 26 of 52 weeks in adversely affected work at wages of at least \$30 per week.	70 percent of worker's average weekly wage with maximum equal to national average weekly manufacturing wage (currently \$250). Reduced by any UI received and by 50 percent of any wages received.	Maximum of 52 weeks in a 2-year period or, if worker is over 60 or in training, 78 weeks in a 3-year period.	Relocation allowances (80 percent of moving expenses plus maximum \$500 lump sum), training (allowances plus travel and subsistence expenses), job search (80 percent of transportation and living expenses up to \$500 while looking for work).	Through State unemployment insurance offices.	Federal general revenues through congressional appropriations.	\$706,708,488 April 1975-April 1979.
Disaster Relief Act of 1974 (Public Law 93-200).	Workers unemployed as direct result of major disaster declared by President at request of Governor.	Act authorizes President to provide appropriate payment. Regulations provide weekly benefit equal to UI individual would have received if all wages were covered. Reduced by any UI or wages received.	Maximum duration of 1 year beginning with date disaster is declared.	Relocation expenses plus grants (up to \$5,000) for necessary expenses plus rental or mortgage payments up to 1 year, plus cost of minor home repair.	State unemployment offices for cash benefits, Department of Agriculture for Food Stamps, HUD.	Appropriated as required annually by Congress.	\$95,480,841 (through May 1979).
Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415).	Employees affected by deinstitutionalization of juvenile delinquents.	Same as UMTA of 1964.	Same as UMTA of 1964.	Same as UMTA of 1964.	Law Enforcement Assistance Administration approves employee protection plans of institutions involved.	Institutions involved through Federal grant formulas.	No substantial cost.

1975

Developmental Disabilities Services and Facilities Construction Act of 1975 (Public Law 95-103). Superseded by Developmentally Disabled Assistance and Bill of Rights Act, Public Law 95-602.

Employee who is affected by deinstitutionalization of the developmentally disabled.

No cash benefits.

Not specified.

- (1) If dismissed State or local government employee cannot find employment elsewhere, employee is guaranteed a job at (a) no less pay, (b) no "substantial increase in health or safety hazard."
- (2) Employees given 6 months notice prior to formation of deinstitutionalization plans.
- (3) Preservation of rights, privileges, and benefits (specifically including pension rights) under existing collective bargaining.
- (4) Employee training or retraining as necessary.
- (5) Relocation expenses to employees transferred more than 50 miles from previous employment.
- (6) Early retirement, if desired, for qualified employees.

Division of Developmental Disabilities, HEW, executes guidelines in conjunction with Department of Labor, to be carried out by the State institutions involved.

State institutions involved.

No substantial cost.

TABLE 1. Employee protection provisions enacted into Federal law—*Continued*

Title	Eligibility	Benefit amount	Duration	Other benefits	Administration	Funding source	Cost
Special Health Revenue Sharing Act of 1975 (Public Law 94-63).	Employees affected by deinstitutionalization of the mentally ill.	No cash benefits.		(1) Training and retraining. (2) Preservation of employee rights and benefits. (3) If dismissed employee cannot find employment elsewhere, employer must find employee a job at same rate of pay and retrain as necessary.	Individual plans administered by State health or mental health authority; Secretary of HEW responsible for ensuring all authorities have fair and equitable protection plan (as determined by Secretary of Labor).	Affected State health or mental health authority.	
1978							
CETA Amendments of 1978 (Public Law 95-524) through Sept. 30, 1982.	Unemployed individual in area of large-scale unemployment with no reasonable expectations of local employment and a bona-fide employment offer.	Cash benefits to supplement any UI received up to local minimum wage.	Upon completion of training period.	(1) Relocation loans or grants. (2) Job search assistance.	State agencies or prime sponsors.	Annual congressional appropriations.	
Airline Deregulation Act of 1978 (Public Law 95-504) through Dec. 31, 1989.	Workers with at least 4 years employment with air carrier and laid off by reason of the carrier experiencing a bankruptcy or major contraction (7½ percent or more reduction in full-time employees) caused in major part by this act.	Secretary of Labor in consultation with Secretary of Treasury authorized to determine amount proposed. Regulations provide monthly benefit equal to 70 percent of monthly wages (after Federal income taxes and FICA) paid during recent 12-month period. Current proposed maximum, \$1,200 month (66⅓ percent average wage in industry). Reduced by any UI received.	Maximum of 72 months.	Relocation expenses including compensation for loss in selling property or in cancelling lease agreement or contract of purchase. Retention of seniority and recall rights plus first right of hire with other air carriers.	Department of Labor. ETA administers provisions concerning benefit eligibility and amounts, extent of reemployment assistance, and maintaining comprehensive job listing. LMSA administers priority hire rights provisions, air carriers' duties to hire, and negotiations between air carriers and union representatives.	Employee protection account; congressional appropriations.	Not funded.

Amendment to act establishing National Park (1978) Public Law 95-250 —through Sept. 5, 1984 ("Redwood").	Workers on layoff or down-grading between May 31, 1977, and Sept. 30, 1980, from employer engaged in harvesting or processing redwood timber at park area who: (1) Had collective bargaining determined seniority as of May 31, 1977, and 12-months work as of Mar. 27, 1978, or (2) Had at least 1,000 hours work from Jan. 1, 1977, through Mar. 27, 1978.	100 percent of average pay during 3 of last 5 years in which hours were greatest. Reduced by any wages earned in timber industry and by 50 percent of other wages, social security, and UI. Severance payment option available.	Period equal to length of service, age 65, or June 30, 1984, whichever occurs earliest, except those reaching age 60 before Sept. 30, 1984, remain eligible until 65. Acceptance of optional severance pay (sum equal to total entitlement up to 72 times weekly benefit) ends duration.	Relocation, training, job search benefits, plus continuing entitlement to health, welfare, pension, insurance at no greater cost than when employed.	California Employment Development Department.	U.S. congressional appropriated funds.	\$13.9 million as of Dec. 22, 1979.
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1979

Milwaukee Railroad Restructuring Act (1979) (Public Law 96-101) through March 1, 1984.	Workers laid off from the Milwaukee Railroad.	80 percent of average monthly pay between June 1977 and November 1979, less UI and any earnings. May opt for a severance payment not to exceed \$25,000.	Period equal to length of service not to exceed 36 months or Apr. 1, 1984.	Career training assistance not to exceed \$3,000.	Railroad Retirement Board.	U.S. congressional appropriated funds of \$7.25 million.	No funds expended as of yet.
Health Planning and Resources Development Amendments of 1979 (Public Law 96-79).	Workers terminated because of discontinuation of hospital services.	Termination payment only.		Protection against worsening of position, protection of fringe benefits, re-training.	Certification by Department of Labor.	Institutions involved through Federal grants.	No funds expended as of yet.

Source: National Commission on Unemployment Compensation.

Some argued that special programs have created special classes of unemployed workers and this has produced inequities. These arise because substantially different benefit entitlements are often awarded to claimants with substantially identical work histories. Conversely, claimants with substantially different patterns of work may qualify for the same benefit entitlement. This happens already between claimants in different States because of differences in State laws and benefit formulas. The special programs produce even wider differences in treatment among claimants within single States for reasons that bear no relationship to length of employment or level of wages.

Under special programs, it is the cause of job loss rather than the work history that dictates whether or not the worker can qualify for special protection.

Under UI, it is prior work history alone that serves as the basis for determining benefit entitlement. The weekly unemployment benefit is wage-related and is intended to replace only a portion of lost wages. It represents no more than 50, 60, or, at most, 66⅔ percent of recent normal full-time weekly wages to allow the individual to meet nondeferrable expenses without jeopardizing work incentive. The objective of a reasonable wage replacement is often defeated by low maximum benefit amounts. However, the objective can be thwarted in a different way when, because of special programs, the individual's supplemented benefit amount approaches 100 percent of lost wages.

UI and most special programs thus have divergent objectives. Satisfying one tends to undermine the other.

Those who believe special programs are needed argue that, if the Federal Government takes away jobs in pursuit of some public interest, it has both an obligation to compensate fully for the lost job and lost livelihood and usually also a legal commitment based on legislative bargaining. It is unfair to expect workers to give up hard-won protections when employers are not asked to forfeit corresponding values. They argue that special programs are needed because UI is inadequate in many States. Until the basic program is substantially improved, pressures will continue for special protection at least for those to whom the government owes a particular obligation. In addition, displaced workers helped by special programs are usually older workers, with long attachment to a single employer, whose likelihood of reemployment is bleak without extra help. This includes positive supportive aid such as job search assistance, retraining allowances, and relocation assistance when these are appropriate. It also includes a substantial enough benefit amount and duration to ease a particularly difficult, painful, and sometimes abrupt transition from years of steady employment to no job at all.

Recommendations

1. The Commission is aware of special programs to deal with particular problems resulting from trade policy, airline deregulation, and other governmental programs (see Table 1). It has not had time to study these programs in detail and, as a Commission, takes no position on them. Some members believe they are necessary and appropriate and others do not.

2. The amount and duration of benefits under special programs should not be considered a precedent or a pattern for State temporary UI payments.

*Adopted by recorded vote of 7 yeas
(Commissioners Bivins, Coleman, Cooper, Crosier, Hill, Sullivan, Cohen), 3 nays (Commissioners Daniels, Morris, Seidman).*

3. Such existing programs or similar special programs that may be established in the future should be separate from UI, and their benefits and other features should be determined in the light of the special nature of those programs.

*Adopted by recorded vote of 6 yeas
(Commissioners Cooper, Daniels, Morris, Sanchez, Seidman, Cohen), 5 nays
(Commissioners Bivins, Coleman, Crosier, Hill, Sullivan).*

4. Any special Federal programs, regardless of form or purpose, if relating to compensation or indemnification for unemployment, should not serve as a concurrent supplement to UI but should be paid either before or after UI.

*Adopted by recorded vote of 6 yeas
(Commissioners Bivins, Coleman, Cooper, Crosier, Hill, Cohen), 5 nays
(Commissioners Daniels, Morris, Oakar, Seidman, Sullivan).*

5. Total costs of special programs including any payments made through the UI system should not be borne by the UI system, but should be paid from general revenues or other sources.

*Adopted by recorded vote of 8 yeas,
3 abstentions (Commissioners Daniels,
Morris, Seidman).*

6. Services to claimants:

a. State agencies should make a special effort to authorize job relocation and job search authorized under existing law.

b. State employment security agencies should make a special effort to provide counseling and referral services to unemployed persons eligible under special programs.

c. Payments should be made more promptly.

[See section 12.0, "Commissioners' Supplemental Statements."]

9.2 Temporary Disability and Health Insurance

Background

Six United States jurisdictions—California, Hawaii, New Jersey, New York, Rhode Island, and Puerto Rico—have laws requiring employers to provide their employees with partial insurance against wage loss due to non-job-related illness.¹ These temporary disability insurance plans provide wage-loss protection for workers:

- whose disability disqualifies them in most States for unemployment insurance (UI) because of the "able to work" requirements;
- who are permanently disabled, and therefore eligible under social security, but are not immediately compensable under that system due to the minimum 10- to 12-month delay before social security benefits can be awarded; and
- whose illness or injury is not job-related since such disabilities are compensable under workers' compensation.

After World War II some people thought that temporary disability insurance would be a logical way to fill the large gap not covered by social security disability benefits and workers' compensation.

The failure of most States to adopt temporary disability insurance can be attributed in part to two changes: the development of wage-loss disability benefits provided by employers, mainly through collective bargaining, and the decisions by many States to waive their "able to work" requirements for unemployed UI claimants who, because of illness or injury, become unavailable for work after they file an unemployment claim and register for work.²

Because the data do not exist, it is almost impossible to estimate the need for expansion of temporary disability insurance. The greatest need probably exists for workers in small labor-intensive industries and services that are also low paying, nonunion, and unlikely to offer private temporary disability or sick pay arrangements.

Health insurance. A close link exists between employment and health insurance since 70 percent of the people receive all or some of their health insurance

through group plans provided at the job. Unemployment, therefore, may put the employees face to face with both loss of income and the high cost of medical care.

In periods of declining economic activity and general inflation this problem becomes even more acute. At these times, the existing public programs, mainly for the old, the handicapped, and the poor, are neither designed for nor capable of supporting the medical needs of the growing numbers of the unemployed.

Alternatives facing workers being laid off, if they have health insurance, are frequently conditioned by the provisions in their group plan. Many of the plans provide for continuation of coverage through such options as automatic continuation, self-pay, or conversion.

Automatic continuation is for a specified period or a period based on a worker's employment record. These continuations can sometimes extend over a year, but more commonly do not exceed a month or two.

The self-pay option requires workers to pay the employer's share of premium payments, as well as their own share. About 7 percent of health plans have this feature. Rarely is the self-pay period extended as long as 12 months.

Conversion options permit workers to continue their health insurance coverage by converting from a group health plan to a private individual health plan. The worker using a conversion option does not have to satisfy any special conditions that might ordinarily apply to individual plans. However, the individual plan has higher premium rates than the group plans, which were paid for in part or entirely by the employer.

When laid-off workers are neither under the health plan of a spouse or parent nor in some type of public plan, they may be faced with these options if they wish to continue their coverage.

A study done for the Commission showed that the receipt of UI plays a small but significant role in whether workers continue their insurance.³ Individuals who are eligible for UI benefits are more likely to retain employment-related group plans or individual private plans than workers who do not receive benefits.

For average amounts of UI weekly benefits received by workers, the effect of UI benefits is to increase the probability of retaining coverage by slightly over 5 percent. However, considerable variation occurs

among different groups of workers. This reflects the fact that such factors as previous income and wealth also affect decisions about continuing health insurance.

Those unemployed most likely to have private insurance coverage had incomes above \$12,000, and those most likely to be in some public plan had low incomes.

Despite the small effect of UI in helping workers retain this health insurance, at the time of the survey in 1976, about 40 percent of the unemployed job losers had no health insurance at all.

Not surprisingly, during the 1974–75 recession at least 17 different bills were introduced in the Congress to meet the medical needs of the unemployed. Similar bills are now being introduced.

Findings and recommendations

Temporary disability. Temporary disability laws operate in California, Hawaii, New Jersey, New York, Rhode Island, and the Commonwealth of Puerto Rico. Federal law provides coverage for railroad employees under the Railroad Unemployment Insurance Act of 1938.

The Commission had a study prepared on the operation of these State and Federal programs. This study has been made available to State employment security and other agencies. The Commission urges employers, employees, the general public, and State and Federal governmental agencies to consider the study and to evaluate the need for expanding the temporary disability protection afforded employees.

Health insurance. The Commission is concerned about the current situation when unemployed individuals may lose their group health insurance coverage and employer contribution for such protection. For some who are unemployed such coverage continues for a short period after they become unemployed. But after such

time the unemployed individual loses the entire employer contribution to such coverage and must secure individual coverage at a much higher cost.

Federal tax laws provide that employers can deduct their contributions for health insurance coverage of employees and their families.

The Commission recommends that the State insurance commissioners reexamine existing policies and encourage insurance carriers and employers to extend health insurance coverage to the unemployed to the extent feasible.

The Commission has discussed proposals that would continue the health insurance coverage of unemployed individuals who register at the employment service for work. Such continued protection could be provided through a small additional contribution to the State UI program. The Commission urges that States give careful study to such proposals. In addition, it urges the executive branch and the Congress to give consideration to this important matter in its proposals relating to health insurance and in amendments to Medicare and Medicaid pending in the Congress.

Footnotes

1. There are also disability benefits paid in conjunction with the Railroad Unemployment Insurance Act.

2. Alaska, Delaware, Hawaii, Idaho, Maryland, Massachusetts, Montana, Nevada, North Dakota, Tennessee, and Vermont.

3. Suresh Malhotra and John Wills, "The Effect of UI Payments on Health Insurance Coverage," *Unemployment Compensation: Studies and Research* (Washington, D.C., NCUC, 1980).

4. Joann L. Schrock, Jan M. Beecham, Brett Brown, *Review of State Temporary Disability Insurance Programs* (NCUC, 1980).

9.3 Railroad Unemployment Insurance

Under present law, railroad workers are covered under a separate unemployment insurance (UI) system that is administered by the Railroad Retirement Board, composed of representatives from railroad labor, railroad management, and the public.

Railroad workers remain the sole occupational group in the country that is covered under a separate UI program. Railroad employers pay contributions on the wages of employees up to \$4,800 a year, compared with a wage base of \$6,000 for nonrailroad employment under the Federal Unemployment Tax Act. Railroad employers contribute at substantially higher rates than the average of all nonrailroad employers. There is no experience rating in the railroad UI system.

In recent years employment in the railroad industry has declined significantly. The maximum daily unemployment benefit rate is currently \$25. Benefits have remained unchanged since July 1976, and the benefit replacement rate has thus declined. As wages and prices rise, railroad UI benefits will become increasingly inadequate, unless further action is taken by the Congress.

Many interstate employers and industries—such as the airline, maritime, and trucking industries—are covered under existing State UI laws. Many employers contribute to more than one State program because they have employees in more than one State. Many employees work in more than one State in a given year. Originally, the Social Security Act of 1935 provided

that railroad employment could be covered under State laws.

The Commission has not taken a position on whether railroad employment should be covered under the State UI programs.

The Commission recommends that the Secretary of Labor, in cooperation with the Railroad Retirement Board, examine the railroad UI program and report recommendations to the President and the Congress not later than October 1, 1982.

9.4 CETA, WIN, Welfare Assistance, and Unemployment Assistance

Background

CETA

Origins and history of CETA. The origins of the current Comprehensive Employment and Training Act (CETA) go back to the early 1960's, when the Manpower Development and Training Act (MDTA) was adopted by the Congress to assist individuals who needed more than referrals and short-term counseling to become job-ready.¹

The concept of targeting training services to individuals and groups with special needs had been recognized by the Employment Security system—both unemployment compensation (UC) and the employment services (ES)—over a period of years. However, in the 1970's the trend was to shift the responsibility and control over such services from the State UC and ES agencies to local political jurisdictions, and, in theory, to allow for some control and influence by participants and their representatives.

As the "great society" concepts developed, increasing emphasis was placed on improving the employability of individuals through retraining and assisted job mobility, on job creation through community economic development, and on more local influence and control by community organizations and local governments. During these years, while MDTA had some substantial successes, its operations frequently duplicated those of existing agencies such as the ES or vocational schools. Since most MDTA clients were individuals without UC attachment, the impact of MDTA training on UC was indirect.

By the early 1970's, the Congress had enacted piecemeal legislation reflecting varied, and often overlapping, approaches to structural unemployment problems. Much of the legislation focused on target groups.

The enactment of the Comprehensive Employment and Training Act (CETA) of 1973 (PL 93-203) was

The Commission recommends that, if the railroad UI fund should experience financial difficulties before any basic changes are made in the existing railroad law, the Federal Government provide loans from general revenues to the railroad UI system, with interest, to permit benefits to be paid until the Congress can consider further, longer-range alternatives.

Adopted by recorded vote of 10 yeas, 1 nay (Commissioner Bivins), 1 abstaining (Commissioner Sullivan).

intended to pull these diverse efforts together and, through "block" grants, develop a decentralized system for the provision of training, employment, and other services to economically disadvantaged, unemployed, and underemployed persons. The 1973 Act included the concept of decentralizing the operation of manpower services by giving authority to "prime sponsors" (defined as States and units of general purpose government with a population of 100,000 or more). The ultimate goal of CETA is to produce self-sufficient individuals who do not need subsidized employment.

The CETA legislation (Title II) included a trigger authorizing transitional public service employment for areas having 6.5 percent or more unemployment. It also took over the Emergency Jobs and Unemployment Assistance Act and provided a temporary program of emergency public service employment (PSE) (Title IV).²

Five years of experience, in the period between the 1973 enactment of CETA and its amendment and reauthorization in 1978, brought out both the strengths and weaknesses of the concepts on which it is based. Although the program met many of the needs of the disadvantaged, it tended to undercut the work of more traditional bodies, such as the ES. Many governments used CETA as a form of free and inexpensive employment for county and city officials; CETA programs tended to keep persons in public service jobs instead of training them and finding them private employment.

Many of the objections to the original Act were met by the amendments. Problems still arise from CETA's Federal decentralization to prime sponsors, which still permits some bypass of the State structure. In addition, the fact that special funds were available for employer participation (Title VII) programs caused conflict with ES voluntary employer activities.

CETA structure and linkages. The 1978 Act reauthorizing CETA includes requirements that each prime sponsor must use available services and facilities, with or without compensation, "after giving due consideration to the effectiveness of such existing services

and facilities, including the State employment service . . .” Furthermore, the prime sponsor’s plan must include

a description of the methods for coordination between the prime sponsor and the local State employment security agencies, and delineate the specific responsibilities of each in the delivery of employment and training services for participants funded under this Act and under the Wagner-Peyser Act, with the goal of maximizing the level of coordination between the prime sponsor and the local employment security agency and minimizing duplication—Sec. 103(B)(15).

In addition, each State must establish a State Employment and Training Council. This body must include at least one representative of the public Employment Service of such State. (In some cases the term used is Job Service.)

Thus, some coordination is mandated—but not always carried out. If the proposals outlined in a recent DOL Report on the Wagner-Peyser Act (June 1980) are carried through, substantial progress will be made. These call for synchronizing the timing of the CETA and ES planning processes, as well as decentralizing the ES procedures. A model local ES plan would be coordinated with prime sponsor planning and would include:

a description of arrangements for coordinated delivery of services between the Job Service and CETA (including the financial or nonfinancial agreements), as well as descriptions of arrangements with other community agencies, such as schools and vocational rehabilitation and welfare agencies. In the case of CETA, for example, the plans would specify the respective Job Service-CETA roles in such activities as job development, job search assistance, and administering tax credits.

The specific mechanisms for coordination between the Job Service and the CETA system should be patterned after sections 105 and 307 of CETA which deal with partnership arrangements. A bonus system within available resources should be established which would provide resources to encourage the Job Service staff in each State to develop an integrated delivery system plan with the CETA prime sponsors. Similar bonuses within available resources should be provided to prime sponsors pursuant to Section 307 of CETA.³

WIN

The history and organization of WIN. The Work Incentive Program (WIN) was established by the 1967 amendments to the Social Security Act. Title IV A as amended requires that able-bodied applicants for Aid to Families with Dependent Children (AFDC) register for employment and training services as a condition of eligibility for AFDC benefits and participate in work or training offered through WIN. WIN, financed 90 percent from general revenue funds, is administered jointly by the Department of Labor (DOL) and the Department of Health and Human Services (HHS).

Under the specified division of responsibility, HHS determines income eligibility and provides support services, while the DOL is responsible for training and employment.

The law provides for mechanisms for joint actions that are developed in regulations issued, on behalf of both departments, by the Executive Director of the National Coordination Committee (consisting of the Assistant Secretary for Employment and Training of the DOL and the HHS Assistant Secretary for Human Development Service). A WIN Regional Coordination Committee, established by the Assistant Regional Administrator of the Employment and Training Administration (ETA) of the Department of Labor and the HHS Regional Officer, is responsible for approving all State WIN plans in each region. Formal agreements are made by the Regional Coordination Committee with the State WIN sponsor (usually the State ES) and the State Welfare Agency (i.e., the Separate Administrative Unit designated by the State Welfare Agency) for the overall administration of the State WIN plan.

The regulations, and the jointly developed *Handbook of Policy Guidelines*, require coordination and linkage with other agencies and programs, including CETA, Title XX (Social Services under the Social Security Act), State Adult Education Programs, Food Stamp Programs, the State Employment and Training Council, the State Employment Service, publicly supported work programs, and other “pertinent employment and training and welfare programs.”⁴

The extent of the coverage of the WIN program differs from region to region and within States, depending on the characteristics of the unemployed and the attitude of the local administrators. A funding ceiling limits the number of eligible entrants to the program and the nature of the services available—whether training and support services or employment in subsidized jobs. The small size of the WIN program in relation to the numbers who are eligible raises the issue of its feasibility as a welfare-work mechanism. The program has had some success in achieving “positive” placement of its participants.

Income transfer programs. The Federally subsidized welfare programs, e.g., AFDC (and WIN) and food stamps, were directed during the 1960’s and 1970’s to require, as indicated in chapter 7.7, job search and labor force participation by eligible adult recipients. In some States similar requirements applied to State public assistance programs. Recent proposals for welfare reform have sought to expand this concept. The growing issue of receipt of pension income by workers who also apply for unemployment insurance (UI) has increased State and Federal efforts to define the relationships between these programs.

A number of existing income support or transfer programs impinge upon UC programs and in some

States result in deductions from unemployment benefits, or, in others, from the income support program concerned. The question of deductions from UC benefits—particularly with respect to pensions and social security—is dealt with in chapter 3.2, on Federally mandated restrictions. Related issues concern the effect of UI on early retirement, as well as on the amount of aid an individual may receive under income-tested programs.

There is no deduction from social security for UC benefits, but social security is now deducted from UC. There have, however, been suggestions that the procedure might be reversed. The Federal Supplemental Security Income program (SSI), designed to supplement social security payments for individuals who are aged, blind, or disabled, is based on income need. In addition to the Federal program, most States provide some supplemental benefits. Any UI benefits received are deducted dollar for dollar from SSI or State supplemental payments.

There are similar problems with respect to UC and some 15 different income transfer programs, of which the most significant are: Medicaid; AFDC, particularly when there are two parents in residence, one of whom is unemployed (AFDC-UP); housing assistance; food stamps; nutrition programs including child nutrition, Women, Infants and Children, and school lunches; and the many State programs of public assistance. Full consideration of these issues will have to be undertaken before final adoption of new welfare reform programs.

The Commission received two studies outlining the major problems and making suggestions for action: "Overlap of Unemployment Insurance Benefits and Other Income Transfer Payments," by James R. Storey, and "Unemployment Insurance and Other Income Maintenance Benefits," by Ida C. Merriam. Both appear in the Commission's *Unemployment Compensation: Studies and Research* (1980).

Other work and welfare programs. If the administration's 1979 plan or any similar proposals were to be adopted, the WIN employment program might be merged with other employment programs and greater responsibility given to Governors. Approximately 620,000 CETA public service employment jobs were envisaged in the 1979 proposals for welfare "eligibles," including 400,000 CETA work and training opportunities. There are special provisions for job training, child care, and job services as a method to provide self-support and as a condition for receipt of benefits. But how the ES would be used and how far the current WIN mechanism linking income maintenance, social services, and unemployment would be followed is not clear in any of the proposed bills or in the congressional hearings on welfare reform.

In addition to the formal welfare reform proposals,

considerable discussion has occurred on the need for an unemployment assistance program, which could be either Federal or State or both, to meet the needs of unemployed persons who are not eligible for UI or have exhausted their benefits and are not eligible for current welfare programs but who cannot live on their incomes.

Income-tested programs would not require a complete "spend down" of assets for eligibility. They would also not necessarily require that income be below the poverty level—as defined in many State public assistance programs. Some suggest that the income test might be a percentage of the Bureau of Labor Statistics lower living standard, adjusted regionally to account for differences in cost of living.

Job search requirements, such as those included in the food stamp and WIN programs, could be a condition for receipt of unemployment assistance in any form: cash, training or retraining stipends, or temporary work on public or community programs. The basic purpose would be assistance to unemployed individuals seeking work and not receiving other adequate compensation or income.

Findings

The Commission, when discussing the effects of both structural and cyclical unemployment in the national and local labor markets, noted the value of public employment programs planned to meet temporary periods of labor surplus.

The Commission also examined the need for additional programs to assist individuals who are not covered by UC or whose benefits have been exhausted and who are not eligible for public welfare assistance. It recognized that these problems are faced by many disadvantaged individuals and by those who either are new entrants to the labor market or have skills that are no longer viable.

The Commission noted the various current programs developed or funded through CETA, WIN, and the Department of Agriculture (for food stamps), as well as by the ES, offering employment, training, counseling, and job search activities. It stressed the need for greater coordination of these activities to prevent duplication. In some cases, it suggested that full integration might be achieved at the local level, provided that sufficient incentives were given to Governors, to CETA prime sponsors, and to local employment and training offices—those under the jurisdiction of the ES or CETA as well as those operated by city and/or county departments.

The Commission indicated that coordination of CETA and ES operations should include coordination of advisory committees, such as the Unemployment Advisory Councils (UC/ES) and Employment and Training Councils (CETA) at national, State, and local levels. To the maximum extent possible, there

should also be coordination and some common membership between the ES and CETA employer advisory committees, to obtain the maximum employer participation in job creation, retraining, and placement of those seeking employment or advancement.

With respect to WIN and other welfare-work programs, the Commission noted the financial limitations and suggested that Congress might give consideration to the WIN operations when it takes up the work opportunities provisions in the various proposed welfare reform programs.

Recommendations

The Commission made a number of recommendations that relate to UC/ES/CETA coordination and the need for increased subsidized employment and related programs for unemployed persons unable to obtain employment in the private sector.

Wagner-Peyser/CETA statutory changes. The Commission does not recommend any statutory changes at the present time in the legislation governing the U.S. Employment Service (Wagner-Peyser Act), CETA (Comprehensive Employment and Training Act), and the UC program (Social Security Act, Federal Unemployment Tax Act, and related legislation). It is believed that effective ES/CETA coordination with UC is essential for full and efficient service to applicants. The Commission recommends that where necessary the DOL make appropriate improvements under the broad latitude provided to the Secretary under present law.

Increase in CETA job slots/need for an expanded jobs program. Recognizing that the nation is in a deepening recession, the Commission recommends, in addition to a program for a further extension of benefits in the UC system:

1. that the President and the Congress double the presently budgeted number of job slots under CETA and

2. that the Secretary of Labor study the need for a jobs program for exhautees of the UC system that would provide projects and work opportunity of significant community value.

Opposition to proposal to remove CETA, PSE, and other work projects employees from UI protection. The Commission recommends withdrawal of current budget proposals in the administration and the Congress that would terminate use of general revenues to finance benefit costs of PSE and other work opportunity CETA employees and thus require that the cost be paid from CETA program grant funds or other State or prime sponsor sources.

Adopted by 9 yeas, 2 abstentions (Commissioners Cooper and Hill).

Unemployment assistance. The Commission is deeply concerned about the substantial number of unemployed individuals who exhaust all UC benefits to which they are entitled without becoming reemployed. The Commission recognizes that the duration of UC benefits must be limited. The Commission believes that every effort must be made to limit the extent to which unemployed persons must apply for and receive welfare.

The Commission urges that every effort be made to provide jobs for all unemployed persons.

The Commission also recommends that, in addition to CETA, public works, and any other employment, work, and training program, a program of income-tested benefits be available, administered completely independently of UC, to provide some minimum protection to all unemployed persons who are not eligible for such benefits and for whom no other program is available.

Adopted by 11 yeas, 1 abstention (Commissioner Hill).

Footnotes

1. The legislative history of CETA includes: the Area Redevelopment Act of 1961 (which expired in 1965); the Manpower Development and Training Act of 1962, and its 1967 amendments providing a Community, Work and Training Program; the Economic Opportunity Act of 1964; the Social Security Act Amendment of 1967, establishing the Work Incentive Program; and the Emergency Employment Act of 1971. All of these contain some provisions that affect CETA operations.

2. A report, issued by the DOL in December 1975 (reproduced in the "Oversight Hearings on Comprehensive Employment and Training Act: Relationship Between Employment Services and Unemployment Programs," Part 2, June 16 and 17, 1976), provides a concise analysis of the background of CETA, its structure, and the first years of its operations.

3. Report to Congress on Wagner-Peyser (June 12, 1980).

4. *The WIN Handbook* stresses the relationship between WIN and other employment and training (E&T) and social services programs, describes the methods of formalizing linkages at every level, and summarizes the role of each linked agency—including that UC services are to be used for all payment procedures and that "in instances where the WIN E&T Agency is other than the State employment service, the WIN E&T Agency should coordinate all employment and training services with the ES to gain access to that agency's comprehensive labor market information system."

10.0 Women and Program Policy

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The Commission recognizes that

in the 43 years since the UI program was established . . . no development has more potential consequences for UI policy than the changing role of women in the labor force. [It has brought about] the tremendous increase in the number and relative importance of women in the labor force, the movement toward broader industrial and occupational distribution of working women, and the changes in the marital, family, and economic status of working women. The most important change for UI policy, however, may be the transformation in the attitudes of working women and of society toward working women.

This statement comes from Margaret Dahm and Phyllis Fineshriber in "Women in the Labor Force," written for the Commission.¹

In making its recommendations, the Commission considered the need to eliminate overt and subtle discriminatory provisions in State systems. The Commission also reaffirmed women's right to participate in the labor market on an equal basis with men and to receive unemployment compensation (UC) when appropriate.

To determine its position on the need for changes in the unemployment insurance (UI) program to meet the particular problems women face in the labor force, the Commission had seven reports prepared, one of which has already been mentioned. All seven are included in the Commission's *Unemployment Compensation: Studies and Research*.²

In addition, the Commission received testimony at public hearings around the nation from individual women who have suffered from various discriminatory actions, from labor leaders and employers who have dealt with some of the issues, from lawyers and others who have represented women claimants, and from Federal, State, and local administrators of the UI program. One session of the Commission was devoted entirely to hearing testimony on women's issues and their relationship to the UC system.

After considering issues of special concern to women, the Commission decided that such issues should not be dealt with as a block, but that each should be treated individually and substantively. The specific recommendations appear, therefore, in the various relevant chapters. They are summarized here to illustrate their wide scope and to indicate where they have been discussed in this Final Report.

Displaced homemakers

Displaced homemakers are defined as individuals who are either new entrants to the labor market or who seek to reenter employment after a substantial period of absence, during which they had the occupation of maintaining a home for a family, caring for a child, or caring

for other dependents needing assistance. The Commission was made aware of the special provisions applying to such homemakers in the 1978 Comprehensive Employment Training Act (CETA) amendments, which provide discretionary funding to deal with some problems encountered by displaced homemakers.

The Commission considered several options for handling the problems of displaced homemakers. The following three options were recommended for consideration by the Department of Labor (DOL) and the Congress.

UI credits for equivalent work. New legislation is needed to extend UI protection to displaced homemakers. One option would enable an individual who had been occupied in maintaining a home for a family, caring for a child under 6, or caring for other dependents needing assistance for substantial periods of time to obtain work credits for the time spent in such "equivalent work" for which no unemployment taxes were paid.

Also covered should be a person whose spouse's employment prevents outside work. This would include the spouse of someone who is assigned to a country in which employment of the spouse is not permitted or the spouse of a person who holds a "sensitive" job—either governmental or contractual—with similar restrictions for the spouse.

Registration with the Employment Service (ES) and search for appropriate work, proof of having carried out "equivalent work," and good cause for absence from covered employment would validate credits. Determination of eligibility and of the economic value of the "equivalent work" for the UC credit could be the responsibility of the State in which the claim is filed, or the legislation could require the DOL to issue eligibility criteria and establish the wage-credit value of "equivalent work."

Under such an approach, for example, the minimum wage, the prevailing wage paid to people employed as homemakers, previous wages earned by the individual, or a flat rate allowance could be used as a base. Benefit costs could be funded as pooled costs from the unemployment fund, from contributions from the workers, or from some other sources.

Transfer of unemployment credits earned by spouse. The Commission also considered an option to enact legislation to enable an unemployed homemaker who becomes "displaced" by reason of the death of a spouse to receive credit for UC benefits earned by the spouse. Such credits might be added to any employment record of the survivor who registers with the ES and cannot find "suitable" employment.

Pilot projects or studies. The third option includes administrative action to undertake a series of pilot studies

on the characteristics of individuals eligible for coverage under the two prior recommendations, the number of individuals likely to enter either category, the cost of the coverage, and possible methods of meeting costs.

The Commission recommended that the Congress and the DOL give consideration to these three options.

The recommendation for such consideration was adopted by the Commission by a recorded vote of 10 yeas, 2 abstentions (Commissioners Cooper, Hill).

In addition, the Commission unanimously recommended that the ES in each State find, at the State and local levels, appropriate and qualified persons who will be responsible for the establishment, implementation, and evaluation of appropriate services to displaced homemakers who register for work.

Discrimination on the basis of pregnancy

The Commission noted the provision in the 1976 Unemployment Compensation Amendments (PL 94-566), effective January 1, 1978, that states, "No person shall be denied compensation under . . . State law solely on the basis of pregnancy or termination of pregnancy." All States have brought their legislation into conformity with this Federal standard. Yet, based on experience with States that had no specific provisions on pregnancy, pregnant claimants may still be disqualified, not on the basis of pregnancy, but on the pregnant claimant's inability to meet State statutory conditions, including being able to work and available for work.

The Commission, in its recommendations on disqualifications, did not refer directly to the pregnancy issue but implied that it should not be used to disqualify a worker. In the section of the recommendations that deals with voluntary quit for good cause, the Commission stated that good cause should include "compelling family circumstances." With respect to search for work, the pregnancy issue is implicitly included in the Commission's recommendation that claimants be required "to demonstrate his or her availability for work by doing those things which a reasonably prudent person in his or her circumstances would do to find work" (see chapter 4.4).

Sexual harassment

The Commission received substantial testimony on the issue of sexual harassment (see chapter 4.4). There is no Federal law referring directly to this issue. The Commission, however, recommended specifically "that there shall be no disqualification in the case of voluntary quit for 'good cause,' including sexual harassment."

Discrimination based on family circumstances

The Commission discussed in considerable detail the problems that arise when one of two employed family members is relocated by an employer to an area in which there is no suitable employment for the other family member. Although this is not necessarily a women's issue, it has historically affected more women than men. The problem is becoming more significant, and it is impinging on the economic well-being not only of the families concerned but also of the area and the industries seeking new development and employees.

Testimony and commissioned reports have outlined examples of compelling family circumstances, which include lack of child care and sickness of family members. The Commission included, in its recommendation concerning voluntary quit, the provision that compelling family circumstances should be taken into account and should not constitute a basis for disqualification (see chapter 4.4).

Availability for work/active search for work

The Commission, in its discussion of work search requirements, specified that the definitions of availability for work, suitable work, and job search apply equally to men and women. The recommendation stated that availability be proved by

doing those things which a reasonably prudent person in his or her circumstances would do to find work . . . and States should require job search efforts by the claimant that are appropriate in light of such relevant factors as . . . the claimant's particular circumstances [see chapter 4.4].

This issue can relate particularly to women because family responsibilities often make work scheduling important.

The Commission also discussed setting eligibility criteria so that a person would be considered available for future work on the basis of past work. In other words, if a person had worked the third shift, that person would not be considered unavailable for work and thereby disqualified if the person would not accept work on the second or first shift.

Part-time work and benefits for partial unemployment

Part-time employment and the extent to which such employment serves as a basis for unemployment benefit rights is of particular concern to women. The Commission considered the issue, dealing with the definition of "availability for work" (see chapter 4.4) and with the determination of partial benefits (see chapter 4.5).

The Commission took account of the importance to the economy of permanent part-time workers. The Commission noted that women, and in particular working mothers, make up the bulk of the part-time work force and that their employment is usually an essential part of family income. The Commission therefore recommended that:

State law . . . should set no specific limitation that would automatically disqualify an individual who had a recent record of steady part-time employment. State policy should not interpret job search or suitable work in such a manner as to automatically require availability for full-time work [see chapter 4.4].

The Commission stated its belief that there should be substantial financial encouragement to accept part-time employment and recommended that benefits should not be reduced on a dollar-for-dollar basis (as is the case in some States). It recommended that benefit reduction might be on a percentage basis, such as 80, 75, or 66⅔ percent.

The Commission has not taken a position on payment of partial benefits to individuals who engage in worksharing, but it does advocate continued study and evaluation of various partial benefit provisions, including worksharing, to be conducted by the States, the DOL, and research organizations. The Commission also advocates inviting responses to the provisions from employers, labor, and the public (see chapter 4.5).

Coverage of household workers

Although many men are engaged in household work—especially when gardeners and handymen are defined as household workers—women make up the largest numbers of such workers today. Therefore, the extension of the coverage of UI to more household workers is basically a women's issue. The issue is dealt with in chapter 3.1.

The Commission found that, while in some States virtually all household workers are covered by UC, in others they are covered only when employed by relatively large household employers, that is, those employers who pay at least \$1,000 per quarter. The Commission felt that this constituted a discriminatory action and recommended that the present Federal Unemployment Tax Act (FUTA) coverage provisions defining employment by services performed by household workers be broadened to include the Social Security provision requiring coverage for employers with a quarterly payroll of at least \$50.

Dependents' allowances

The role of dependents' allowances in aiding the families of unemployed workers was considered along with the discussion of the weekly benefit amount. The findings and recommendations of the Commission on such allowances appear in chapter 4.2.

The discussion, and much testimony, on allowances dealt with the discriminatory attitude that frequently prevails when considering women's rights to such allowances. In many cases, the questions asked of women concerning their family finances differ from the questions asked of men. In some States, the law or regulation determining how these allowances should be calculated is highly discriminatory.

The Commission, after analyzing the testimony, decided to include in its recommendations in favor of dependents' allowances the following provision affecting women:

If a State wishes to add dependents' allowances, the provisions for those allowances should be equitable, should not discriminate in the statutory language or administrative practice as to the sex of the spouse, and should not require scrutiny of the family finances of any claimant [see chapter 4.2].

Older worker/lifetime reserve

The Commission considered the problems facing older workers, who frequently have special difficulty in maintaining their income because of retirement policies, their decreasing capacity for full-time employment, or limited openings for reentrants. The Commission noted in particular the increasing numbers of women in the labor force and the increasing proportion of women who must maintain their earnings or benefits at later periods in their life. In fact, the labor force participation of older women has risen in the last 30 years, while that of older men has declined (see chapter 5.2).

The Commission recommended a program to aid people in the passage from regular full-time employment, after layoff from a permanent job, to eventual retirement and receipt of social security. The program is designed for women and men who have a recent long-term attachment to the labor force, are involuntarily displaced from their jobs, wish to remain in the labor force, and have been unable to find new employment. For such persons, "lifetime reserve benefits" would be available at or after the age of 60.

Other issues

Many other issues in the Final Report have special ramifications for women. The Commission took note of the facts that currently more men than women file unemployment claims and that the percentage of men who appeal is far greater than the percentage of women who do so (see chapter 2.2). Besides the issues of coverage and exclusions for agricultural and household workers, the federally mandated restrictions on school employees affect more women than men (see chapter 3.2).

Taxing UI benefits also creates a double penalty on married unemployed women (see chapter 4.6). The Commission opposed such tax as discriminatory "since

not all other income is presently taxed under Federal income tax." The chapters on the interrelationship between UI and other job search programs, such as WIN or CETA, are also of great concern to women, since many of the reasons for unemployment revolve around personal issues, such as lack of child care or lack of skilled training that would make a woman eligible for a well-paying job (see chapter 9.4).

Footnotes

1. Margaret Dahm and Phyllis Fineshriber, "Women

in the Labor Force," *Unemployment Compensation: Studies and Research* (Washington, D.C., National Commission on Unemployment Compensation, 1980).

2. Of the other six reports, four are by the above two authors: "The Issue of Part-Time Employment," "Examining Dependents' Allowances," "Disqualifications for Quits to Meet Family Obligations," and "Administration of the Pregnancy Standard." The fifth, "Household Workers," is by Annette Kornblum, and the sixth, "Effects of Unemployment Insurance and Working Wives on Husbands' Unemployment," is by Gary Solon, Lois Black, and Curtis Gilroy.

11.0 Statistical Information and Research

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Adequate information about the Unemployment Insurance (UI) program is an important aid to its proper administration, to evaluations of the program's effectiveness, and to estimates of costs and other effects of existing and alternative provisions.

The Social Security Act calls upon the Secretary of Labor to report periodically on the condition of the UI system and requires the States to submit the information needed for this purpose. Based on this mandate, a regular statistical reporting system exists whereby State Employment Security Agencies (SESA's) collect and assemble data from their UI operations and transmit them periodically to the Department of Labor (DOL). The DOL summarizes and publishes the data in various forms providing totals for the nation and individual States. Most States also publish their own data, usually in greater geographic and other detail.

In addition, special studies obtain more information than the regular reporting programs can provide to explore selected aspects of the program in some depth and intensity. This research may be carried out by SESA's at their own initiative or through the encouragement and sponsorship of the DOL. The latter carries on research and analysis functions in its Unemployment Insurance Service (UIS) unit and funds researchers outside the system to pursue studies of the program.

The Commission reviewed a number of issues relating to the statistics and research activities of the UI system. Title IV of PL 94-566, which authorized the Commission, called upon it to:

- "Review the present method of collecting and analyzing present and prospective national and local employment and unemployment information and statistics."
- Identify "any weaknesses in such method and any problems which result from the operation of such method."
- Formulate "any necessary or appropriate new techniques for the collection and analysis of such information and statistics."

This chapter describes the present regular statistical reporting system, a new automated microdata base, and some of the problems associated with the compilation and reporting of the data. It also reviews the status of research activities and the manner in which data and research results are made available to the public along with the need for improvements in these areas.

UI statistical reports

Table 1 provides some idea of the range and content of the data that States must report regularly about their UI program activities. Besides the significance of the

data for program management and evaluation, some of the data also have significance for general economic analysis.¹ For example, UI claims activity data help to signal changes in the direction of the U.S. economy. The weekly series on initial claims (which indicates the level of new unemployment) is a basic leading economic indicator, and the series on continued claims is a concurrent indicator. These statistics appear regularly in *Business Conditions Digest*, the Department of Commerce's journal of business-cycle statistics, and are widely circulated in other economic and business publications. Of course, State and national weekly insured unemployment data are used to determine, automatically, the triggering on and off of extended benefits.

Data from the ES 202 report—*Employment, Wages, and Contributions*—are used extensively for developing

TABLE 1. A selected list of required UI reports

Report name	Report number	Frequency
Employment, Wages and Contributions	ES 202	Quarterly
Characteristics of the Insured Unemployed	ES 203	Quarterly
Experience Rating Report	ES 204	Annually
Annual Distribution of Claimants by Earnings	ES 206	Annually
Nonmonetary Determination Activities	ES 207	Monthly
Weekly Report of Claimstaking Activities	ETA 5210	Weekly
Claims and Payment Activities	ETA 5159	Monthly
Benefit Rights and Experience	ES 218	Quarterly
Overpayments and Willful Misrepresentation	ES 227	Biannually
Payment Activities Under the Disaster Relief Act of 1974	ETA 532	Monthly
Extended Benefit Data	ETA 539	Weekly
Trade Readjustment Allowance Activities and Employment Services	ETA 563	Monthly
Contribution Operations	ETA 581	Quarterly
Interstate Arrangement for Combining Employment and Wages	ETA 586	Quarterly
Benefit Appeals	ETA 5130	Monthly
Monthly Analysis of Benefit Payment Account	ES 8401	Monthly
Summary of Financial Transactions, Title IX Funds	ES 8403	Monthly
Monthly Analysis of Clearing Account	ES 8405	Monthly
Income-Expense Analysis, UC Fund, Benefit Payment Account	ES 8413	Monthly
Income-Expense Analysis, UC Fund, Clearing Account	ES 8414	Monthly
Statement of Expenditures and Financial Condition of Federal Funds for Unemployment Compensation for Federal Employees, Ex-Servicemen and Veterans	ES 191	Monthly
Statement of Selected Workloads and Expenditures of Federal Funds for Unemployment for Ex-Postal Service Employees	ES 191A	Quarterly
UI Financial Transactions Summary	MA 2112	Monthly

other economic statistics and for economic analysis. The Bureau of Labor Statistics (BLS) uses ES 202 data as a benchmark for current estimates of national, State, and local area employment. The Department of Commerce's Bureau of Economic Analysis uses them as a partial basis for national income and personal income estimates. The ES 202 is also a source of data used by business and research organizations for market research and other studies.

The *Characteristics of the Insured Unemployed* report (ES 203) provides information for each State about the age, sex, race, industry, occupation, and duration of unemployment of UI claimants. These data help expand and deepen the analysis of the nature of all unemployment in the nation of which the insured unemployed represent a large proportion.

The DOL in cooperation with the Interstate Conference of Employment Security Agencies (ICESA) and individual State Employment Security Agencies recently conducted a comprehensive review of the required reporting system.² They recommended that unnecessary or redundant data elements be eliminated to reduce each State's reporting burden.

To further ease the State burden and increase the speed and efficiency of data reporting, the DOL hopes to implement a streamlined automated statistical reporting system. Under the proposed system, State agencies would transmit the data, directly by telephone, to DOL regional office computers from their own State computers. The data would then remain in the regional computers until needed by DOL's national office.

At the present time, although States vary in their degree of computerization, each State generally assembles the required data and stores them in a large central office computer. When States submit data to the DOL, the data are taken off the central office computer and manually put on Federal reporting forms. These forms are then mailed to the DOL national office with copies going to the regional offices. The data in the reports are keypunched at the national office and put on a DOL computer that then aggregates the separate State data and prints out the final report for the entire United States. Revisions or additions to a month's report must wind their way through this same tortuous process until a corrected final report is eventually produced.

The present system is deficient in a number of respects. For one, the State central and local offices, and the DOL national and regional office do not all have access, or easy access, to the data base that accumulates from the reports.

Second, the UI system produces an enormous amount of data, but the data do not have the organization or format that would allow their use with speed or efficiency. For example, a user who wishes to analyze data for all States from two different reports has to extract the data from two different printouts or two separate reporting data tapes and calculate some rela-

tionship. The process is slow, costly, cumbersome, and inefficient and discourages frequent use.

To remedy this deficiency, the DOL is creating the UI reporting data base that logically will bring together and accumulate all the data from many of the separate required reports, enabling rapid and efficient computerized extraction and statistical analysis.

A longitudinal data base

In effect, the data compiled and reported regularly by the States represent a cross-sectional view, a comprehensive snapshot describing the program at a moment in time. Once in this aggregate format, information about individuals or firms cannot be analyzed and followed over time. Researchers cannot tell how the program affects the behavior of claimants. Does post-unemployment behavior of workers differ because they had received benefits? Do they receive higher postunemployment wages? Similarly, analysis of the behavior of firms is impossible. Do they tend to lay off fewer workers and make greater use of overtime if their UI taxes rise because of benefit changes?

The lack of answers to such questions hampers policymaking on such important issues as the level and duration of benefits for claimants and the levels of tax rates and the tax base for employers. One way to answer some of these and many other important questions is by the creation of a source of longitudinal statistics, data that describe the experience of individuals and firms over time.

Such a data source is now under construction for UI claimants and covered workers—the continuous wage and benefit history (CWBH). It is "continuous" in the sense that it follows the employment and unemployment history of a sample of UI claimants and covered workers over time.

The CWBH design was developed after consultation with many labor economists, other researchers, and SESA personnel to determine the appropriate content for the future multipurpose data base.

The DOL launched a pilot CWBH project in fiscal year 1977 in which 14 States are now participating.³ Currently, most are producing data. These data have passed preliminary testing and are provisionally available for analysis and research use. Nearly all 14 States are expected to be producing usable CWBH data by December 1980.

The CWBH data base in each State is developed for a random sample of workers and claimants sufficiently large to provide statistically reliable data on UI beneficiaries. To ensure a sufficiently large sample in years of both high and low unemployment, the minimum CWBH sampling rate adequately represents a universe equal to the smallest annual number of first payments in the past 10 years. At this rate, each State sample is expected to contain at least 3,000 first payments in a

year when the UI claims load is low. In fact, among the 14 pilot States, the CWBH samples currently include between 12,000 and 50,000 first payments.

In each State, the CWBH system follows the individuals in the sample through all their employment and unemployment as reflected in the State agency records covering their UI experience and their wages and employment as reported by their employers, where available.⁴ About 90 percent of the data incorporated in the CWBH file is drawn from the agency's operating records. Remaining data come from a questionnaire filled out for each sampled individual at the time a new initial claim is filed. The questionnaire provides more extensive and more accurate information about the individual's economic and demographic characteristics than is available in agency operating records.⁵

The CWBH has already demonstrated its potential and actual value through a variety of UI research conducted by State agencies, the DOL, other Federal agencies, and private researchers. In addition to its applications for UI research and evaluation, various Federal agencies have expressed interest in or are using the CWBH for research and analyses that relate to UI only indirectly or not at all.⁶

It is too early to make CWBH tapes available to researchers outside of the government. In the future such tapes will be made available but purged of social security number identification, thus assuring privacy to claimants and workers.

State agencies are employing the CWBH for uses beyond those envisioned by the DOL. Several States conduct a larger sample survey than required for CWBH, in order to provide local area employment and unemployment estimates. Utah includes all claimants in its CWBH file. Pennsylvania is creating several multipurpose data bases and will merge the CWBH with other data to expand its capability to estimate costs and effects of legislative proposals, to conduct labor market analysis, and to improve program management.

The 14 States in the pilot project together do not constitute an adequate national sample. The addition of a few more selected States such as California, Massachusetts, Michigan, Texas, and one of the other Great Lakes States, would make State representation adequate for generalizing research results that would be valid for national needs. Eventually, CWBH should include all States in the UI system.

Before CWBH can be expanded to more States, it must demonstrate that it meets its objectives as a reporting and research data system and that it is cost effective. A preliminary cost-benefit study has indicated that the CWBH recoups one-quarter of its costs by replacing previous methods of research and reporting.⁷ Given the rapidly increasing new uses of CWBH, the system should soon prove to be cost effective as well as a valuable research and statistical reporting tool.

UI research and analysis

To some extent, information about workers and their earnings as recorded by the Social Security program can be helpful to UI. Not only is this true for research purposes where Social Security data can extend or confirm UI information about the same workers, but the data can also serve to aid UI claims administration and control programs for overpayment and fraud. Social Security has converted from quarterly to annual earnings reporting. The available information, therefore, is less valuable for UI purposes. Nevertheless, it is desirable to have available all data that may be useful for UI. Social Security laws and regulations, however, close off access to this information to protect its confidentiality and the privacy of individual workers. Some exploration of this problem seems warranted to find a way to facilitate exchange of information between the two programs.

Apart from adequate compilation and reporting of statistical data from the UI program's operations, considerable research activity must be applied to exploit the data fully and to supplement them with special studies. Such research and analysis that occur at the State level are concerned primarily with the State's own program. At the Federal level, the UIS conducts or supports research relating directly to UI program goals and operations, to benefit payment activities, and to benefit financing. UIS also works with the States in planning and conducting UI research.⁸

UI research, as related to the program itself, consists of two broad areas: (1) benefit payment research dealing with activities involving those provisions in the law, and their administration that concern eligibility, amount and duration of benefits, and other aspects affecting UI claimants and (2) actuarial research dealing with program financing—taxes, costs, and fund management. Both types of research go on at the State and Federal levels.

UI research fund limitations

The amount of UI research and evaluation analysis that occurs is severely restricted at both State and Federal levels. For the UIS, the annual budget allocation for research has been \$157,000 for several years. For State agency UI research, funding totals no more than \$4 million a year. In a program that pays out between \$10 and \$20 billion a year in benefits, the total resources allocated to research represent a very tiny fraction of total program outlays—less than 5 hundredths of 1 percent (0.02 to 0.04 percent). In a private corporation, typically at least 1 percent of sales is devoted to research and development. For UI, 1 percent of total benefit outlays would amount to between \$100 million and \$200 million.

For many years, there has been serious concern about the inadequate level of UI research being undertaken. In the Employment Security Amendments of 1970 (PL 91-373), the Congress mandated a "comprehensive research program" and authorized \$8 million a year to carry it out. At that time, total benefit outlays were running between \$2 billion and \$3 billion a year; the authorized funding level for research was only about one-third of 1 percent of those outlays. The research program mandated by the Congress was never realized. Appropriations initially were well short of the authorized level and have declined since then even while inflation has eroded the real worth of the research dollar.

In January 1978, the Federal Advisory Council on Unemployment Insurance called to the attention of the Secretary of Labor the meager resources devoted to UI research and the consequent inadequacies of that function. The Council urged a general upgrading of research at Federal and State levels, and an eventual doubling of the DOL's UI research budget. These proposals were among a series of recommendations by its UI Research Subcommittee that the Council adopted.

When the Commission began its work, it was necessary to contract for many special studies. A total of about \$4.3 million was allocated for this purpose. Much of the research required time to plan, conduct, and analyze, which made their results less timely for adequate use by the Commission. The inadequacy of the research conducted in prior years has posed difficulties for the Commission's work.

The UI system has been particularly inadequate in the amount of work done on systematic and scientific program evaluations and demonstration projects. Such studies can evaluate the effectiveness of existing programs and procedures and help to determine which alternatives would work better. Some examples of possible issues for further study are: mail versus in-person claims, eligibility requirements, continuing eligibility, suitable work, lump sum payment, post-UI program, and positive adjustment assistance.

Funds allocated to the States for UI research have been able to support a staff of less than 200 throughout the country. In fiscal year 1979, many small States assigned UI research to one person who was also responsible for other functions as well. In the 10 largest States, the size of the UI research staff funded ranged from less than 2 persons to 14 persons. In most States, the number of researchers is not enough to maintain an adequate research program. Moreover, turnover in UI research staff is high because of low State salaries; a good UI researcher, with skills developed, can do better elsewhere and is likely to move on to a better paying job in private industry.

A recent study, funded by the UIS, concerning State UI research and research units found that most (over 70 percent) of the State research staff was classified as

professional and most of these had college degrees.⁹ The study also found that State research units generally had little computer support and little access to standard statistical software packages. To a large extent, their predicament reflects the low priority given to the research function in many of the States.

The study found that when asked to describe major research efforts undertaken during the last 12 months (not including normal reports or special requests not considered major), the States responded as follows:

Major research reported	Number of States
Nothing	10
Historical statistics	12
Legislative reports (impact of implemented or planned legislation)	15
Benefits financing (including forecasting models)	27
Special research (e.g., postexhaustion studies)	20
CWBH	14
Claimant characteristics	2

These results are not surprising considering that staff levels in many States preclude anything other than routine functions, but they raise questions about the intellectual rudder of a system likely to continue to experience substantial benefit financing difficulties. There is need for more and better quality UI research among the States.

There appear to be important differences among the States in how the research function is regarded by agency directors and the management team. When there is a positive attitude, the research units play a significant role within their agencies in policy analysis, interpreting data, and making related recommendations. Their opinions are sought, and unsolicited analyses are welcomed. In other States, the research units are generally excluded from a policy role and more occupied in the generation of numbers with little or no analysis. The vitality of a research unit is thus a function both of resources and also attitudes of upper management toward research and its use within the agencies. More adequate funds and better attitudes toward UI research are necessary to revitalize that function in the States.

Several other means of strengthening State UI research have been suggested. One is to initiate a State UI research output program that clearly defines the work expected of each State in the coming fiscal year. These output expectations would be specified annually in the Employment and Training Administration's (ETA's) *Program and Budget Planning (PBP) Guidelines*. At present, UI research is but one of several functions handled in the State agencies by their research and analysis (R&A) units. These functions, among others, include the production of labor market information (LMI) materials for the ETA and local area unemployment statistics (LAUS) for BLS. Both LMI and LAUS outputs are specified precisely with budgets designated accordingly. Other functions, such as UI

research, are not so specified and, as a result, receive less attention and little or no stress. The suggested State UI research output program would help remedy the imbalance and establish higher priority for UI research in the State R&A units. Designated line-item budgeting for State UI research would better ensure the execution of research plans.

A more active DOL regional office role in UI research would also be helpful to the States in this area. Research coordinators in these offices, after extensive training in the research and actuarial methods used, could review regularly State plans and performance.

Another initiative that could strengthen State UI research is the establishment of a system of UI regional research centers (RRC's) each located at a major research institution, one in each of the DOL regions. If located at a university, the RRC would be staffed by the equivalent of two full-time faculty members and a number of graduate research assistants given dissertation fellowships for work in UI. The RRC's would complement the support efforts of the UIS by conducting studies or assisting technically in the conduct of State research studies, as requested by SESA's; by providing training to State technicians; and by developing a pool of trained UI researchers from among the graduate research assistants at the center. The estimated annual cost per center is \$300,000.

Benefit financing research

Benefit financing research has advanced to a sophisticated level, but the needs and demands for such research are beyond the program's present capacity to fulfill.

The Division of Actuarial Services in UIS produces legislative, budgetary, and workload estimates by using a series of computer models that have been developed since 1975. One of the computer models of particular interest is the State benefit-financing (formerly, the Mercer) model. By simulation, key variables are filtered through the model of a State's UI system to project their impact on the State's trust fund balance. The model has proven to be a valuable tool to State analysts when studying their State's benefit financing system and developing strategies for achieving and maintaining trust fund solvency. It helps the States to determine what path to take to achieve their benefit-financing goals and aids them in making the choices necessary to meet those goals. Specifically, by simulating the impact on the State's UI system under given economic assumptions, it allows the State to play a "what-if" game with respect to alternative economic assumptions and changes in the State's benefit-financing provisions.

In its present form, the model is designed for States with reserve-ratio experience-rating systems. It is cur-

rently available for use by nine States; considerable work has been done for an additional four States. Other States have requested it, but the actuarial staff is insufficient to meet the demand. At present the UIS provides the model to two or three additional States per year. At that rate, it would take about 15 years to get the model to all States. To get this model into use in all States in 5 years would require an estimated five additional staff positions in the Division of Actuarial Services.

The Division provides a wide variety of technical assistance to the States for benefit-financing research. It offers benefit-financing seminars once or twice a year for State actuaries at the intermediate and advanced levels.

Publications of research and program information

UI research results must be communicated to policymakers and other researchers for the research to have any impact on the program. The UIS has recently initiated the *UI Research Exchange*, a semiannual publication that contains research summaries, research findings, announcements, book reviews, and research opinions. The publication presents information on UI research planned, in progress, and completed at the Federal and State levels and outside government as well. It fills a needed gap in the dissemination of research information.

UI Statistics is a publication that contains data from the required reporting system. It provides a variety of program statistics. Several changes would improve the publication. Both the format and content of the publication should be revised. Technical notes and a glossary should be added. The publication also would be more useful if it contained graphic presentations and introduced historical and other analysis.

The Handbook of Unemployment Insurance Financial Data is another important reference source of UI statistics. This handbook provides annual data, by State and for the United States, going back to 1938. It was last published in 1978 and contained data through 1976. Supplements issued each year bring the information up to date.

In addition to these publications, some statistical data on the UI program are included in the *Monthly Labor Review* and the *Social Security Bulletin*. Previously, analyses of the program and special articles were published in the *Employment Security Review* and later, on a much reduced scale the monthly magazine, *Manpower*, neither of which is now published. There is no current periodical publication that features information and articles about the UI program.

Findings

The magnitude and significance of the UI program necessitates its continual evaluation. Information must be available to provide to decisionmakers, legislators, and the public, especially at crucial times in the business cycle. Needed information must be planned, collected, organized, and used.

Continuing research and the ongoing analysis of information and statistics should serve to monitor and test program performance. Research is a powerful tool for policy development. It can also be used to improve accountability, to provide data for public understanding, and to generate special information for particular uses, both in and out of the government.

There is need for the UIS to develop plans for the automated transmission of UI operating statistics from the State agencies to the UI regional offices and national office and to implement these plans as soon as a regional computer network or similar network is established. There is also a need to establish a UI reporting data base containing all reported data to serve research and management information needs and to make it available to State agencies as well as the DOL national and regional offices.

The development of CWBH is a valuable addition to UI research and will be especially useful when expanded to a nationally representative sample of States. The ES 203 report (*Characteristics of the Insured Unemployed*) could be generated from the CWBH as States adopt this system. (The UIS presently allows States to substitute CWBH sample data for the ES 203 sample data.)

The research effort of the DOL in UI has continued to decline, at least since 1970. The State research programs also need more vitality. Effective applied research is one of the important preventions against organizational debilitation.

The scope of research now is too miniscule for a program of the size and economic importance of UI.

As the research effort is expanded to pressing issues in benefits and financing, the publications that communicate results to labor, management, the public, and the research community should be broadened and intensified.

Estimates are that all of the improvements suggested with regard to collection, compilation, and reporting of UI data and other information, plus increases needed in national office research and actuarial staff, increases in the number of State research positions from 200 to 300, and improvements in and additions to publication can all be achieved for a total cost of about one-third of 1 percent of the annual aggregate of benefit payments averaged over several years.

Recommendations

With regard to the compilation, assembly, and reporting of data, the Commission recommends that:

1. All State reports and other operating statistics compiled by the DOL national office should be transferred into an electronic UI data base that may be used for reporting, research, and management information. This data base should also be made available to the SESA's and the DOL regional offices.

2. The CWBH data base should be expanded to a nationwide system by 1990. In the interim, a nationally representative sample of States should be integrated into the system beginning in FY 1982. As States come completely into the system, the ES 203 report (*Characteristics of the Insured Unemployed*) should be generated from and eventually replaced by the CWBH.

3. Any necessary changes in law or regulations that are needed to provide full exchange of information between the unemployment compensation and social security systems should be undertaken. Full confidentiality should be maintained and, accordingly, this exchange should not in any way constitute a violation of the Privacy Act.

With regard to UI research and analysis, the Commission recommends that:

4. The efforts expended for research should be expanded, particularly in the areas of program evaluation and demonstration projects. This research should be applied practical research aimed at increasing the efficiency of the UI program and improving the quality of service to UI beneficiaries and employer taxpayers. The program evaluation and demonstration projects should include studies of the operation and administration of the UI system.

5. The UIS should provide the staffing and other resources to develop, export to the States, and maintain the State benefit-financing model in all States within 5 years.

6. New initiatives should be taken by the DOL to provide more technical assistance and staff development at the regional and State levels, including centers at different localities throughout the nation in order to encourage research in unemployment insurance and related areas.

7. States should be encouraged to do research in both benefit and financing areas and have the necessary support staff to do so.

8. All of the above data collection and research for actuarial and program development purposes at both State and national levels should have an annual budget of about one-third of 1 percent of average annual benefit payments of recent years. Each State should have at least two full-time researchers. For all States

the total research personnel should increase from about 200 to at least 300.

The Commission also recommends that:

9. The DOL reestablish and publish a monthly *Employment Security Review* covering significant aspects of both unemployment insurance and the employment service, including both statistical data and evaluation of program experience. Significant data and evaluation articles should be published, for instance, on financing and benefit adequacy data, State solvency provisions, the claims and appeals processes, existing or proposed performance standards, overpayments, underpayments, fraud, collection of contributions, experience-rating, the operation of the employment service, special income-protection programs, and labor market data affecting the system.

Footnotes

1. For a more extensive description of UI data and their uses, see Saul J. Blaustein, "Insured Unemployment Data," in *Data Collection, Processing, and Presentation: National and Local*, Appendix Volume II to *Counting the Labor Force* (Washington, D.C., National Commission on Employment and Unemployment Statistics, 1979).

2. CURB Committee, *UI Required Reports Review*, CURB recommendation (Oct. 1978), mimeo.

3. Georgia, Idaho, Iowa, Louisiana, Missouri, Nevada, New Mexico, New York, North Carolina, Pennsylvania, South Carolina, Utah, Washington, and Wisconsin.

4. Most States receive quarterly reports from cov-

ered employers containing earnings and employment information for individual employees. About a dozen States do not have such information.

5. A comprehensive analysis of the current CWBH questionnaire has been conducted. See Richard Strouse, *An Evaluation of the CWBH Questionnaire*, Draft Report (Mathematica Policy Research, July 1979).

6. For example, the Bureau of the Census wishes to use CWBH as a sampling and data source for its Survey of Income and Program Participation; the Bureau of International Labor Affairs (DOL) would use the CWBH design to develop a data-reporting system for the Trade Readjustment Assistance program and to analyze the labor market behavior of trade-impacted workers; and in the Employment and Training Administration of the DOL, the Office of Policy Evaluation and Research (OPER) would combine CWBH data with Employment Service and CETA data to study worker labor market experience and job services received; and the DOL Office of the Assistant Secretary for Policy Evaluation and Research (ASPER) would use CWBH to study the problems and labor market behavior of structurally dislocated workers.

7. Walter Corson and David Long, *A Benefit Cost Analysis of the CWBH Program* (Mathematica Policy Research, Sept. 1979).

8. OPER supports UI research that goes beyond the UI program itself, for example, studies relating to the efficient use of the labor force. ASPER pursues research that relates UI to economic policy and reflects overall Department goals and priorities.

9. James S. Hanna and Raymond J. Uhalde, *An Assessment of the State UI Research Program with Recommendations for the Future* (Nevada Employment Security Department, May 1980).

12.0 Commissioners' Supplemental Statements

12.0 Commissioners' Supplemental Statements

Report as a whole

Commissioners Bivins, Cooper, Crosier, Hill: The 45-year-old Federal/State Unemployment Compensation (UC) program has served this nation remarkably well. It has experienced considerable change through revisions of the Federal statutes—particularly in the areas of coverage and financing. It has been nourished by thousands of amendments to the various State laws. The vitality and resiliency of the system is largely attributable to the continuing response of State legislatures to the changing needs in each of the 53 jurisdictions involved. The careful balance between Federal and State responsibilities upon which the system was founded is the major reason for its success. Any change in that balance should be approached with trepidation.

The majority of the Commission has voted to shift significant program responsibilities from the States to the Federal Government. Although we acknowledge that imperfections exist in State laws, we submit—and this report substantiates—that Federal laws are equally imperfect. In spite of that, many of this report's recommendations would curtail or confine State prerogatives and broaden Federal controls.

In addition to that fundamental philosophical defect, several of the recommendations are vulnerable for technical reasons, and others are unacceptable because they encumber the system with objectives beyond the basic design of UC.

Our principal concern is that the report lacks balance. Many of the program "reforms" contained in it result in substantial cost increases. Few result in reducing costs. We object to the trend of increasing benefits and reducing eligibility criteria.

We are also concerned that the report contains no overall estimate of the balance or imbalance between additional costs and added revenues.

Those of us endorsing these general concerns about the report voted with the majority on many issues. Some of us dissented more often than others. Most recommendations indicate who supported and who opposed the decisions reached, and in some instances a brief statement of the minority follows the recommendations. This, to some extent, relieves the impulse to respond to every decision individually.

Commissioner Coleman: The strengthening of the unemployment insurance (UI) system has been of enormous concern to all employers since, by protecting the unemployed, it protects those who employ. What is needed, in my opinion, is not an entirely new system that might entail untoward risks, but one that will be responsive to the new problems that have arisen since this program was started nearly 50 years ago. We must

address ourselves, for example, to the financial problems and the burden of new programs that, due to lack of personnel and adequate funding, add to the difficulties of the present system. The financing of the UI system by the employers is one of its strengths, and, since experience rating is what keeps the employer community concerned and interested, it seems to me fundamental that it be continued.

The current recession only underscores the importance of the UI system and the need to improve it. Any comparison of early depressions, particularly that of the thirties, will point up the difference in human dignity as well as in the countercyclical effect the UI system has had. Again, those who finance UI are the ones who have considerable self-interest in maintaining an efficient and effective system, which should be improved along the general lines recommended in this report.

Commissioners Daniels, Morris, Seidman: We favor most of the recommendations in this report and are convinced that, if they are adopted and enacted, the nation and its workers will have a greatly improved system of UC that, in good times and bad, will afford much more effective income protection to jobless workers and their families. Thus we have no doubt that the overall impact of implementation of the Commission's recommendations would be distinctly positive, and therefore we fervently hope that the President, the Congress, and the States will direct immediate consideration to them.

As we indicate in separate supplementary statements, we do not support all of the Commission's recommendations, and in some cases we support the recommendations because they are a move in the right direction even though we believe they do not go far enough.

In addition, we wish to comment briefly on two major issues that are not dealt with in this report.

The first is the structure of the program. We favor a federalized program rather than the current Federal-State system. We believe that it is a historical accident that UC was not established as a Federal program with uniform benefits and taxes, as was the other major social insurance program established under the Social Security Act—old age, survivors, and disability insurance. Instead, the States have had the major role in determining the majority of the most important aspects of the UC system. This has resulted in very uneven protection of unemployed workers based on the happenstance of where they live and work.

To some extent, the Commission's recommendations for Federal minimum benefit standards would correct this inequity. However, the benefit standards would not deal with all features of the program, and States would be free, as they are now, to establish all sorts of requirements and restrictions that benefit employers and diminish the protection of workers. Thus, even if the

Federal minimum standards the Commission has recommended are implemented, workers in the different States will not enjoy equal protection.

We can see only one way of remedying this situation, and that is by federalizing the program, as organized labor has long advocated. However, we are realists, and we recognize that such a change is unlikely in the near future. Therefore, we strongly support the introduction of Federal minimum standards into the program and urge the President and the Congress to work for their implementation at the earliest possible date.

The second issue on which we wish to comment is experience rating. The United States is the only country in the world with this feature in its UI program. While other countries have been fully aware of this anomaly in our program, none has seen fit to introduce it into its own system.

We think they are right not to have done so. Under experience rating, employers pay higher taxes when the *compensable unemployment charged against them* rises. Thus, when their employees are displaced from their jobs, employers have every incentive to resist their claims for UC, no matter how legitimate, and this they have done. The result is that large numbers of jobless workers are denied the payments to which they are rightfully entitled. Their loss of subsistence payments is the employer's gain in lower taxes. The only way of removing this perverse incentive from the system is to abolish the experience-rating method of tax determination.

The second reason for our opposition to experience rating is that it produces a regressive tax system that maximizes unemployment. Low-wage employers in declining industries with erratic or decreasing employment are hit with the highest tax rates. Prosperous employers who are able to maintain steady employment have the lowest tax rates or, in some States, none at all. Thus, the system perversely penalizes those employers least able to bear the burden of the highest tax rates, adds to their costs, and forces them to lay off even more workers. This then adds to their tax rates, and the vicious cycle continues until they are taxed at the highest rate the State law establishes.

As with federalization, we see little prospect for the abolition of experience rating. Therefore, assuming that experience rating will continue, we support a number of the Commission's recommendations that may mitigate some of its worst effects, such as the strengthening of claimants' rights.

Commissioner Sanchez: Our employment insurance programs have, for over 45 years, contributed to the protection of unemployed workers by providing cash benefits to claimants unemployed through no fault of their own. Employers have, for the most part, recog-

nized the fact that these same workers have provided them with valuable service and therefore should be provided some measure of security when they find themselves unemployed.

We can take great pride in the fact that never in the 45 years of the existence of the programs have benefits not been paid. However, the fact that 25 States required loans from the Federal Government during the mid-seventies recession demonstrated that the financing of the UI system is inadequate for today's needs. Therefore, much examination and discussion of the financing of the program has been done by this Commission. The loading down of the system with special programs, its inadequate staffing, and restrictive administrative financing and regulations also have been given a great deal of thought, and much research has been done on these matters. At no time were the needs of claimants—as persons who deserve to be treated with dignity—forgotten. Much discussion and research also has gone into representation of claimants, disqualifications, duration of benefits, qualifying requirements, and the like. I have become convinced that, while not perfect, the Federal-State partnership has proven to be the best way of addressing the needs of the many different regional areas of this country. I also am convinced that experience rating, as a way of providing some measure of equity in the taxing of many different types of employers and of maintaining their interest in the management and financing of the system, is best left in place. It is my hope that as future changes in the program are contemplated, at both the State and the Federal level, the work and research of this Commission will be used to help chart a thoughtful, reasoned course.

Chapter 3.1

Commissioners Bivins, Coleman, Cooper, Crosier, Hill: Evidence submitted at Commission meetings in Austin, Texas (Oct. 19–21, 1978), and Orlando, Florida (Jan. 25–27, 1979), convinced us that alien farmworkers entering the United States under a contract between our government and a foreign country are not adversely affecting wages or job opportunities for domestic farmworkers. The contract for the alien workers is approved *only* after the U.S. Department of Labor certifies that domestic labor is not available. There is a legal prohibition against paying a wage that would adversely affect U.S. workers.

Foreign workers are brought into this country under these temporary, limited arrangements because domestic workers cannot be found to do the work. Employers using contract alien workers must pay transportation costs, provide approved housing and food allowances, and so forth. Such expenses are not required for domestic workers, so employment of the foreign workers is not less expensive.

Contract alien workers cannot draw unemployment compensation. They present no *risk* to the system. We see no valid reason for requiring farm employers to pay UC taxes on such workers. They are not required to pay social security taxes on these workers, and the rationale is the same.

Adding unnecessary costs to the production of any commodity fuels inflation. It is particularly lamentable when that commodity is food. Adding unemployment taxes in this instance does nothing for the workers; it just increases the price of the product—a product, which, in most instances, is a necessity.

Commissioners Daniels, Morris, Seidman: It is felt that, in order for the UI system to respond to the migrant worker who becomes unemployed, a uniform requirement is needed in the States to establish who has reporting responsibility when a farm operator or crew chief hires migrant workers. One or the other is responsible. A uniform procedure must be established for making tax payments and reporting the names of each migrant worker separately (by farm operator and/or crew chief) to the appropriate government agency.

Under circumstances where the farm operator and the crew leader agree in a signed contract that the crew leader assumes the responsibility to be the employer, the crew leader and crew must be formally advised by the farmer-operator of the crew leader's obligation to pay the employer's UI taxes. The crew leader under these circumstances should be required to register with the State and receive a State registration number. The farmer-operator who hires the crew leader should be responsible for ascertaining that the crew leader has a State registration number and for reporting to the farmer-operator's State agency that the crew leader is to make the required UI tax payments. The decision to hire a crew leader is solely that of the contracting farmer-operator, and therefore the farmer-operator has the obligation to report the crew leader's State registration number and the number of workers used by the crew leader to the farmer-operator's home State UI agency.

Chapter 3.2

Commissioners Daniels, Morris, Seidman: The Commission's recommendation would narrow but not eliminate the existing discrimination in both Federal and State laws against professional and nonprofessional employees of educational institutions, professional athletes, and receivers of retirement income. Justice and equity dictate that there should be no discrimination against any category of employee. Workers should be treated under UC laws as individuals and not as members of arbitrary categories. This could be accomplished by eliminating the special denial provisions in the Federal law but extending the equal treatment re-

quirements to all workers. This would prohibit any State from establishing separate eligibility conditions, benefit amounts, duration provisions, and so on for any particular category of workers. In other words, it would restore equitable treatment to all workers.

It may be argued against this recommendation that it could have the unintended effect of prohibiting dependents' allowances and weighted benefit schedules. This strikes us as a strained interpretation of the change in the law we are recommending. But if such an interpretation can be placed on it, the Congress could, when it deals with the question, specifically provide that the new provision does not prohibit States from including such features in their laws.

Chapter 4.1

Commissioners Daniels, Morris, Seidman:

Comments on base-period attachment. We feel that 39 weeks of employment is far too long as a requirement for eligibility for 26 weeks of benefits. The maximum requirement should be 20 weeks, as in the bill that passed the Senate in 1966.

Comments on alternative qualifying requirement. We recommend that the alternative, in the form of a flat dollar earnings requirement, be included in all State laws in order not to penalize certain workers, such as actors and other performers, some construction workers, and other workers, whose involuntarily intermittent employment would bar them from UC protection under qualifying requirements based on duration of employment.

Chapters 4.1–4.5, 7.3

Commissioners Daniels, Morris, Seidman: We would very much like to see the States incorporate all of the provisions of a desirable State law the Commission has recommended because this would greatly improve the nation's UI system. Unfortunately, based on the past record, we see very little chance that this will happen. Therefore, we recommend to the Congress that these provisions be considered for inclusion in the Federal law as requirements for all States. The specific provisions are those related to weekly benefit amount, wage replacement rate, labor force attachment (qualifying requirements), waiting periods, disqualifications, job search placement, eligibility while temporarily ill or disabled, appeals period, double affirmation, benefit eligibility from part-time work, dependents' allowances, availability for work and active search for work, and benefits for partial unemployment.

Chapter 4.2

Commissioners Bivins, Cooper, Crosier, Hill, Sanchez: The Federal benefit standards recommended by a

majority of the Commission are neither desirable nor necessary. Their adoption would signal a strong move toward more federalization of a program that, in our opinion, has succeeded because Federal intrusion into substantive program areas has been limited. Standards on benefit levels will, in our view, inevitably be followed by standards on qualifying requirements, eligibility conditions, disqualifications, and duration. These will be considered necessary to restrain States from enacting restrictive provisions in order to stabilize the benefit cost and tax increases resulting from the original standard. The majority of the Commission felt compelled to recommend, along with a standard on benefit levels, another standard prohibiting States from requiring more than 39 weeks of work for 26 weeks of benefits. Enactment of these standards—and others that will inevitably follow—will produce a UI program less adaptive to significantly different and changing local conditions and needs.

The function of adjusting and balancing key UI elements to reflect local interests and economic realities will be further removed from State legislatures if these standards are enacted. It not only deprives States of this flexibility but simultaneously imposes upon them the responsibility for raising the money to pay for the benefit cost increases.

At a time when a number of State funds are at or near depletion, the $\frac{2}{3}$ benefit maximum will increase costs substantially in several of these States without ensuring benefit adequacy. The $\frac{2}{3}$ ceiling will be inadequate in some States and unnecessarily high in others to meet the familiar goal of a benefit structure geared to provide a 50 percent wage replacement to 80 percent of insured workers if they should become unemployed.

The recommended standard would fall short of meeting one measure of benefit adequacy in several States while precluding the consideration of other valid adequacy criteria. For example, States that now take a claimant's dependents into account in establishing their benefit structures will be forced by the standard to reconsider this approach. Similarly, States that now vary the maximum according to dependents as well as base-period income will need to change to control costs. States that choose to compute the weekly benefit in terms of a percentage of annual wages rather than quarterly or weekly wages will be forced by the standard to abandon that approach.

The standard is not only undesirable, for the above reasons, but unnecessary. Few States provide less than a 50 percent wage replacement below the maximum, and the actual replacement rate is usually higher. This is because benefits are computed in most States as a fraction of claimants' wages in their high quarter—the calendar quarter in which their wages were highest. Other States have benefit schedules that are weighted to provide lower-paid claimants a higher percentage of

lost wages. Still other States augment the benefit amount by providing dependents' allowances.

The record of the States during the last decade in providing and maintaining adequate benefit levels is outstanding by any reasonable measure (the number of States with automatic adjustments of the maximum to reflect changes in wage levels, the number of increases in benefit maximums, benefit increases in relation to consumer price index increases, etc.). In the face of the most severe recession since the 1930's and the highest annual benefit outlays, maximums increased each year in the large majority of States either by operation of "flexible maximums" or specific amendments. Not a single State reduced its maximum.

Commissioners Daniels, Morris, Seidman: We support the Commission's recommendations that for a State to have an approved UI law it must establish minimum benefit standards. Those that the Commission has recommended—a maximum weekly benefit amount not less than $66\frac{2}{3}$ percent of average total weekly wages in the State and a benefit amount for the individual (between minimum and maximum) that is at least 50 percent of the individual's average weekly wages—are higher than current levels in some States, but they are nevertheless too low. We favor benefit standards of at least $66\frac{2}{3}$ percent of the individual's wage up to a maximum amount, which should not be less than 75 percent of the statewide average wage.

According to data that were made available to the Commission, a maximum benefit of only $66\frac{2}{3}$ percent of the statewide average wage would mean that, in all but two States, more than 20 percent of workers would not be assured that their benefits would replace even 50 percent of their weekly wages.

But a 50 percent replacement rate is far too low to forestall extreme deprivation and a drastic cut in living standard for many jobless workers. Moreover, the replacement rate itself does not take account of fringe benefits, such as health benefits, social security, and pension rights, and other benefits that are just as much a part of the worker's compensation as the wage itself. According to the Chamber of Commerce of the United States, on the average, such benefits amount to 37 percent of payroll. Thus, even a $66\frac{2}{3}$ percent wage replacement rate amounts to less than a 50 percent replacement rate for total compensation.

Based on these considerations, we believe that, for many workers, any standards less than $66\frac{2}{3}$ percent of the individual's wage up to 75 percent of the statewide average wage would be inadequate to prevent major deterioration of both present and future living standards, the very conditions that UC is intended to prevent.

Chapter 4.4

Commissioners Bivins, Cooper, Hill: The Burgess-Kingston study on "Estimating Overpayments and Im-

proper Payments in the Unemployment Insurance System” clearly reveals that failure of claimants to actively seek work is prevalent and that the failure to detect it is a major program deficiency. We agree that correction of that flaw will not be achieved by requiring claimants to apply to a specified number of employers each week. Claimants could “satisfy” such a requirement without “actively” seeking work, particularly if they deliberately apply for employment at places where they know the likelihood of being employed is zero. Whether an individual is “actively seeking work” is a subjective determination involving a different effort with different individuals, but *all eligible individuals should be actively seeking work*. The determination of what constitutes an “active” search will vary widely depending on each worker’s skills and the existing labor market for these skills.

Like the majority, we oppose a perfunctory test for determination of an active search, but unlike the majority, we believe the active-search concept should be retained and applied on an individual basis. Jobs seldom come looking for people, and we can support no recommendation that appears to relieve the unemployed of doing their best to find employment.

Chapter 5.1

Commissioners Bivins, Cooper, Hill: We feel strongly that 39 weeks should be the maximum duration allowable under the Federal/State UC program. The additional weeks this recommendation would provide should be divorced from the system. The general revenue funding is one step in that direction, but there should be other steps. There should be additional qualifying conditions, perhaps including an income test. There should be greater emphasis on retraining and/or relocation.

Supplementary Extended Benefits is just another name for longer and longer duration of UC. We believe it distorts the system.

After losing the initial vote on whether these additional weeks should be incorporated into the system, we abstained from votes on when and to whom these extra weeks would be paid.

Mr. Bivins agrees with the above, except he feels 26 weeks should be the maximum duration under the Federal/State UC program.

Commissioners Daniels, Morris, Seidman: The triggered programs of extended benefits and supplementary unemployment benefits that the Commission recommends represent improvements, and therefore we favor them as a short-term measure, particularly during the present acute recession. However, we would like to substitute for such triggered programs a permanent program of extended benefits for long-term unemployed workers who have had a firm attachment to the labor force.

Such a program should provide adequate opportunity for such workers to obtain vocational training as well as other appropriate assistance needed to qualify them for suitable work. Such a program should operate throughout all phases of the business cycle in order to serve the long-term unemployed and restore them as quickly as possible to productive jobs at decent wages. Such a program should also provide incentives for workers to move to areas with greater employment opportunities through provision of relocation expenses on a voluntary basis.

Chapter 5.2

Commissioners Cooper, Crosier, Hill: Unique barriers to employment confront many unemployed workers. Some have few skills, some little or no experience, some limited education. Some live in large urban areas where jobs are numerous compared to small towns or rural areas. Some are in places where the labor market is tight; others are located where jobs go begging. Some are very young. Some are physically handicapped. Some are old.

It is not possible, in our judgment, to make special program accommodations for all of these barriers.

Granting 52 weeks of additional duration to workers between 60 and 65 years of age introduces special treatment for one group. It discriminates against others whose barrier to finding work may be as great as or greater than the problem of advancing years.

Commissioners Daniels, Morris, Seidman: We strongly support the Commission’s recommendation for establishment of a program to meet the needs of older workers who have been displaced from their jobs and are unable to find new employment. However, we would make two modifications in the Commission’s proposal:

1. The problem to which the proposal is addressed is not confined to workers of 60 or older. Many workers begin to have the same problems at 50 or 55. Therefore, we would make the program available to displaced workers at no later than 55.

2. Precisely because these older workers, once they lose their jobs, have great difficulty in obtaining employment, the requirement of recent UI eligibility seems altogether inappropriate. Instead, if workers are at least 55 and have been displaced from their regular employment, they should be eligible for lifetime reserve benefits until they are able to obtain suitable work or are eligible for social security benefits.

Chapter 6.2

Commissioners Cooper, Hill: The Commission recommends increasing and indexing the Federal taxable wage base as the means of generating additional revenue to fund the Federal portion of the UC benefits

program and administrative costs. We believe this recommendation is without reasonable justification.

The Commission makes many recommendations that would require additional funds, but no estimates have been made of the cost of implementing the different recommendations, and the recommended wage base increase has no relation to projected costs. Any increase in unemployment taxes should be consistent with the financial needs of the system. We object to levying higher taxes without designing the tax to meet specific needs.

We also believe any recommendations for additional taxes should include a more balanced combination of tax rate and taxable base increase. Generating additional funds by repeatedly increasing only the taxable wage base affects many employers inequitably.

Approximately 75 to 80 percent of the Federal Unemployment Tax Act (FUTA) revenues under normal circumstances is used for the administration of the UC system and the public employment service. The most equitable distribution of this tax burden is achieved when the per capita cost per employee is relatively equal for all employers.

Why should an employer who pays relatively high annual wages be required to pay more FUTA taxes than a low-wage employer, when such taxes are used primarily to support administrative costs? High-wage employers are no more likely—they are probably less likely—to utilize the administrative services than are low-wage employers. The services performed by the Federal-State employment security systems are open to all employers and employees on an equal basis; no preferential treatment is given to employers or employees because they pay or receive higher wages than others. In the absence of a direct service charge for utilization of the services (UC or ES), the most equitable Federal levy would be one that required an equal per capita cost per employee from every employer. This can be achieved more closely by using a relatively constant taxable wage base and adjusting the tax rate to generate the required revenue.

One of the reasons advanced for escalating the Federal wage base is its mandatory impact on the taxable wage bases in the States. The States must, in effect, have a wage base as high as or higher than that established by the FUTA. The funds generated by the State unemployment tax laws are used to pay benefit costs—a very different use than the FUTA. The appropriate level of taxable base will vary from State to State. The wage base recommendations in this report may require some States to compress their span of tax rates to the detriment of experience rating. In other States, the higher Federal base may still be insufficient to support the benefit costs.

We are convinced that repeated escalation of the FUTA wage base as recommended will have an adverse impact on State experience rating. Many States will need

to adjust their tax rates repeatedly, a difficult task politically. Even assuming some adjustment is made, the tax burden will follow a pattern:

1. Low-cost/high-wage employers are likely to be subject to significantly higher taxes.
2. High-cost/high-wage employers will also pay more, and perhaps they should if the State maximum tax rate is too low.
3. Low-wage employers are affected far less, regardless of their benefit cost experience.

This, in our view, distorts experience rating, and if State experience rating loses its equity for some employers, it soon loses its validity for all employers.

The taxable wage base in some States may be inadequate. If so, it should be raised. The amount of increase should be determined at the State level, not arbitrarily mandated by Federal legislation. The level of the taxable base and the distribution of the tax burden among its employers is a State responsibility. An alternative and better approach to the report's recommendation would be a recommendation that States have a State taxable wage base at least equal to insured wages, that is, the amount of wages required to qualify for maximum potential benefits (maximum weekly benefit amount times maximum duration). The Federal taxable wage base would remain relatively constant, and the Federal rate would be adjusted to meet Federal revenue needs.

One of the arguments frequently advanced for raising the FUTA base is that the States are politically unable to enact base increases due to competition for new industry. We do not believe that, because the record of repeated adjustments to the tax rates and the taxable bases in the States disproves it. We do believe some States have failed to make needed adjustments in their tax structure because it is more comfortable politically to let the Congress do it for them. The difficulty lies in the fact that the Congress cannot design a wage base that is equitable for benefit cost recoupment in each State and also equitable for the administrative cost for which the FUTA is responsible.

Chapter 6.5

Commissioners Cooper, Hill: This recommendation avoids many details essential for our support.

Reinsurance would assist States that suffer an unpredictable catastrophe. Federally funded assistance would be triggered by a defined change in the State's current experience compared to its "normal" experience. The change could be measured in unemployment rate—cost rate—or other criteria.

Cost equalization would assist States whose experience exceeds a set norm. Federally funded assistance would be triggered any time a State exceeded that estab-

lished norm. If the norm is a prescribed insured unemployment rate—or a given cost rate—certain States would continuously receive Federal assistance and others would seldom, if ever, qualify. The recipient States would be predictable.

We see merit in the concept of catastrophic reinsurance, but we are strongly opposed to cost equalization. This recommendation appears to contain elements of both and is too vague to receive our approval.

Commissioners, Daniels, Morris, Seidman: We support the Commission's recommendations for the establishment of a reinsurance plan, but we think the plan proposed by the Commission is inadequate.

The very high levels of unemployment during the recession of the mid-1970's generated huge excess costs, and that experience is likely to be repeated during the current recession. We think it is altogether insufficient for the State's reimbursement to be limited to only 30 percent of the excess costs. The apparent reason for the Commission's recommendation is that it would rely on an additional employer payroll tax, which it feels should not exceed one-tenth of 1 percent of taxable payrolls.

The fundamental problem with the Commission's proposal is that it relies on an employer payroll tax. We think the excess UI cost resulting from a recession should be borne by the nation as a whole. Therefore, the program should be financed out of Federal general revenues and should reimburse a much higher proportion (perhaps all) of excess costs than the Commission recommends.

Chapter 7.1

Commissioners Daniels, Morris, Seidman: This section appropriately calls for benefit payment controls to minimize overpayments, underpayments, fraud, and error. Emphasis by UI agencies is given to benefit payment controls pinpointed to the claimant. There should be equal concern to actions or manipulations that may be perpetrated by employers with intent to defraud the system. A positive approach by the DOL and the UI State agency to minimize loopholes that permit fraudulent conduct by employers requires a sharply expanded audit control effort in each State. The emphasis must not be placed only on the claimant and the related drop in trust funds caused by benefit payments, but must be equally directed to an effort to retrieve tax funds that do not come into the system because of failure of employers to make required tax payments.

Chapter 7.2

Commissioners Daniels, Morris, Seidman: Penalties in the UI system for failure to discharge statutory obligations are unjustly balanced between employers and employees. Although harsh disqualifications are imposed

in every State where employees fail to meet statutory requirements, no comparable penalties are imposed on employers who misrepresent facts affecting employees' eligibility. Nor are there penalties equally applicable to employers who postpone or fail altogether to make required tax payment. This is an intolerable double standard.

A DOL report discussed a project involving students who telephoned selected delinquent employers. Those telephone contacts recovered substantial sums of money from delinquent employers.

Information reported to the Commission described various schemes by people establishing "paper" businesses. They laid off their employees and folded their operations. Claims were filed and UC paid, but the "employers" were no longer to be found. The DOL advised the Commission that this fraud exceeded \$25 million dollars. A major employer representative observed that such a deficit would have to be made up by the remaining employers in that system.

Other illustrations of employer fraud include falsely reporting discharges as "voluntary quits" and assessing disciplinary discharges against employees during routine plant layoff periods. Employers also manipulate the system by treating persons as discharged for "misconduct" while grievances or charges are pending before government agencies protesting such discharges.

In regard to such deliberate actions, companies have carefully tailored their internal procedures for employee separation by maximizing the potential for the denial of subsequent unemployment claims.

To correct this imbalance, we urge that consideration be given to establishing appropriate penalties to be imposed against derelict or fraudulent employers. An appropriate penalty for employers who fail to make required tax payments might be denial of the benefit of experience-rating entitlement for the period of their delinquency. Penalties should also be applied to employers who misuse the claims and appeals process, and these penalties should be equivalent in severity to penalties invoked against the claimant.

Each fraudulent act by the employer should receive a penalty that is the appropriate equivalent to the penalty imposed on the claimant. One such economic penalty would be an assessment equal to the employer's maximum tax rate for 1 week.

Chapter 7.3

Commissioners Daniels, Morris, Seidman: Many of the proposals reflected in changes recommended by the Commission are welcome improvements that can result in fairness, quality, and promptness in the appeals process to the claimant. It is the claimant for whom UI benefits are the means to food and shelter during unemployment periods.

We believe that the guarantee of a fair hearing for claimants is based on the "due process" clause of the 14th amendment to the United States Constitution. Section 303(a)(3) of the Social Security Act requires States to provide claimants who have been denied benefits an opportunity for a fair hearing.

The current recommendations of the Commission do not go far enough to balance the scales of justice, which are currently tilted toward the employer and against the claimant.

The Bureau of National Affairs made a study based on interviews and reports by employers throughout the nation. This study shows that major employers, with few exceptions, are represented by specialized or trained in-house personnel who respond to the State UI agencies regarding employees' claims for UI. The same in-house personnel litigate the appeals before referees or hearing examiners and usually participate in higher agency appeals. When the employer needs further professional consultation and/or legal consultation, attorneys are hired. This is a cost of doing business and is therefore a deductible expenditure from the employer's income tax reporting obligations. The larger employer has incentive to spend this money because the experience-rated system "saves" money by reducing tax obligations. Employers are also given incentives to litigate meritless appeals because their accounts are not charged while such appeals are pending.

In this fashion, every American taxpayer, including the UC claimant, ultimately shares the cost for these trained UI experts.

Claimants are not familiar with quasi-judicial referee hearings, and they are ill at ease and far less experienced than the in-house employer representatives.

It is believed that "due process" as intended by the 14th amendment cannot truly be accomplished without also establishing a claimant advocacy structure separate from the direct jurisdiction of the individual State UI agencies. We agree with the Commission's recommendation that each State establish an office of ombudsman to help with UI problems. However, the report does not ask that these ombudsmen be independent of the very State agency with which they may deal. They may be perceived as being tied to and a part of the same system that caused the claimant to seek help.

Such a proposal would not create a whole new tier of bureaucracy and Federal payrollers. The DOL could propose the establishment of an independent claimant representation section relating to each State agency. A panel of knowledgeable claimant representatives could include retirees, ex-employees of the State agency, former union and employer representatives, and law students. Some of them should be skilled in the languages prevalent in each State. There would not be the cost of full-time personnel other than the one, two, or three people necessary to administer the program and the secretary or clerical personnel required.

It is believed that the cost of a claimant advocacy office would be less than 1 percent of the total cost to the general revenue system of tax deductions by employers for maintaining UI tax experts to prevent employee claimants from receiving UC.

Until an adequate claimant advocacy structure is formed, claimants will continue to be denied property rights without due process of law in violation of the 14th amendment. The U.S. Supreme Court held, in the *Gideon* case, that persons may not be deprived of liberty without due process of law including and entitling said persons to counsel. This same 14th amendment protection should afford claimants the right to counsel or other representation. The entitlement to such representation is inherent in the American system of justice.

Even as we go to press with this report, a document dated May 30, 1980, relating to the trial ombudsman program in New York, operated from September 17, 1979, to May 16, 1980, in six test offices, substantiates our contentions and is fully supportive in its recommendations for the needs and perceptions by claimants for a clearcut independence from the regular operation of a UI agency.

For further information, see "On Appeal: Claimant Advocacy and Full and Fair Hearings," by Ken Morris, a member of the National Commission on Unemployment Compensation, in the Commission's *Unemployment Compensation: Studies and Research*.

Chapter 7.7

Commissioners Daniels, Morris, Seidman:

Comments on mandatory job listing. The Commission report draws attention to the mandatory listing of job openings by employers and refers to the fact that employers with Federal contracts are required to list all job openings with the Employment Service (ES). Despite the fact that no evidence was presented to the Commission demonstrating a negative characteristic of this approach, no action was taken to extend the mandatory listing requirement to employers in the private sector per se; the employees or claimants for UC, however, are required to demonstrate job search efforts or face denial of UC.

The ultimate objective of UI and ES programs structured by the U.S. Government is to return to the workplace those unemployed workers whose capacity, skills, and potential work qualities are marketable.

It is our firm conviction, buttressed by experience, that workers generally prefer to return to work or locate a job as soon as possible once unemployed. The needs of all employers, private as well as those affected by Federal contracts, can well be met by requiring mandatory listings.

If the unemployed worker had the opportunity of registering with the ES where there exists mandatory listing of jobs by all employers, this would substantially

upgrade the effectiveness of the ES and create nationwide placement capacity. Until mandatory listing of jobs is required, the effectiveness of the ES will fall far short of fulfilling the historic objective that brought about its establishment.

It is inappropriate and contradictory for employers not to be mandated to list job openings with the ES. Employers insist that employees/claimants for UI be denied benefits for allegedly not making adequate job search. Peculiarly, employers—individually or as members of employers' groups—vociferously oppose mandatory listings through the USES, even though experienced employers stand to profit, through lower tax payments, if claimants return to work soon. Thus mandatory listings would benefit both employers and employees; they get claimants back to work, and employers reduce their tax obligations.

The proposed mandatory listing for all employers does not suggest that mandatory *listing* with the Federal Employment Service also requires mandatory *hiring* of those workers sent to them by the ES. The employer would still advertise job openings through normal channels. It is most difficult to understand employer resistance to the mandatory listing concept. We believe that the report of the Commission would be strengthened with the inclusion of mandatory listing.

Comments on plant closings. This recommendation of the Commission is a step forward in that it recognizes the economically cancerous character of plant and business closings. The very nature of employer facility closings affects employees of varying ages and varying lengths of service to the employer. Employees above age 40, and in varying degrees progressing beyond age 60, are less likely to secure meaningful employment to sustain a family in a way that befits American citizens who have contributed over the years to the growth and prosperity of the business with which they have been associated. Testimony given to the Commission emphasized the devastating effects of plant closings on the people involved and on the community itself.

Over the past years recognition of the seriousness of this problem has been manifested by the introduction in the Congress of bills seeking to deal with this problem. Legislation in previous years had been introduced by then Senator Mondale, with a companion bill by Congressman William Ford currently in the House. Bills seeking to address this problem have been submitted recently by Congresswoman Mary Rose Oaker (a member of this Commission) and Senator Metzenbaum. Related bills have been introduced in this session by Senator Riegle and by Congressman William Ford, all offering proposed solutions to the problem created by closed plants, which gnaws at the core of the system under which we live.

To say that regular UC is an insurance program and is meant to be temporary and therefore not meant to

encompass the nature of the problems posed by plant shutdowns is not a satisfactory solution to the problem. The plant shutdown impact on the worker is a calamity.

A greater effort to locate worthwhile jobs even prior to the actual close-down is far preferable to compensation in any form. The cost for such activities should be borne by the employer who initially made the decision to shut down the facility. This may well be a solution whose time has come.

In addition, the ES should establish a qualified task force with the responsibility of entering the plant scheduled for closing, interviewing each employee, and determining employees' qualifications and the services needed. The task force would (1) catalog skills, (2) retrain where needed, (3) reeducate and educate in new skills, (4) provide travel allowances and relocation allowances to secure new jobs, and (5) provide compensation equivalent to normal take-home pay during out-of-work periods, with all costs directly chargeable to the most recent employer. The same procedure should be applied for workers whose jobs are adversely affected by government policy changes and/or legislative actions resulting in full or partial plant shutdowns.

To this end, a report was submitted to the Commission in October 1979 by Ken Morris, a member of the Commission, entitled "A Proposal for the Protection of Workers Employed by a Firm or a Supplier to That Firm Who Lose Their Jobs as a Result of a Total or Partial Closing of the Firm or an Establishment Which Is Part of That Firm." The full text of that proposal follows.

A Summary of the Proposal

In short, we propose a concept for dealing with the problems of plant movement—job loss in both the private and public sector. It would be a program that would track other actions made by Congress to meet special problems of workers affected by unusual developments in their worklife. The program would include:

- advance notice by the employer of permanent plant closing or partial closing;
- provision for adequate replacement income and fringe benefit protection for affected workers in keeping with wage replacement and fringe benefit entitlements established in such programs as Amtrak, Conrail, the Redwoods, Airline Employees and TRA;
- an Employment Service Task Force to catalog skills, coordinate needs of workers to be affected, locate jobs, and develop training in advance of the shutdown date, where possible;
- the development of job search allowances, as well as relocation allowances;
- a cataloging of job training needs;
- a method of financing to be charged to those making the decisions for the plant shutdown or movement;

- establishment of a National Trust Fund through the Department of Labor, with the program being developed and coordinated by the Unemployment Insurance and Training Divisions of the DOL.

We believe that the proposals contained in this document to help solve this major perplexing problem of plant shutdowns and job loss, which affects substantial numbers of this nation's work force, can, in part, be handled through the unemployment insurance system.

Moreover, this says to the worker who contributes his worklife to an employer that the nation is willing to extend a helping hand when the vagaries of our free enterprise system put him out of work.

The Proposal

The many sessions held by the Commission have helped provide a deeper understanding and appreciation of the flexibility of the U.S. unemployment insurance system, thereby making it an appropriate vehicle in part to aid in solving a major perplexing problem which affects substantial numbers of this nation's work force. The major problem is *the economic catastrophe of plant closings to people!*

There has been considerable testimony regarding the need for special treatment for victims of plant closings. The inadequacy of the current unemployment insurance system in confronting the crisis of permanent job loss is implicitly recognized when contrasted by the existence of special Federal worker protection programs such as Amtrak, Conrail, the Redwoods, Airline Employees, and the Trade Readjustment Act of 1974.

These special programs have established far higher benefit levels and far longer benefit durations than the regular unemployment insurance system. The problems of job loss require the innovative and compassionate attention of all economic and social forces that make up American society. Workers thus affected, thrust onto the job market following years with one employer (some with 10, 20, or more years), need the compassionate help of an organized system to provide retraining, job search, and job relocation opportunities designed to aid affected workers in adjusting to permanent job loss associated with structural economic changes. Most workers thus affected need job security with their base employer through transfer rights for the affected worker and/or the means for the continuation of important fringe benefits a worker loses when his or her job is abolished.

There are many reasons for permanent loss of a job in our economy. Military and defense establishments may be closed in the event of a reduction of the needs of the defense establishment or a change in our technology or Federal policy dictated by foreign policy considerations. Other permanent jobs are lost as a result of a reduction in imports of a particular set of products.

But there are other reasons for permanent plant closings as well. Some firms or companies close in one State because of State and Federal policy enticements to move to another. Others close their plant or company because it is simply no longer profitable for them to continue operations.

Federal and State tax laws, permitting tax abatement privileges to employers, have spawned voluminous plant movements, leaving in their wake the tragic consequences of abandonment of workers and the community. Employers are encouraged by tax laws to build new plants—ofttimes in new locations. Most States are in competition to lure potential employers within boundaries, they develop active campaigns with effective public relations professionals accompanied by varying tax and monetary give-aways to win a new plant or business to that State. Quite often the Governor directly participates in the effort. Employers who have done poorly economically may find the answer to their dilemma by selling their facility to a buyer who is really purchasing a tax loss to be offset against profitable holdings. The purchaser gains a plant facility with its physical assets and reputation. When the facility is no longer useful it is sold, closed, and/or its physical assets disposed of.

No special consideration is given to workers afflicted with job loss because of plant closings. Most often, the majority of the workers find a job. Not so with many others. They are thrust upon the community with the "used up" worker label, or the worker with higher wage needs which he feels he must meet in order to handle his financial obligations soon learns that this may become a handicap in finding a job. The erosion of the tax base so necessary to the community where the plant cutback or closing takes place has its negative flow-through impact throughout the community.

Plant closings, relocations, and permanent reductions cause an especially serious kind of unemployment; the shock waves reverberate throughout the affected community, hitting hard at local merchants and supplier firms, thereby shrinking job opportunities. Vital tax revenues are lost just when the need for community and social services is greatest. The local job market is flooded with applicants just when its ability to absorb them is minimal. Property values plummet, subjecting workers who have already lost their jobs and incomes to catastrophic erosion of their lifetime savings as well—and restricting their mobility just when the need to relocate to seek work is greatest.

The closings of plants and resulting permanent job cutbacks often disproportionately affect older workers. Older workers are highly susceptible to a wide range of unemployment-related health and psychological traumas, and their chances of securing decent reemployment (or employment of any kind) are often dim.

But job cutbacks are not just the problem of older workers. Young workers are affected as well. Many have

submerged themselves with long-term debt on the strength of the future they have a right to expect in a fundamental job commitment to the employer. Many have a commitment for a home in which to live and raise a family. They may have purchased a car for transportation to get to their job. They may have initiated a savings account to implement in the planning of an educational future for their children.

The permanent loss of that worker's job brings all of these plans to a halt. Many workers have gone through just such disasters more than once in their personal work history. The economic impact is profound, chilling, and many times leads to the mental and physical deterioration of the individual.

Current State and Federal legislation substantially contributed to the circumstances which help create these problems through the rewards and guarantees offered to employers, while the employees have no such assurances. But in addressing these and other problems related to such permanent job loss, our nation's commitment to the free enterprise system falls short of its promise and obligations to the workers affected by its failures.

Federal Government contracts almost directly are responsible in many locations for employment of workers through a manufacturing facility of the private business community. When the need for such contracting work ceases, such employees are entitled to job loss benefits also. A case in point is hereby illustrated:

The Vought Corporation has announced it is shutting down its Michigan Division plant. Its customer, in effect, has been the United States Government. The manufacturing of the Lance Missile has been performed in a government building, under a government contract, and at the pleasure of the government.

A change in government foreign policy relative to weaponry is resulting in the shutdown of that plant. There are close to 800 people with an average of 11 years service who will be without jobs. Eleven years of service is equivalent to 25 percent of the worker's work-life expectancy. *The Vought worker should be treated under this proposed program exactly as any other worker. Therefore, the government's obligation to provide funds for the job-loss protection of these workers becomes obvious.*

The hope has been expressed that this Commission can propose a solution to this growing and ever expanding economic cancer of dislocation because of private or public decisions. We can recommend to Congress and the nation the view that legislative action is absolutely essential to address the problems facing workers resulting from permanent job loss directly and indirectly from the permanent closing of all or part of a firm and/or its major suppliers.

Inescapably, the Federal Government, State government and other subdivisions of local government em-

ploy substantial numbers of workers where Federal contracts are responsible for employment of workers through a manufacturing or other facility of the private business community. As the need for such contracting of work ceases and layoffs occur, employees affected are entitled to benefits also.

The need is for the establishment of a Federal trust fund from which benefits can be allocated to the State or States affected. We are proposing that such a fund be financed from Federal resources. It is the purpose of this proposal to suggest actions be taken that will go a long way to help solve the problems of workers thus affected and thereby be helpful to the communities. These actions can be devised in such a way as to stabilize incomes during a transition period and to provide the means, machinery, and above all a realistic potential for future job usefulness for the affected workers.

Such a program should include these three elements: (1) it should require an employer to give advance notice of a permanent closing; (2) it should provide adequate replacement income for affected workers; and (3) it should establish task forces which would move in on a permanent closing and make a vigorous, concentrated, well-thought-out, coordinated effort to find alternative meaningful employment for affected workers.

Advance notice. We propose that any employer contemplating a permanent (complete or partial) closing of one or more establishments in an area be required to provide advance notice of two years or as quickly as employer awareness exists. Notice should be given to the affected workers, their union (where applicable), and the State and Federal employment service. If the employer has not provided the required notice in a manner satisfactory to the task force which is later established as provided below, that employer should be subject to a penalty.

Most responsible employers already provide advance notice of permanent plant closings. For example, the Chrysler Corporation, an employer facing financial difficulties, has recently announced a decision to permanently close a large plant facility, in addition to permanently reducing the work force at several plants; *it made the effort to provide advance notice.*

Chrysler planned a few years ago to close the Detroit Jefferson Avenue assembly plant. The company gave the community, the union, and the workers at the plant advance notice. As a result, a successful effort was mounted to keep the plant open. The workers, the management, the union, and the local government worked together. That plant is still in operation and its three thousand jobs are still intact.

The corporation was responsible enough to provide substantial notice. When this occurs the way is open to

institute the effort to enable the community, the Federal and State governments, and the union to leave no stone unturned to find solutions to the problems which may confront those affected.

An employer providing advance plant shutdown notice to the Federal-State agency would trigger the establishment of the proposed task force to be coordinated by DOL through the State employment service. If it is determined that a satisfactory notice has not been provided, then the employer should be subject to a penalty which could include substantial fines to be paid into the trust fund to help finance the program.

The policy has been established by the Congress in the Trade Readjustment Act of 1974, which provides in Section 283 that employers moving productive facilities to foreign countries should give advance notice of such moves to the affected employees and to the Secretary of Labor and the Secretary of Commerce and should offer employment opportunities and assist in relocating affected employees. The same policy could be equally applicable in this proposal.

Income protection. It is proposed that the income and standard of living of a worker who loses his or her job as a result of a permanent plant closing be protected during a period of readjustment. This protection should apply not only to workers displaced from the permanent closing of an entire plant, but also in cases in which only a partial closing of a permanent nature is decided upon. The same protection should apply as well to workers of companies who furnish parts and supplies to the primary firm.

There are several laws in this country that provide such aid for displaced workers in certain industries, or under certain circumstances in which the permanent job loss has been determined to be the result of actions taken in the public interest. Among these laws are the Rail Passenger Service Act of 1970 (Amtrak), the Regional Rail Reorganization Act of 1973 (Conrail) and the related Rail Revitalization Act of 1976, the Trade Readjustment Act of 1974, and the most recent congressional legislative action affecting airline employees.

The agreement negotiated under Amtrak provided a supplement to unemployment insurance of other earnings which result in the worker receiving the equivalent of full pay adjusted for wage increases for a period of time equal to his or her seniority up to a maximum of six years. Fringe benefits (hospitalization, pensions, etc.) are continued for the same period. An affected worker is required to exercise his or her seniority during this period to get any open job providing equal pay as long as he or she is not required to relocate.

Under Conrail, which affected the lives of as many as 100,000 workers, benefit duration was even longer. Benefits for workers with over five years' seniority

are even more liberal than under Amtrak—full pay and full fringe benefits until the worker reaches age 65 as long as he or she does not fail to exercise his or her seniority to get an available job in his or her craft for which he or she is qualified.

Even the Trade Readjustment Act of 1974 provides a worker displaced as a result of increased imports with a weekly cash adjustment allowance, in addition to unemployment insurance which will yield a total cash benefit equal to 70 percent of his or her former pay for up to 52 weeks over a two-year period. The duration is greater for older workers or those in an acceptable retraining program.

In each case these laws were enacted to protect workers who suffer job loss resulting from public policies which are considered to be in the national interest. The closing of companies or firms produced by tax and other policies of Federal, State, and local government result in no less of an obligation.

It is proposed that all workers affected by job loss, through plant movement and/or job cessation from a partial plant movement, be entitled to a supplement to their State or other unemployment compensation not less than, or more than, weekly benefits provided in the congressional programs described above. The amount of fringe benefit would be related also to the programs already adopted by Congress geared to the specific fringe benefits in effect from the terminated business or plant facility where the worker was last employed.

Establish a task force. During the period of the employer's advance notice of intent to close the plant or facility, a carefully selected task force will be appointed by the State employment service consisting of persons with a variety of skills, as per guidelines established and supervised by the DOL.

Prior to the plant shutdown, each worker will be interviewed in plant for job experience, degree of skill, and related characteristics to be cataloged for job procurement potential prior to the day of shutdown.

The duty of the task force would be to concentrate its full effort on obtaining jobs of comparable skill for those workers who will be facing job loss. Securing comparable jobs, skills, wages, etc., for those about to be displaced will be the immediate function.

During the period of layoff:

1. The weekly cash income replacement proposed above will continue for an extended period. The amount will be supplemented by the equivalent of unemployment insurance benefits if they are exhausted. Fringe benefit coverage will continue as well.

- a. The workers will receive adequate income replacement in addition to normal unemployment compensation, the combination of both to be within

range of that provided by other Federal programs described herein.

b. The workers' fringe benefit protection will also be continued. A company transferring its operation in one State to a location in another would normally continue fringe benefits in most cases for those employees transferred to the new location. Credit toward any pension would continue to grow. Life and health insurance would continue; and vacation eligibility would continue as well, for example. Those employees left behind deserve no less. If the employer ceases operations completely, the financial losses suffered prior to shutdown entitles the employer to certain tax advantages. The adjustment costs of his employees deserves equal treatment.

2. The duration of cash benefits and fringe benefits coverage for workers age 45 and over should extend for a much longer period than for younger workers due to the greater difficulty in placing them in comparable jobs.

3. The task force will interview all of those workers who have lost their jobs and who have not yet found an adequate replacement. These interviews will be in-depth interviews. Its efforts to find employment for the remaining unemployed will be carefully coordinated with the United States Employment Service. During the first six months of layoff the worker will rely on his or her efforts or the U.S. and/or State employment service to find a comparable job or a satisfactory job with another employer.

The task force assigned to a group will have the full responsibility to carry out several areas of activities in its efforts to locate like or suitable work. Avenues to be followed will include job search allowance, relocation allowance, retraining programs, and other programs.

Job search allowance. The Trade Readjustment Act of 1974 provides a job search allowance if properly approved. A person who permanently loses his or her job as a result of the closing of a firm or establishment should be entitled to the same type of treatment, subject to approval of the task force. It is unlikely that an employer in another State or area who may be interested in the skills of a particular displaced worker is going to hire that worker without interviewing him or her. After that worker has been without a job for more than half a year with a substantially reduced income, that worker's resources are likely to be limited.

Relocation allowance. A relocation allowance should be provided for workers who are required to move to another location to obtain a job of comparable skills. This allowance should be subject to the approval of

the task force, based on average prevailing moving costs as related to family size.

It is not unusual for a company which closes a plant and transfers the work to another area to provide transferees to the new location with some type of relocation allowance. It may range from a simple moving allowance to aid in selling that person's home, etc., as well as pay for a period in which a smooth relocation can be accomplished.

The policy affecting relocation allowances as may be established by the company for any of its employees shall be applicable to any or all of its employees when job opportunities within the corporation become active at the new location.

Amtrak and Conrail protection includes expenses of the initial move to the location of a replacement job including the expenses for the worker and family including living expenses and wage loss. If the new job lasts less than three years, an equivalent compensation must be paid so the worker can move back to the original location if desired. Reimbursement for any loss suffered on the sale of a home or the breaking of a lease for a residence is provided for as well.

Retraining programs. The task force should be authorized to institute training programs to prepare workers for adequate jobs at other firms in the same or other communities if jobs are available for which the displaced workers can reasonably be trained. These should not be give-away programs, but programs which the task force decides upon after careful review of the skills available in the displaced work force and evaluation of unmet needs of other employers in the same or nearby communities.

Again the Trade Readjustment Act of 1974, Amtrak, and Conrail all provide for training programs of some kind. The Trade Readjustment Act provides for extended duration of cash readjustment for workers who are enrolled in an approved training program.

Other programs. The task force could be given many other responsibilities as well. For example, it would arrange for the counseling needed by workers suffering from the trauma of losing their jobs by appropriate community mental health and public health institutions.

It could also investigate the possibility of obtaining financial aid of appropriate Federal, State, or community authorities to convert the closed establishments to a salable plant for other operations, thus providing at least temporary jobs for some of the displaced workers.

Financing of benefits. Benefits provided by this proposed program which are in addition to benefits under current unemployment insurance programs would be financed out of a National Trust Fund administered by the U.S. Department of Labor.

Contributions to the Trust Fund would be obtained as follows:

1. Any employer who permanently closes an establishment or part of an establishment to move or transfer to another location will have charged against that employer, from the Federal level of government, a sum for each worker who loses his job equal to the difference between the individual worker's regular UI entitlement and any weekly cash benefit and fringe benefit protection provided by the program, for the duration of that worker's unemployment, or for a period not to exceed the duration of any law currently in effect as applied in the Federal laws referred to, such as the TRA, Amtrak and Conrail, Redwoods, or the airlines industry. The difference referred to above between regular state UI entitlement and the program's weekly cash benefits and fringe benefit protection will be recorded as a charge and billed to the base employer. An equivalent offset against the charge would be provided for each worker for whom the employer provided a permanent equivalent job lasting at least three years at the new location.

2. Each employer who takes advantage of any form of tax abatement or special advantages, reduced rates, discount, inducement fees, or special community services from the Federal or State government or political subdivision thereof is to have the total amount of "savings" attributable to the move tabulated. Such employer would then be required to pay into the National Trust Fund an amount annually of such savings to equal fifteen percent of the yearly "savings." And, where applicable, each employer would tabulate the "savings" per employee at the new location as compared against the individual employee at the old location, and the fifteen percent of that total amount of savings annually would be paid into the National Trust Fund. Any employer establishing a new business facility and who may have secured tax abatement enticements or such other inducements shall also be required to pay fifteen percent of such savings into the National Trust Fund.

3. The third source of income to the National Trust Fund would be from general tax revenues. Since it may be considered to be in the public interest for Federal, State, and local governments through tax laws to provide tax abatements to encourage firms to move plants from one location to another, then the obligation exists to make the workers whole for losses suffered as a result of the plant closing. The first charge should be against the employer who initiated the action and who will benefit most from the plant move; the balance of the cost for plant relocation would be borne from the Federal treasury in the event additional funds are necessary to keep the National Trust Fund solvent. The costs of comparable benefits for workers who suffer from permanent job loss resulting from a firm's decision

to go out of business is just as much an obligation to the Federal Government as long as tax laws allow the business world to trade on tax losses.

We have submitted an approach to provide wage replacement, job search, and job training for new skills to aid workers in finding employment and to keep the American citizen and his family at a fair standard of living during this period.

The proposal also provides the mechanism for pinpointing the financing of costs to those employers responsible for initiating the moves that create the job loss. In addition, it proposes that funds procured be earmarked into a National Trust Fund. Those business establishments and the employing groups who are given financial advantage of tax laws should be required to contribute a portion of such tax advantage to help finance the costs of this program.

Chapter 9.1

Commissioners Daniels, Morris, Seidman: We believe that the special unemployment benefit program—particularly the special industry and the trade adjustment assistance programs—provide a desirable supplement to the basic UI program and should be continued. In these cases, the unemployment involved stems basically from Federal action. The work force affected is made up of a large proportion of women and minority workers, is generally older than average, has a long attachment to the industry—which is often declining in employment opportunities—and, for these and other reasons, will generally have unusual difficulty in finding new jobs. The Congress was aware of these elements when it set up the special unemployment benefit programs as a quid pro quo for the Federal action that led to the unemployment. To put an end to these special programs now is clearly inequitable because it amounts to rescinding half the bargain made at the time, with the burden falling solely on the workers involved.

While we have elsewhere indicated that substantial improvement in the regular program is essential, nevertheless, until such changes are effected, the special benefit programs take pressure off the regular benefit system, which would otherwise have to provide benefits of higher amounts and longer duration to compensate for the special needs of workers now covered by the special benefit programs.

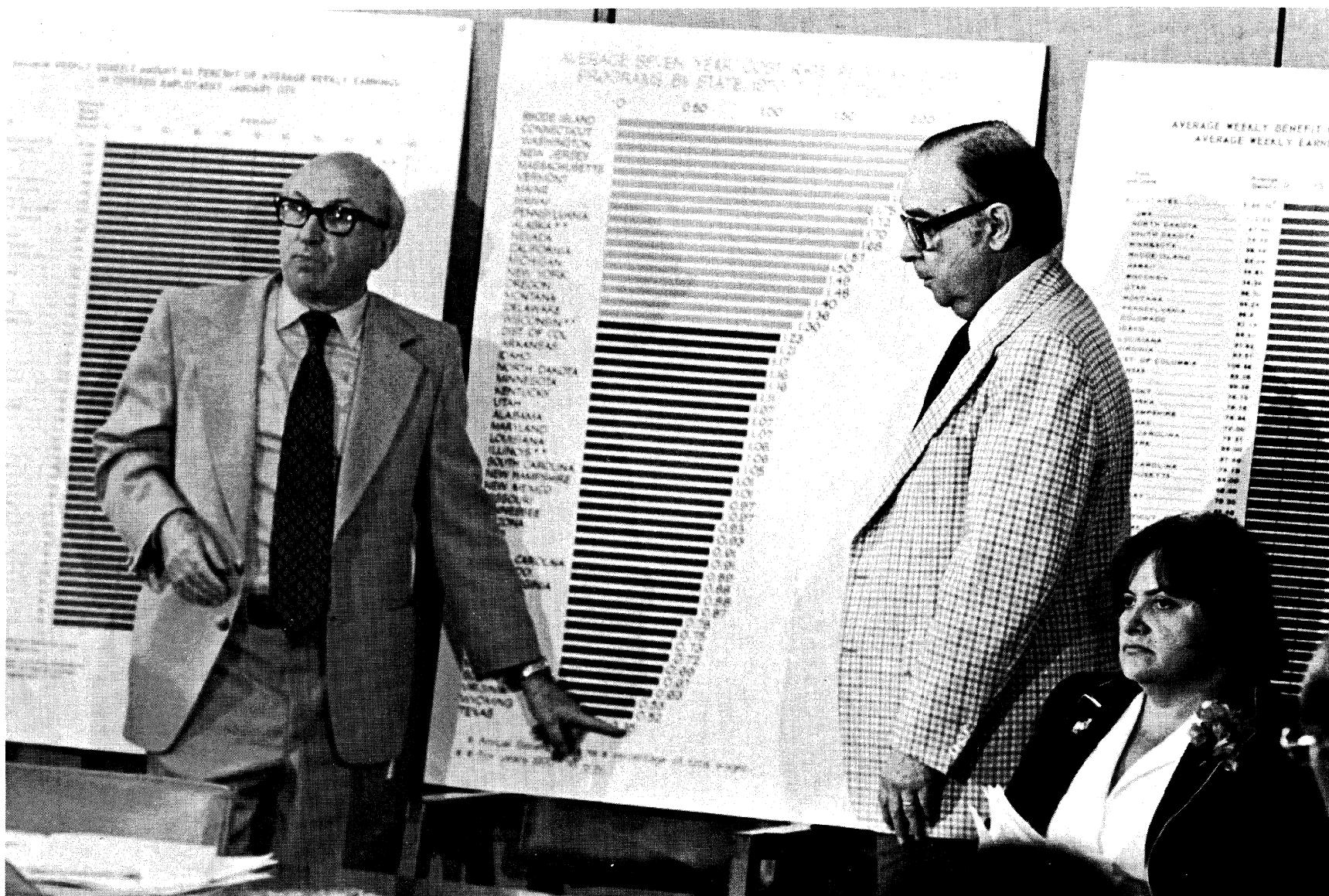
Finally, and most basically, the loss suffered in such special circumstances must be distinguished from the temporary loss of employment suffered by the usual UI claimant. In the special cases, what is involved is career investment loss, which requires compensation, retraining, and relocation solutions different from the basic purpose and structure of the temporary UI system. The present special unemployment benefit programs recognize, in effect, this basic difference and should therefore be continued.



First meeting of the National Commission on Unemployment Compensation, March 9, 1978. Left to right: Alphonse Jackson, Eldred Hill, Edward Sullivan, Warren Cooper, Walter Bivins, Bert Seidman, Wilbur Cohen, John Crosier, Ray Marshall, Chuck Campisi, Dolores Sanchez, Beatrice Coleman, Ken Morris. (Not pictured are Wilbur Daniels and Mary Rose Oakar.)



Briefing Secretary of Labor Ray Marshall (October 31, 1978) on First Interim Report.



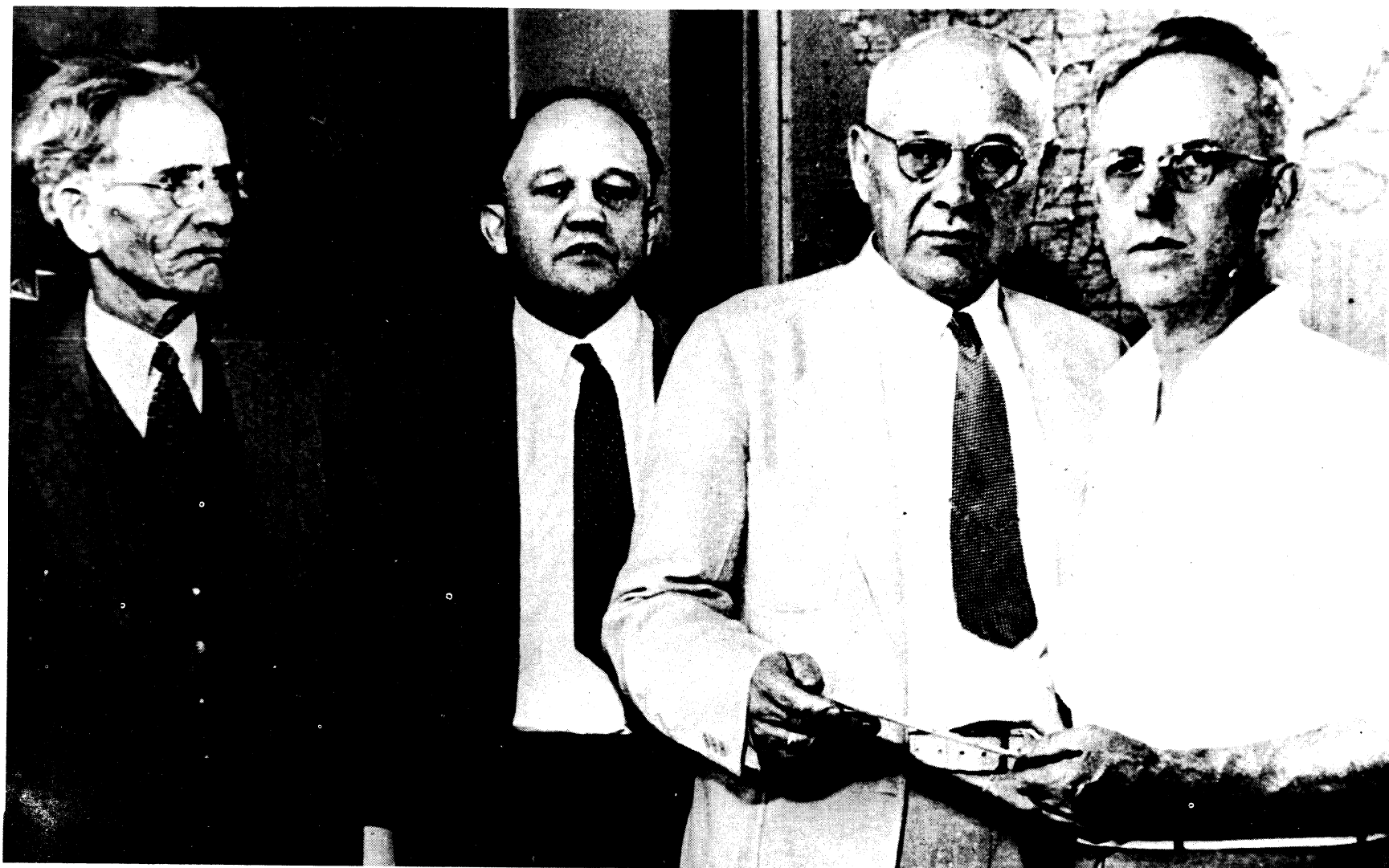
News conference, August 26, 1980. Wilbur J. Cohen, Chairman; James M. Rosbrow, Executive Director; Mary Rose Oakar, Commissioner and Member, U.S. House of Representatives.



Wilbur Daniels, Commissioner, and Wilbur J. Cohen at August 26 news conference.



Signing of Wisconsin's pioneer unemployment compensation law, January 28, 1932. Left to right: Henry Ohl, Jr., President, Wisconsin State Federation of Labor; Elizabeth Brandeis; Paul A. Raushenbush; John R. Commons, Economics Professor; Philip F. La Follette, Governor of Wisconsin; Henry A. Huber, Lieutenant Governor; Harold M. Groves, Assemblyman and Economist; Robert A. Nixon, Assemblyman. (Photo courtesy of the *State Historical Society of Wisconsin*.)



August 17, 1936: America's first unemployment compensation check was delivered to Neils B. Ruud (left) by Voyta Wrabetz, Chairman of the Industrial Commission of Wisconsin. Also shown are Professors Edwin E. Witte and John R. Commons. *(Photo courtesy of the State Historical Society of Wisconsin.)*

NOT GOOD FOR MORE THAN \$15
THIS CHECK MUST BE HONORED AT PAR

INDUSTRIAL COMMISSION OF WISCONSIN
UNEMPLOYMENT COMPENSATION DEPARTMENT
MADISON, WISCONSIN

FIRST NATIONAL BANK (79-46)
MADISON, WISCONSIN

UNEMPLOYMENT RESERVE FUND
(SECTION 108.16 OF THE WISCONSIN STATUTES)

Nº 1

PAY **\$15 DOLLARS 00 CENTS**

DATE **AUG 17 '36**

IDENTIFICATION NO. **31 32 33 34 35-27 32 15 00**

WEEKS CHARGED **35** (UNDER RATIO) **36**

1936 WEEK OF UNEMPLOYMENT **32**

AMOUNT OF THIS CHECK **15 00**

NEILS B RUUD
824 E DAYTON ST
MADISON WIS

INDUSTRIAL COMMISSION OF WISCONSIN
ADMINISTRATOR OF THE UNEMPLOYMENT RESERVE FUND

Walter A. Napieciński
Harry R. McLean *Alurques*

BROCK ENGINEERING CO
NAME OF EMPLOYER
NUMBER
VOID UNLESS PRESENTED FOR PAYMENT WITHIN ONE YEAR

ENDORSEMENT

RECEIPT IS HEREBY ACKNOWLEDGED OF UNEMPLOYMENT BENEFIT PAYMENT IN THE AMOUNT SHOWN ON THE FACE OF THIS CHECK.

SIGN YOUR NAME HERE

Neils B. Ruud
Paul A. Rauchenbush

THIS IS THE FIRST
JOBLESS BENEFIT CHECK
ever issued in this country
from a state unemployment fund.

Paul R.

The first unemployment check. (Photos courtesy of the State Historical Society of Wisconsin.)

WISCONSIN EMPLOYER'S REPORT FOR 1978

Required to determine your status under the
Wisconsin Unemployment Compensation Act.

Complete and return one copy within 10 days to:

Department of Industry, Labor & Human Relations

Job Service Division

P.O. Box 7905

Madison, Wisconsin 53707

Telephone (608) 266-3161

TRADE NAME

LEGAL NAME

MAILING ADDRESS
C/O (IF REQUIRED FOR CORRECT DELIVERY)

STREET OR P.O. BOX

CITY & STATE

ZIP CODE

FEDERAL IDENTIFICATION NUMBER:

 —

TYPE OF OWNERSHIP

☐ INDIVIDUAL

☐ OTHER (ESTATE,
RECEIVERSHIP, TRUST)

☐ PARTNERSHIP

☐ CORPORATION — IS IT NON PROFIT?

☐ YES

☐ NO

SOLE OWNER'S NAME

CORPORATION OFFICERS' NAMES

DO YOU HAVE EMPLOYMENT
OUTSIDE OF WISCONSIN?

PARTNERS' NAMES

☐ YES ☐ NO

TRUSTEE, RECEIVER, ETC.

NUMBER OF EMPLOYEES
OUTSIDE WISCONSIN

NAME OF PERSON TO CONTACT FOR ADDITIONAL INFORMATION

AREA CODE

TELEPHONE NUMBER

 —

DATE OF FIRST EMPLOYMENT IN WISCONSIN

IF YOU NO LONGER HAVE EMPLOYEES IN WISCONSIN:

DATE OF LAST EMPLOYMENT

DID YOU ACQUIRE ALL OR PART OF A BUSINESS ALREADY
ESTABLISHED? ☐ YES ☐ NO IF SO ON WHAT DATE

ARE YOU OUT OF BUSINESS?

☐ YES ☐ NO

DID YOU SELL OR TRANSFER YOUR BUSINESS?

☐ YES ☐ NO

TRADE NAME OF PRIOR OWNER:

IF SO, WHAT DATE

TRADE NAME OF NEW OWNER:

LEGAL NAME OF PRIOR OWNER:

LEGAL NAME OF NEW OWNER:

ADDRESS OF PRIOR OWNER:

ADDRESS OF NEW OWNER:

DID THE FEDERAL UNEMPLOYMENT TAX ACT APPLY TO YOUR TOTAL 1977 PAYROLL? ☐ YES ☐ NOWILL IT APPLY TO YOUR TOTAL PAYROLL IN 1978? ☐ YES ☐ NODO YOU MANUFACTURE ANY
PRODUCTS IN WISCONSIN?
☐ YES ☐ NO

MAIN PRODUCTS MANUFACTURED

% OF TOTAL SALES

MAIN MATERIALS

IF YOU ARE NOT A MANUFACTURING FIRM, DESCRIBE YOUR
BUSINESS OPERATION:WHAT ARE YOUR MAIN PRODUCTS SOLD OR
SERVICES RENDERED:

DO YOU SELL PRODUCTS OR SERVICES TO:

GEN'L PUBLIC (RETAIL) ☐ YES ☐ NOOTHER BUSINESSES
(WHOLESALE) ☐ YES ☐ NO

PLEASE FILL IN THE FOLLOWING INFORMATION ON YOUR FIXED PLACES OF BUSINESS IN WISCONSIN

STREET ADDRESS

NAME OF CITY, VILLAGE OR
TOWN

IS IT A

CITY

VILLAGE

TOWN

COUNTY

MAIN PRODUCT OR BUSINESS
ACTIVITYNUMBER OF
EMPLOYEES**FOR BUREAU USE**

COVERED

1 IN 20

\$1500

FUTA

VE

IF YOU ARE AN ORGANIZATION DESCRIBED IN S. 501(c)(3) OF THE INTERNAL REVENUE CODE CHECK BOX ☐ AND DO NOT COMPLETE THE FOLLOWING QUESTIONS BUT SUBMIT A COPY OF FEDERAL DETERMINATION LETTER ESTABLISHING YOUR STATUS UNDER THE INTERNAL REVENUE CODE.

EMPLOYMENT TABLE

1. COMPLETE ALL COLUMNS IN THE TABLE BELOW THROUGH THE MOST RECENT WEEK OF 1978 EMPLOYMENT.
2. THE EMPLOYEE COUNT IN COLUMN 1 SHOULD INCLUDE EVERY PERSON WHO PERFORMED SOME SERVICES FOR PAY IN A WEEK, INCLUDING PART-TIME EMPLOYEES, PAID AND UNPAID CORPORATION OFFICERS. IF YOU OWN TWO OR MORE BUSINESSES (MUST BE SAME OWNERSHIP) INCLUDE ALL EMPLOYEES IN ALL BUSINESSES IN WISCONSIN REGARDLESS OF LOCATION AND TYPE OF BUSINESS. DO NOT INCLUDE SOLE OWNER OR PARTNERS.
3. THE COUNT IN COLUMN 2 SHOULD INCLUDE EMPLOYEES WHOSE ONLY WORK IN THAT WEEK WAS IN EXCLUDED EMPLOYMENT. THE FOLLOWING ARE TYPES OF EXCLUSIONS PERMITTED. CHECK (✓) TYPE(S) CLAIMED.

☐ (A) A SOLE PROPRIETOR'S FATHER, MOTHER, SPOUSE OR ANY OF HIS CHILDREN UNDER THE AGE OF 18. IDENTIFY THOSE CLAIMED.

☐ FATHER ☐ MOTHER ☐ SPOUSE
☐ CHILD UNDER 18 - BIRTHDATE _____
☐ CHILD UNDER 18 - BIRTHDATE _____
☐ CHILD UNDER 18 - BIRTHDATE _____

☐ (B) UNPAID CORPORATION OFFICERS.

☐ (C) INSURANCE SALESMEN OR REAL ESTATE SALESMEN PAID BY COMMISSION ONLY. (DOES NOT APPLY TO OTHER COMMISSION SALESMEN).

☐ (D) AGRICULTURAL LABOR ON EMPLOYER'S FARM. (EXPLAIN BY LETTER WORK REFORMED.)

☐ (E) OTHER. GIVE APPROPRIATE LETTER FROM ENCLOSED MEMORANDUM. (LOOK UNDER PERMITTED EXCLUSIONS.) _____

4. BELOW - COMPLETE COLUMN (1), THEN SUBTRACT COLUMN (2) FROM COLUMN (1) AND SHOW RESULT IN COLUMN (3).

WEEK NO.	1978 WEEK ENDING	(1) TOTAL NUMBER OF EMPLOYEES IN EACH WEEK	(2) PERMITTED EXCLUSIONS	(3) NET NUMBER	WEEK NO.	1978 WEEK ENDING	(1) TOTAL NUMBER OF EMPLOYEES IN EACH WEEK	(2) PERMITTED EXCLUSIONS	(3) NET NUMBER
1	JAN 7				27	8			
2	14				28	15			
3	21				29	22			
4	28				30	29			
5	FEB 4				31	AUG 5			
6	11				32	12			
7	18				33	19			
8	25				34	26			
9	MAR 4				35	SEP 2			
10	11				36	9			
11	18				37	16			
12	25				38	23			
13	APR 1				39	30			
14	8				40	OCT 7			
15	15				41	14			
16	22				42	21			
17	29				43	28			
18	MAY 6				44	NOV 4			
19	13				45	11			
20	20				46	18			
21	27				47	25			
22	JUNE 3				48	DEC 2			
23	10				49	9			
24	17				50	16			
25	24				51	23			
26	JULY 1				52	30			
PAYROLL TABLE					53	31			

5. PLEASE COMPLETE THE FOLLOWING RECORD OF YOUR QUARTERLY PAYROLLS IN WISCONSIN. DO NOT REPORT WAGES FOR EMPLOYEES EXCLUDED IN ABOVE TABLE.

GROSS QUARTERLY PAYROLLS				
YEAR	1ST QTR JAN-MARCH	2ND QTR APRIL-JUNE	3RD QTR JULY-SEPT	4TH QTR OCT-DEC
1977	\$	\$	\$	\$
1978	\$	\$	\$	\$

6. Did you have 20 weeks in 1977 in which at least one employee worked full or part-time? (Do not include employees working in excluded employment.)

☐ YES ☐ NO

If so, on what date did the 20th week end? _____

THIS REPORT IS TRUE AND COMPLETE, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

FIRM NAME _____ DATE _____

SIGNATURE _____ POSITION _____

OHIO BUREAU OF EMPLOYMENT SERVICES
DETERMINATION OF BENEFITS

TO CLAIMANT: This notice is a determination of your claim. Your eligibility to receive benefits for this claim has been determined according to the decision shown in item 8.

1. Claim- ant's Name and Address		3. Date mailed..... 4. Social Security Account Number..... 5. Benefit year began..... 6. Local office number..... 7. THIS NOTICE IS A DETERMINATION OF: ☐ (a) First weekly claim ☐ (b) Additional (reopened) weekly claim ☐ (c) Continued weekly claim ☐ (d) Other. See decision below
2. Em- ployer's Name and Address		

8.
ISSUE(S):

**APPLICABLE
LAW: . . .**

APPEAL RIGHTS: If you think this determination is incorrect as to fact or law, or if you have additional facts which might affect the determination, you may file a request for reconsideration in person at any bureau office. You will be given assistance in preparing your written request. If you desire, you may write directly to the local office in which the claim is filed. To be considered timely, your request must be filed in person or postmarked no later than fourteen calendar days after the date entered in item 3 on this form. If the fourteenth day falls on a legal holiday, the period for filing is extended to include the next scheduled work-day. If the request is filed by mail, it should indicate the items with which you disagree, the reason for disagreement, and the social security account number shown in item 4 on this form.

OHIO BUREAU OF EMPLOYMENT SERVICES
REQUEST TO EMPLOYER FOR WAGE AND SEPARATION INFORMATION

TO THE EMPLOYER: The claimant identified below has filed a claim for benefits and listed you as a former employer. Complete the applicable items on this form, sign and return to the bureau office shown below. The information you furnish will be used to determine claimant's eligibility for unemployment compensation benefits. If this form is not returned within ten calendar days after the date entered in the block titled: "Date This Form Mailed," you are subject to a \$5.00 penalty and benefit rights will be determined on basis of claimant's statement.

CLAIMANT'S NAME AND ADDRESS		CLOCK NUMBER OR OTHER IDENTIFICATION	SOCIAL SECURITY ACCOUNT NUMBER
		BENEFIT YEAR BEGINS	APPLICATION DATE
EMPLOYER'S NAME AND ADDRESS		LOCAL OFFICE NUMBER	DATE THIS FORM MAILED
		CLAIMANT STATES HE OR SHE WAS SEPARATED FROM YOUR EMPLOY DUE TO: ☐ LACK OF WORK; ☐ OTHER	
PLANT NUMBER			

1. If this individual has not worked for you within the last fifty-four weeks, check this block ☐ , complete item 8, and return the form.
2. Was claimant's employment covered by the Ohio unemployment compensation law? YES ☐ NO ☐
If "NO," complete item 9 on reverse side.
3. For the base period: from _____ through _____, enter the
number of calendar weeks in which this worker earned twenty dollars or more. (Number of calendar weeks)
4. Enter total gross wages this worker earned during the weeks shown in item 3 (Gross wages)
5. Enter date hired _____ last day worked _____
(Date required only if hired within past fifty-four weeks)
6. Was claimant separated due to the lack of work? YES ☐ NO ☐
 A. If separation is temporary (less than forty-five days) give approximate date of recall _____
 B. If separation was for other than "lack of work," furnish all the facts you have concerning the separation.

(Use the reverse side of this form if additional space is needed)

- C. If claimant's separation was for other than "lack of work," a fact-finding interview, if requested, will be conducted before determining claimant's eligibility for unemployment benefits. This interview, when requested, will be conducted at the address shown in the lower left corner of this form. If you wish to request and attend the interview, check this block. ☐
See item 6-c on the reverse side of this form for additional information.
7. Complete this item if you have paid or will pay this claimant any money allocated to the period subsequent to the benefit year beginning date shown above such as WAGES, HOLIDAY or VACATION PAY, any type of SEVERANCE PAY, or a wholly employer financed PENSION.

TYPE OF PAYMENT	DATES OF PERIOD COVERED		AMOUNT OF PAYMENT
	From	Through	
			\$
			\$
			\$

Return the original of this form to:

LOCAL OFFICE
OHIO BUREAU OF EMPLOYMENT SERVICES
5739 CHEVROLET BOULEVARD
PARMA, OHIO 44130

8. EMPLOYER'S CERTIFICATION: I certify that the information furnished is true and correct.

Employer's name _____
Ohio unemployment
compensation account number _____

Signed by _____ Date _____

Title _____ Telephone _____ (area code) (number)

UC-425H (R 2-76)
55192

Return Original—Keep Carbon (Buff) copy for your file.

9. If you checked item 2 "NO," indicate below the reason claimant's employment with your company or organization was not covered by the Ohio unemployment compensation law:

A. I am an employer not covered by the Ohio unemployment compensation law ☐ Enter
B. I am a covered employer, but this worker was in excluded employment ☐ Enter
reason for exclusion _____

C. This worker's employment was covered under the unemployment compensation law of another state ☐ Give
the name of the state _____

INSTRUCTIONS AND DEFINITIONS — RETURN ORIGINAL COPY

The purpose of this form is to notify you that the claimant has filed an application for unemployment benefits and to request information from you to be used in making the eligibility determinations required by law.
The item numbers below refer to the numbered items on the face of the form.

Item 3 — WEEKS WORKED: The base period dates entered in this item represent the first fifty-two consecutive calendar weeks of the fifty-four calendar weeks immediately preceding the "benefit year beginning date" shown in the heading of the form. In completing item 3, enter the number of calendar weeks in which claimant had earnings of twenty dollars or more. A "calendar week" begins Sunday and ends the following Saturday. Only report calendar weeks that are within the "base period" dates appearing in this item.

Item 4 — GROSS WAGES: Enter all wages earned by the employee with respect to the weeks reported in item 3. This includes all commissions, bonuses, vacation pay, and any type dismissal or separation payment, whether such payments are paid in cash or any medium other than cash.

Item 5 — DATES OF EMPLOYMENT: Enter the date this worker first started working for you. If the employment began more than fifty-two weeks prior to the application date shown in the heading of the form, the "first day worked," is not required. In all cases, however, the "last day worked," must be entered.

Item 6 — SEPARATION INFORMATION: If the separation was for "lack of work," check the "YES," block and if the layoff is temporary, enter the "date of recall," if known. If the separation was for any other reason, check the "NO," block and enter such reason along with all available facts. For example, if the individual quit, enter "quit," and the reason he or she gave for quitting. If you discharged claimant, enter "discharged," and the reason(s) for such discharge.

Item 6-c — REQUEST for FACT FINDING INTERVIEW: Enter an "X" in item 6-c if you wish to request and attend a fact-finding interview to obtain information to be used to determine claimant's eligibility for benefits. Section 4141.28 (B), Ohio Revised Code provides that each employer for whom an individual worked, and who is an interested party under section 4141.28 (D) (1), Ohio Revised Code, shall be advised of the right, upon request, to be present at a fact-finding interview before the issuance of a determination on claimant's eligibility for benefits. Interested parties include the claimant, claimant's most recent employer, any other employer for whom claimant worked during the most recent six weeks of employment, and the employer to whose account benefits, if paid, will be charged.

When this bureau receives a request from an interested party to be present at a fact-finding interview, it will schedule the interview and give the parties a least a three day notice of the time and place of the scheduled interview.

Item 7 — SEPARATION AND OTHER PAYMENTS: No entry is required in this item unless you have paid or will pay this individual any money with respect to a period after the "benefit year beginning date" entered in the heading of the form. Entries should include any type of remuneration listed, and in the case of a pension, do not report a pension financed in part by the claimant. The "amount of payment" should be the GROSS amount. If the payment covers more than one calendar week, this amount should be broken down by calendar weeks. If two or more types of payments are allocated to a period after the "benefit year beginning date," make separate entries for each type of payment.

DETERMINATION OF ELIGIBILITY for BENEFITS: When a determination of claimant's eligibility for benefits is made, all "interested parties" as defined in item 6-c above will be mailed a copy. Each determination will contain information about the right to appeal. Section 4141.28 (G) (3), Ohio Revised Code, specifies that if a determination allows benefits, notwithstanding the right of appeal, payment of benefits will begin immediately. If an appeal is filed and it is finally determined that claimant is not entitled to all or part of the benefits already paid, the claimant will be required to make repayment and a credit will be made immediately to the unemployment account of the employer. Credit will be made to the account of a "reimbursing" employer only when recovery is made from the claimant.

IF YOU NEED ASSISTANCE IN COMPLETING THIS FORM, CONTACT ANY CLAIMS OFFICE OF THE BUREAU.

SPACE FOR SUBMITTING ADDITIONAL SEPARATION INFORMATION

NEW ☐ ADD. ☐ Claim Date _____ TO THE CLAIMANT Begin this form with item 1 below	Department of Labor MICHIGAN EMPLOYMENT SECURITY COMMISSION APPLICATION FOR UNEMPLOYMENT BENEFITS AND WORK APPLICATION	Is new Name Plate required? ☐ Yes ☐ No OCC. CODE _____ L ☐ S ☐ B.O. NO. _____								
1. PRINT Name: Last _____ First _____ Middle _____		2. Social Security Number _____								
3. No. and Street _____										
4. City-State-Zip Code _____ County _____		5. Telephone Number _____								
EMPLOYMENT	6. LAST EMPLOYER — Firm Name _____	9. Department and Badge No. _____								
	7. No. and Street _____	10. Plant or Location _____								
	8. City-State-Zip Code _____	11. Most Recent Kind of Work _____								
	12. Other kinds of work you have performed _____									
	13. First Date Worked _____ Last Date Worked _____									
14. Do you expect to return to work with this employer? ☐ Yes When _____ ☐ No ☐ I don't know										
15. Reason for unemployment (check correct one) ☐ Laid off for Lack of Work ☐ Quit ☐ Fired ☐ Labor Dispute ☐ Retired ☐ Other Reason: _____										
16. How much Vacation Pay, Holiday Pay, Bonus, Retirement Benefits, Worker's Disability Compensation, etc., were you paid for this period of unemployment? \$ _____ Amt. From Thru		17. How much did you earn (before deductions) in the last calendar week you worked? \$ _____								
18. If you had military service, enter Active Duty Dates: From _____ To _____		19. Describe any physical disability _____								
20. Circle Highest Year of Education Completed <table style="width:100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; padding: 2px;">Grade School</td> <td style="border: 1px solid black; padding: 2px;">High School</td> <td style="border: 1px solid black; padding: 2px;">College</td> <td style="border: 1px solid black; padding: 2px;">Degree</td> </tr> <tr> <td style="border: 1px solid black; text-align: center;">1 2 3 4 5 6 7 8</td> <td style="border: 1px solid black; text-align: center;">1 2 3 4</td> <td style="border: 1px solid black; text-align: center;">1 2 3 4 5</td> <td style="border: 1px solid black;"></td> </tr> </table>		Grade School	High School	College	Degree	1 2 3 4 5 6 7 8	1 2 3 4	1 2 3 4 5		21. Are you attending or have you attended any school, college or university during the past 52 weeks? ☐ Yes ☐ No
Grade School	High School	College	Degree							
1 2 3 4 5 6 7 8	1 2 3 4	1 2 3 4 5								
Name school and list courses or training (including military) which prepared you for work. Give length and dates courses or training ended. _____		22. SEX ☐ M ☐ F 23. DATE OF BIRTH _____ MO. DAY YEAR								
24. Dep. Code _____ Resid. Code _____ Occ. Code _____ LEAVE BLANK—OFFICE USE ONLY Filing Date _____ BY Beg. Week _____ Dep. Class _____ BPE _____ W B H I A 1st Appointment _____ Gross earnings in current and/or preceding week \$ _____ wk. no. _____ Date MESIC 1555 Mailed _____										

IF YOU HAVE WORKED FOR OTHER EMPLOYERS WITHIN THE PAST 12 MONTHS, USE THE BACK OF THIS FORM

25. FILL IN THIS PART OF THE FORM ONLY IF YOU ARE CLAIMING DEPENDENTS

Individuals claimed as your dependents must have received more than half the cost of their support from you for at least 90 consecutive days (or, in the case of a wife, husband, or child, for the duration of marital or parental relationship if such relationship has existed less than 90 days) immediately preceding the beginning date of your benefit year established by this claim. The law specifically names the following individuals whom you may legally include on your unemployment benefit claim as dependents:

- A. Your child, stepchild, adopted child, or grandchild under 18 years of age (or any age if unable to work because of physical or mental handicap), or under 22 years of age if a full-time student as defined by the institution, at a high school, vocational school, community or junior college, or college or university.
- B. Your legal wife or husband.
- C. Your legal father or mother if such parent is more than 65 years of age or of any age if permanently disabled from engaging in gainful employment.
- D. Your brother or sister if under 18 years of age (or any age if unable to work because of physical or mental handicap), or under 22 years of age if your brother or sister is a full-time student as defined by the institution, at a high school, vocational school, community or junior college, or college or university, provided such brother or sister is orphaned, or if not orphaned the living parents are dependent on an individual.

List dependents you are claiming as follows: children first, then wife or husband, parents next, and any brothers or sisters last.

NAME OF DEPENDENT	ADDRESS OF DEPENDENT	RELATIONSHIP	AGE	LEAVE BLANK OFFICE USE

Did you furnish more than half the cost of support of each individual named above for at least 90 consecutive days (or, in case of a husband, wife or child, for the duration of marital or parental relationship if less than 90 days) immediately preceding the effective date of this claim? Yes ☐ No ☐

Is any other person claiming or receiving dependency allowances for any individuals listed above? Yes ☐ No ☐

26. If you have performed services as a professional athlete during the past 52 weeks please check this box ☐.

27. Have you been a citizen of the United States during the past 52 weeks? Yes ☐ No ☐

a. If "No" have you been issued an Alien Registration Receipt Card, Form I-151 commonly called a "green card"? Yes ☐ No ☐

1. If "yes" when was the card issued? _____

2. If you have not been issued Form I-151 what document or form number have you been issued? _____ Date Issued _____

28. YOUR CERTIFICATION: I hereby register for work and apply for a determination of my unemployment benefit rights. I certify that all of the information submitted by me on this form is true and correct to the best of my knowledge and belief. I UNDERSTAND THAT THE LAW PROVIDES PENALTIES OF FINE AND IMPRISONMENT FOR FALSE STATEMENTS TO SECURE BENEFITS.

DO NOT SIGN UNTIL INSTRUCTED BY THE CLAIMS TAKER.

29. Claimant's Signature _____ 30. Age _____ 31. Date Signed _____

- ☐ Driver's License ☐ Voter's Registration
☐ Service Discharge Papers (DD214) ☐ Other

Given	Yes ☐	Ref.	Clerk
1900	No ☐	To	

IF YOU HAVE WORKED FOR MORE THAN ONE EMPLOYER DURING THE PAST 12 MONTHS, CONTINUE BELOW.
 Include any work performed for any Federal, State, or local government agency, any work performed in other states, and military service.

Do not go back more than 12 months.

NEXT TO LAST EMPLOYER	Plant or Location	Kinds of Work	Badge No. and Department	Date Began Work with This Employer	Last Day Worked for This Employer
Firm Name					
No. & Street	Why did you leave? (Check correct one):				(DO NOT WRITE HERE) Date MESC 1555 Mailed
City	☐ Laid Off For Lack of Work ☐ Fired ☐ Quit ☐ Retired				
State-Zip Code	☐ Labor Dispute ☐ Other Reason:				
THIRD LAST EMPLOYER	Plant or Location	Kinds of Work	Badge No. and Department	Date Began Work with This Employer	Last Day Worked for This Employer
Firm Name					
No. & Street	Why did you leave? (Check correct one):				(DO NOT WRITE HERE) Date MESC 1555 Mailed
City	☐ Laid Off For Lack of Work ☐ Fired ☐ Quit ☐ Retired				
State-Zip Code	☐ Labor Dispute ☐ Other Reason:				
FOURTH LAST EMPLOYER	Plant or Location	Kinds of Work	Badge No. and Department	Date Began Work with This Employer	Last Day Worked for This Employer
Firm Name					
No. & Street	Why did you leave? (Check correct one):				(DO NOT WRITE HERE) Date MESC 1555 Mailed
City	☐ Laid Off For Lack of Work ☐ Fired ☐ Quit ☐ Retired				
State-Zip Code	☐ Labor Dispute ☐ Other Reason:				
FIFTH LAST EMPLOYER	Plant or Location	Kinds of Work	Badge No. and Department	Date Began Work with This Employer	Last Day Worked for This Employer
Firm Name					
No. & Street	Why did you leave? (Check correct one):				(DO NOT WRITE HERE) Date MESC 1555 Mailed
City	☐ Laid Off For Lack of Work ☐ Fired ☐ Quit ☐ Retired				
State-Zip Code	☐ Labor Dispute ☐ Other Reason:				

LEAVE BLANK — BRANCH OFFICE USE ONLY

CERTIFICATION: I hereby certify that during the week(s) indicated:

1. I was REGISTERED FOR and SEEKING work unless these requirements were waived under Section 28(1)(a) of the MESC Act;
2. I did not refuse or fail to REPORT for a work interview or to APPLY for or ACCEPT any work offered me except as reported by me to this Commission;
3. I was ABLE and AVAILABLE to perform suitable full-time work;
4. I did NO WORK (including self employment) other than that for which I had earnings as reported;
5. I did NOT CLAIM or RECIEVE benefits under any STATE or FEDERAL law except as reported;
6. I have not claimed nor did I receive a RETIREMENT BENEFIT except as reported.

I KNOW THAT THE LAW PROVIDES PENALTIES OF FINE AND IMPRISONMENT FOR ANY FALSE STATEMENT:

Claimant's Signature..... Date.....

Week Ending
Earnings
\$
Week Ending
Earnings
\$
Clerk

NOTICE OF CLAIM RENEWAL

TO THE EMPLOYER:

The claimant named on the reverse side of this form has renewed his/her claim for unemployment benefits. You are named as the most recent employer. Item #15 indicates the reason for separation.

If this claimant has unused credit weeks available from you within his/her current base period, any benefits paid as a result of this claim may be charged to your account.

You must advise this Commission in writing within 7 days from the date of mailing, if you believe the claimant should be disqualified or is ineligible for benefits.

Correspondence regarding this claim must be directed to the Branch Office which forwarded this Notice of Claim Renewal to you. Its number appears in the upper right hand corner on the reverse side. The address of the corresponding Branch Office number is listed in the back of the Employer's Handbook.

FORM MESC 1564
(REV. 2-75)

13.0 Appendices

13.1 Estimated Cost of the Commission Recommendations

[Note: The material for this appendix was prepared by the Commission staff, with the assistance of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor. Most of these data were not available, however, until after the Commission had held its last meeting. Thus, the Commissioners did not have access to all of this information when their recommendations were finalized, in June 1980.]

There are cost implications associated with the Commission's recommendations to the Congress, to the Secretary of Labor, and to the States. Estimates were prepared of both the short-run cost increases and the long-run cost impact over the business cycle. Most of the recommendations are stated in general rather than specific terms. Since cost estimates for the future cannot be precise, those included in this appendix reflect the high side of the range of probabilities.¹

There is no attempt here to detail the assumptions underlying the cost estimates of each item of the recommendations. Several underlying economic assumptions are common to all estimates, however, particularly the administration's midyear economic forecasts for the 5 years beginning with fiscal year (FY) 1981.² If economic developments different from those assumed occur, the estimated costs will vary accordingly. In addition, the estimates in this section do not reflect the cost implications of unemployment insurance (UI) legislation enacted subsequent to this writing (September 1980). It appeared at that time that such legislation may include extended benefit program and pension amendments. Some of the Commission recommendations, specifically those concerning expansion of coverage, have revenue and expenditure implications. This chapter deals with the cost impact only.

The Commission does not recommend a full-scale immediate implementation of all its recommended changes in the unemployment compensation system. There are two reasons for this. First, because of the

Federal-State relationship, some recommendations require only State actions, some require only Federal action, some require both Federal and State action, some require both congressional and executive implementation, and some require only implementation by the Department of Labor. Where two or more units of government are involved, there is necessarily a pattern of sequential decisionmaking.

The second reason for phasing in the recommendations is the limited capacity of the various funds involved to adjust to change quickly, particularly when the system is under the kind of financial stress it now is. For this reason, some of the Commission recommendations, specifically those on benefit levels and the taxable wage base, propose incremental increases in several steps over a period of years. This gives time for adjustment and evaluation.

The delays of implementation that arise from budgeting and procedural questions and from desired step-by-step adjustment mean that, for FY 1981, only a small part of the recommendations could be enacted.

Fiscal year 1981 is the earliest possible date that action can be taken at the Federal level, followed by State action with implementation in 1982 or 1983. This does not, of course, preclude the States from responding on their own to Commission recommendations without waiting for a congressional decision. For these various reasons, it is impossible to know exactly in what fiscal year all the Commission's recommendations would become effective.

For FY 1981, there are 10 recommendations that could become effective. Table 1 gives the *additional* expenditures that would be incurred in 1981 as a result of the implementation of these recommendations for the full 12-month period, assuming an 8.5 percent total unemployment rate and 1980 wage and price levels. Note that the Supplemental Extended Benefit (SEB) program is a permanent mandatory program like extended benefits and would require State implementation. It is unlikely that implementation of this could be accomplished in FY 1981. However, the program could be implemented in 1981 through volun-

TABLE 1. Estimated added costs of recommendations in FY 1981

Item affecting general revenue	Added cost in millions of dollars	Item affecting administration	Added cost in millions of dollars
SEB program	4,663 ¹	Base budget set at quarterly average of annual workload	379
Allowances for job search and relocation	139	Full cost model funding	112
No tax of UI benefits	892	Full NPS and AS&T funding	20
Increase CETA slots by 50 percent ²	2,140	Increase in claims workload (e.g., SEB's)	218
Special program benefits not paid concurrently with UI	-1,002	Employment Service staffing	111
	6,832		840

LEGEND: AS&T = administrative, staff, and technical services; CETA = Comprehensive Employment and Training Act; NPS = nonpersonal services.

¹ The estimated 6-month costs for the administration proposal for an SEB-type program is estimated at \$1.25 to \$1.38 billion.

² The remaining 50 percent increase will occur in FY 1982.

tary agreements with the States (as was the Federal Supplemental Benefit program), but then SEB would not be mandatory since the States would not have to participate.

Assuming an unemployment rate of 8.5 percent, the first stage of implementation would cost an additional \$7.672 billion, raising the estimated costs of UI benefits and administration for the year from \$24.765 billion to \$32.437 billion. Most of this would come from general revenues rather than the State trust fund accounts.

Schedule for implementation by steps

Most of the Commission's proposed changes would phase in over a 9-year period. The major items and their timing are indicated in Table 2.

Incremental costs due to the recommendations will vary from year to year in accordance with these stages of implementation. For example, the costs of the recommended benefit standards under varying economic conditions would be as shown in Table 3. These additional costs are for the nation. The additional costs for a particular State vary according to the extent the State already meets or exceeds the recommended standard.

TABLE 2. Scheduled implementation for selected recommendations

Year	Benefit standard (in percent) ¹	Taxable wage base (in percent) ²	Employment Service staff (in thousands)
1981	—	—	34
1982	55	—	38
1983	55	50	41
1984	60	50	46
1985	60	55	50
1986	66⅔	55	50
1987	66⅔	60	50
1988	66⅔	60	50
1989	66⅔	65	50

¹ Benefit standard is the maximum weekly benefit amount (WBA) as a percentage of State average weekly wage.

² Taxable wage base is the percentage of State average annual wage.

NOTE: For a reinsurance program, it is anticipated that the collection of revenue will begin probably no earlier than 1985 and before actual payments to States (to allow for accumulation of funds).

TABLE 3. Estimated additional cost of recommended benefit standards based on three assumed levels of total unemployment, assuming 1980 State maximum weekly benefit amounts

Total unemployment rate	Cost increase (in percent)		
	For 55 percent WBA in 1983-84	For 60 percent WBA in 1985-86	For 66⅔ percent WBA in 1987 and thereafter
6.6 percent	14.6	19.0	24.5
7.5 percent	15.2	19.8	25.6
8.5 percent	15.4	20.2	26.1

NOTE: Maximum WBA is a percentage of State average weekly wage.

The staging for the taxable wage base and the implementation of these recommendations are discussed in chapter 6.2. The estimated impact on the UI tax of the Commission recommendations is discussed below.

The collection of revenue to fund the recommended reinsurance program is expected to begin when the Federal unemployment tax (FUT) drops from 0.7 to 0.5 percent and States and the Federal Government have resolved their respective financial difficulties. Since the reinsurance plan is estimated to cost 0.1 percent, the drop in the FUT would be to only 0.6 percent. Whether the scheduled implementation suggested here is met depends on whether certain other recommendations are adopted (specifically the reimbursement of certain past supplemental and extended benefit costs).

Additional costs when all stages are in place

With the aid of the actuaries in the Unemployment Insurance Service of the Department of Labor's Employment and Training Administration, estimates have been made for FY 1989 when all stages are completed. These estimates are for the total additional costs from the recommendations at an assumption of a high unemployment level of 8.5 percent in 1989. If unemployment is lower than the assumed level, then the estimate of additional costs accordingly would be lower.

The estimates provided in Table 4 are grouped according to the source of funds affected, whether they be general revenues, State benefit trust fund accounts, or funds generated under the Federal Unemployment Tax Act (FUTA). This latter group is separated into benefit-related costs and administration-related costs. An item may appear in more than one category when it has implications for more than one funding source. For example, fraud, error, and benefit payment control have cost implications for State trust fund accounts and for FUTA funds in both administration and benefits (regular extended and supplementary).

In Table 4, savings are indicated with a negative sign. Each estimate assumes that the full implementation of other recommendations has occurred; in other words, interactive effects have been taken into consideration.³ All figures are in terms of 1980 dollars, that is, 1980 price and wage levels. Total added costs for FY 1989 are \$18.669 billion. Total estimated costs without the recommendations are projected to be \$24.765 billion.

The reader is cautioned to observe the limitations of these estimates:

1. They assume that all recommendations are adopted fully by all government jurisdictions and implemented by all the administrative agencies affected.
2. All estimates are for the most extensive interpretation of the Commission's recommendations; since

TABLE 4. Estimated added costs of recommendations in FY 1989 assuming an 8.5 percent unemployment rate and 1980 price and wage levels

Recommendation	Added cost in millions of dollars	Recommendation	Added cost in millions of dollars
Item affecting general revenue		Item affecting FUTA funds <i>continued</i>	
SEB program	4,663	Fraud, error, and benefit payment control	— 84
Allowances for job search and relocation	139	Benefit standards	766
No tax of UI benefits	892	Expanded coverage	36
Double CETA slots	4,280	Partial benefits	13
Special program benefit not paid concurrently with UI	— 1,002		969
	8,972	Item affecting cost of administration	
Item affecting State funds accounts		Base budget set at quarterly average of	
Pension deduction repeal	837	annual workload	379
Disqualification and continuing eligibility	887	Full cost model funding	112
Lifetime reserve	35	Full NPS and AS&T funding	20
Fraud, error, and benefit payment control	— 623	Increase in claims workload (e.g., SEB's)	218
Benefit standards	5,674	Fraud, error, and benefit payment control	74
Expanded coverage	268	Expanded coverage (tax function)	80
Partial benefits	98	State collection of FUTA	— 15
	7,176	Appeals process, claims services	55
Item affecting FUTA funds		Computerization	33
Pension deduction repeal	113	Wage reporting	15
Disqualification and continuing eligibility	120	Interstate benefits	10
Lifetime reserve	5	Research information, program data	30
		Employment Service staffing	541
			1,552

LEGEND: AS&T = administrative, staff, and technical services; CETA = Comprehensive Employment and Training Act; NPS = nonpersonal services.

other interpretations are possible, these estimates constitute an upper limit.

3. These additional costs are not all to be borne by the payroll tax; general revenues will be used more extensively in benefit financing, particularly of long-term benefits.

If unemployment were less than 8.5 percent in 1989, then additional benefit costs would be substantially lower: supplementary extended benefits would not be needed; the additional costs of regular benefits and extended benefits under the recommended standards would drop; the additional claims loads and administrative costs under the recommendations would be reduced. Altogether, the additional costs due to the recommendations would be reduced to one-third or one-half the estimates made above if there were favorable economic conditions in 1989, with a 6.5 percent total unemployment rate.

Effect of recommendations on payroll taxes

The payroll tax paid by employers (with small employee contributions in three States) includes both a Federal portion and a State portion. The Federal portion is a uniform percentage of payrolls; the State portion varies with the level of the State fund and the experience of individual employers. For purposes of

this analysis, the focus is on the Federal-State combined rate as averaged for all employers and all States. To avoid the difficulties of different taxable wage bases, the analysis is in terms of tax rates relative to total covered wages. This permits comparison of taxes across States and over time as well.

In the long run, taxes paid into the system, plus interest on reserves, must equal benefits paid out, plus administrative costs. In any particular year, there may be a great variance between income and outgo, which is reflected in a changed reserve level. There is thus a close relationship between program costs (benefits and administrative) and tax yield, with the latter somewhat smoothed out over time.

In Table 5, the effects on payroll taxes are shown. The estimated cost, in terms of total covered wages, of the existing program in FY 1989 under conditions of high unemployment (8.5 percent) is determined; also determined are the estimated additional taxes that would be required to support *all* the Commission recommendations if they were to become effective in 1989 (all estimates are in terms of 1980 dollars, prices, wage levels, and covered employment).

The estimated cost of the present program is \$24.765 billion in FY 1989 (under 1980 price and labor market conditions), which is 2 percent of total covered wages. If all the Commission recommendations were in effect by 1989, that estimate would be \$43.434 billion (in-

TABLE 5. Estimated effects of recommendations on payroll tax in FY 1989, assuming an 8.5 percent total unemployment rate

Item	Effect
a. Expenditures for existing program, in billions of dollars	24.765
b. Total covered wages, in billions of dollars	1,223.000
c. Program cost rate (a ÷ b), in percent	2.0
d. Expenditures if all recommendations were effective, in billions of dollars	43.434
e. Portion of expenditures (d) from general revenues, in billions of dollars	8.972
f. Portion of expenditures (d) affecting payroll tax (d — e), in billions of dollars	34.462
g. Program cost rate with recommendations (f ÷ b), in percent	2.8
h. Additional costs from recommendations (g — c), in percent	0.8

creased by the \$18.669 billion estimate of added cost from the recommendations).

Since not all of the estimated added costs are absorbed by the payroll tax, those costs (\$8.972 billion) charged to general revenues are deducted. Accordingly, those costs that affect the payroll tax (\$34.462 billion) represent 2.8 percent of total covered wages, for an 0.8 percent increase resulting from implementation of the Commission's recommendations. (The estimated overall costs of the program would be greater, but supplementary extended benefits and job search and relocation expenditures would be charged to general revenues rather than payroll taxes.)

This is the estimated incremental payroll tax rate for a very high cost year. If unemployment falls to an average rate between 4 to 5 percent by the end of the 1980's, then the cost rate will be lower and the estimated payroll tax rate less. Even assuming that the unemployment rate toward the end of the decade averaged as high as 6.6 percent, the long-run additional taxes resulting from the Commission's recommendations would fall to about 0.5 percent of total covered wages. If full employment were reached, the cost of the Commission's recommendations would be less.

The costs of the present program (all benefits and administrative costs) have averaged 1.34 percent of total covered wages from 1950 to 1980. The estimated additional 0.5 percent resulting from the Commission's recommendations raises this to 1.84 percent.

To evaluate a UI program that would require payroll commitments of 1.84 percent as opposed to 1.34 percent requires some historical perspective. UI has been the only employee benefit program to cost less than expected at its inception. Costs of health insurance, pension plans, and social security have risen, leaving UI a minor portion of total labor costs.

The high reserves following World War II made it possible for many years (until about 1957) for the UI tax rate to fall below the cost rate on a continuing basis. The reserves declined in the 1950's. Reserves were not sufficiently built up in the 1960's because of rising wage and benefit levels. As a result, higher rates of unemployment in the decade of the 1970's left the program in a deficit position.

When the program was established in 1935, unemployment compensation was expected to cost up to the equivalent of 3 percent of total covered wages. It has not and it need not. For less than an average of 2 percent of total covered wages, unemployment compensation, improved as recommended by the Commission, can play a significant role in the modern U.S. economy.

Footnotes

1. For example, one of the recommendations is that States discontinue automatically disqualifying applicants who limit their availability to part-time work, if in fact they have permanent work records of part-time work. All but six States would have to change their practice if this recommendation were fully implemented. For purposes of making an estimate of the cost of the recommendation, it must be assumed that all these States would change their policy. Moreover, since data on part-time workers are not available, further assumptions have to be made (for example, one must assume that the average duration of unemployed persons seeking part-time work is the same as for those seeking full-time work). However, part-time workers may be less career-oriented and more willing to accept a variety of jobs. The point is that, where there is uncertainty and lack of evidence, the assumptions adopted were on the high-cost side.

2. The following are the Administration mid-1980 estimates for FY 1981 to 1985:

Fiscal year	Total unemployment rate (percent)	Percentage of change from prior year	
		Consumer Price Index	Gross national product
1981	8.5	10.3	— 1.1
1982	8.2	9.4	3.3
1983	7.5	8.1	4.3
1984	6.8	7.2	4.2
1985	6.15	6.3	4.3

3. In some cases, the figures quoted here do not agree with those in the chapters discussing the issues, largely because the chapters do not take into account interactive effects.

13.2 Summary of the Work of the Commission, March 1978–June 1980

The first meeting of the National Commission on Unemployment Compensation (NCUC) was held in Washington, D.C., March 9, 10, and 11, 1978. The meeting was designed to introduce the Commission members to each other and to the task mandated to them by Public Law 94–566, as well as to organize a working structure for the Commission.

As a means of introducing the Commission members to the unemployment insurance (UI) system and to some of the key personnel involved at the Federal level, several individuals addressed the Commission. In addition to Secretary of Labor Ray Marshall, who emphasized the importance of the work that the Commission was about to undertake, several members of his staff in the Unemployment Insurance Service were present to discuss the goals and mission of the Federal/State UI program.

Joseph M. Becker, S.J., then Acting Chairman of the Federal Advisory Council on Unemployment Insurance, also addressed the Commission. In his remarks, Father Becker extended an offer of assistance to the Commission from the Federal Advisory Council and expressed the hope that the report of the NCUC would produce “genuine light on the issues.”

During the course of the 3-day meeting, the Commission was able to complete several necessary organizational tasks. These included the designation of an interim senior staff; agreement to a tentative schedule of future meeting dates and locations; the draft of a set of “General Rules and Regulations,” by which the Commission would operate; and extensive discussion on the size, scope, and role of various issue-oriented committees within the Commission.

The Commission continued to meet monthly throughout the year. Immediately after its ninth meeting, held in Los Angeles, California, the NCUC issued its “First Interim Report.” In setting the agenda for that report (published in November 1978), the Commission gave first priority to some specific financial and structural questions that were before the Congress at that time. The report also contained recommendations on issues referred to the NCUC by the House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation.

In the 28 months after the initial meeting, the Commission met 26 times in open session in 18 different cities throughout the country. A basic reason for those meetings was to receive testimony for the purpose of carrying out the provisions of the Commission’s congressional mandate (PL 94–566, Sec. 411[b]), which were:

1. examination of the adequacy—and economic

and administrative impacts—of the changes made by this Act in coverage, benefit provisions, and financing;

2. identification of appropriate purposes, objectives, and future directions for unemployment compensation (UC) programs, including railroad unemployment insurance;

3. examination of issues and alternative courses of action concerning the relationship of UC to the economy, with special attention to long-range funding requirements and desirable methods of program financing;

4. examination of eligibility requirements, disqualification provisions, and factors to consider in determining appropriate benefit amounts and duration;

5. examination of (a) the problems of claimant fraud and abuse in the UC programs, (b) the adequacy of present statutory requirements and administrative procedures designed to protect the programs against such fraud and abuse, and (c) problems of claimants in obtaining prompt processing and payment of their claims for benefits and any appropriate measures to relieve such problems;

6. examination of the relationship between UC programs and manpower training and employment programs;

7. examination of the appropriate role of UC in income maintenance programs;

8. conduct of such surveys, hearings, research, and other activities as deemed necessary to enable the formulation of appropriate recommendations and to obtain relevant information, attitudes, opinions, and recommendations from individuals and organizations representing employers, employees, and the general public;

9. review of the present method of collecting and analyzing present and prospective national and local employment and unemployment information and statistics;

10. identification of any weaknesses in such method and any problems resulting from the operation of such method;

11. formulation of any necessary or appropriate new techniques for the collection and analysis of such information and statistics; and

12. examination of the feasibility and advisability of developing or not developing Federal minimum benefit standards for State UI programs.

To help accomplish this, public testimony was received from a wide variety of witnesses. For example, at the second meeting, in Washington, D.C., the Commission listened to, and asked questions of, recognized experts in the UI field, from both State and Federal governments and from the private sector. At its third meeting, in Madison, Wisconsin, the NCUC heard from Paul Raushenbush, an early proponent of the original Wisconsin UI law. It was also in Madison that the

Commissioners heard from their first labor and management witnesses.

At subsequent meetings, testimony was given by such diverse groups as the National Governors' Association, the Legal Aid Bureau of Maryland, the Air Force Sergeants' Association, and the Chamber of Commerce of the United States. Others testifying before the Commission included the West Virginia Coal Association, the American Farm Bureau, the City of Chicago, the National Council of Senior Citizens, Texas Rural Legal Aid, and various private individuals. (A full list of witnesses follows at the end of this section.)

One other very important method that the Commission used in obtaining information was research. Approximately 71 percent of the total NCUC expenditures went to pay for over 60 research projects. These studies were distributed to each Commissioner as soon as available, and many were discussed at the public meetings of the Commission, often with the principal investigator(s) present for questions.

Another source of UC information that the Commission used in meeting its mandate was a survey (completed under a NCUC contract) by the Institute for Social Research, University of Michigan. This survey, called "Attitudes Toward and Experience with Unemployment," was valuable because it contained descriptive statistics of household unemployment, job search behaviors, and attitudes toward UC in America.

Also included in the agendas of seven of the early meetings were visits to local claims offices. These tours enabled the Commissioners to get an idea of the many differences among the States in the way claims are handled and in the facilities available to claimants. The Commission visited offices in the District of Columbia, Illinois, Michigan, Ohio, Texas, West Virginia, and Wisconsin.

In July 1979, the NCUC issued its "Second Report." Legislation to extend the life of the Commission had not been enacted at that time, so that report was, potentially, the final report. Within the report, the Commissioners included an 11-point resolution to explain the necessity "for prompt enactment of H.R. 3920 to assure the orderly completion of the work of the Commission and the submission to the President and the Congress of a comprehensive final report by July 1, 1980" ("Second Report of the National Commission on Unemployment Compensation," July 1979, p. 4).

The legislation was passed by the Congress at the end of September 1979, and the Commission continued its work with monthly meetings, public hearings, additional research and administrative studies, and much internal discussion.

The Commissioners debated the pros and cons of practically every UI issue and by October 1979 began making tentative decisions concerning their final recom-

mendations. This continued over the next 9 months, sometimes resulting in changes in previously made decisions. At the NCUC meeting held June 28-30, 1980, the Commission finalized its recommendations.

List of witnesses

Ray Marshall, Secretary of Labor

Joseph M. Becker, S.J., Acting Chairman, Federal Advisory Council on Unemployment Insurance

Louis Houff, Director, Program Support Staff, UIS, ETA, DOL

Murray Rubin, Chief, Division of Program Policies and Legislation, UIS, ETA, DOL

James Van Erden, Supervisory Actuary, Division of Actuarial Services, UIS, ETA, DOL

Lawrence Weatherford, Administrator, Unemployment Insurance Service, ETA, DOL

Robert Goodwin, Vice President, ICESA

Murray Dorkin, Director of Research, New York State Department of Labor

S. Martin Taylor, Director, Michigan Employment Security Commission

Ewan Clague, former Director, Bureau of Employment Security

Curtis Harding, former Executive Director, Utah Employment Security Agency

Saul Blaustein, Senior Staff Economist, The Upjohn Institute

James Manning, Chief, Division of Actuarial Services, UIS, ETA, DOL

Robert Crosslin, Economist, ASPER, DOL

Sar Levitan, Chairman, NCEUS

Peter Henle, Deputy Assistant Secretary, ASPER, DOL

Robert Stein, representing Julius Siskin, Commissioner of the Bureau of Labor Statistics, DOL

Erv Mesloh, Chief, UI Division, California Employment Development Department

Ross Porter, General Counsel, Pioneer Hi-Bred International Inc.

Paul Raushenbush, former Director, Unemployment Insurance Division, Wisconsin Employment Security Commission

Ellis Taff, Acting Director, Bureau of Benefits Adjustments, UI Division, Wisconsin Employment Security Commission

David Pearson, Acting Employment Security Administrator, Wisconsin Employment Security Commission

Dr. Raymond Munts, Director, School of Social Work, University of Wisconsin

Irvin Garfinkel, Director, Institute for Research on Poverty, University of Wisconsin

Robert Lampman, Professor of Economics, University of Wisconsin

Kermit Caves, Retired, Snap-on-Tool Corporation, Attorney, employer representative on Wisconsin Advisory Council

John Schmitt, President, Wisconsin AFL-CIO, labor representative on Wisconsin's Advisory Council

Stephen Farber, Director, National Governors' Association (accompanied by Joan Wills and Dave Arnold)

Honorable Thomas P. O'Neill, III, Lieutenant Governor of Massachusetts

Gordon S. Berman, Managing Attorney, Legal Aid Bureau of Maryland

Burton Fritz, Barbara O'Hearn, and Charles Horwitz, Migrant Legal Action Program, Inc., Washington, D.C.

Donald L. Harlow, Deputy Executive Director, Government Relations, Air Force Sergeants Association (accompanied by Albert J. Connors, Director for Legislation, and Earl Marshall, Director of Veterans Affairs)

John Lesnick, Maryland AFL-CIO

Julian F. Carper, Virginia AFL-CIO

Chamber of Commerce of the United States:

John R. Wall, Vice President of Personnel, Republic Steel Corporation

Ralph Adams, Director of Unemployment and Worker's Compensation Activities, General Motors

Conrad Kreyling, Manager of Sale and Miscellaneous Taxes, J.C. Penney

Warren Blue, Senior Vice President, R. E. Harrington, Inc.

Council of State Chambers of Commerce:

Edward H. Kay, Payroll Tax Manager, Sears, Roebuck and Company

John Dankowsky, Assistant Director, Legislative Service Department, Pennsylvania Chamber of Commerce

William R. Brown, Associate Research Director of the Council

Julius E. Kubier, President, Association Industries of Oklahoma

Charles H. Taylor, President, Virginia Manufacturers Association

Christopher Costello, Chairman, Unemployment Insurance Committee, Maryland Chamber of Commerce

Samuel Christine, Director, Labor and Employment Laws and Regulations

Perry Ellsworth, Executive Vice-President, National Council of Agricultural Employers

Matthew I. Cotabish, Chairman, Ohio State Advisory Council for Employment Security

Jack Friedman, General Council, West Virginia Employment Security Agency

Edwin Wiles, President, West Virginia Coal Association

Joseph Powell, President, West Virginia Labor Federation (AFL-CIO)

Charles Hopkins, Executive Vice President, West Virginia Retailers Association

Philip Cline, West Virginia Manufacturers Association

Samuel C. Bernstein, former Administrator, Illinois Employment Security Agency

Mishca Rubin, former Assistant Unemployment Insurance Commissioner, Illinois

Gordon Winks, Lawyer, Sifer, Shaw, Fairweather, & Geraldson

J. McCauley, Assistant Corporation Counselor for the City of Chicago (accompanied by Dan Kubasiak, Assistant to the Budget Director, and George Wheatley, Leroy Hansen, and Robert Ward from the Chicago Board of Education)

C. H. Fields, American Farm Bureau

Wayne McGowan, Deputy Secretary of the Wisconsin Department of Industry, Labor and Human Relations

Betty Duskin, Director of Research for National Council of Senior Citizens

Stanley Johnson, President of Illinois State AFL-CIO (accompanied by Dick Welsh, Legislative and Research Assistant, and Mike Kline, Legislative Representative of the United Auto Workers)

Nolan F. Ward, Commissioner, Texas Employment Commission, Texas

Marty Glick, Chairman, Interstate Conference Employment Security Agencies, Unemployment Insurance Committee

Ernie LaPalm, Deputy Commissioner, Employment Security Agency, State of Washington

John Post, Chief, Research and Analysis Section, Alaska Department of Labor

Geraldine Doogan, Manager, Anchorage Unemployment Office

Dave Hillburn, Chairman, Administrative Financing Committee, Alaska

Jose D. Garza, Staff Attorney, Texas Rural Legal Aid, Migrant Division

J. W. Burcham, Boon-Chapman Insurance Managers, Texas

Archie A. Roberts, Associate Executive Secretary, Texas State Teachers' Association

Richard M. Pearl, Director of Litigation, California Rural Legal Assistance

Tom Richardson, California Farm Bureau Federation

Dolores Huerta, First Vice-President, United Farm Workers

Hugo Shibahara, Hood River Grower/Shippers Association, Hood River, Oregon

Geraldine Beideman, California Taxpayers Association

Jo Clemens, President, Part-time Instructors, Los Angeles Community Colleges

Andrew J. McMullian, Director, Division of Employment Security, Florida Department of Commerce

George Stubbs, UI Director, Florida Department of Commerce Division of Employment Security

Clark Ghiselin, Executive Vice President, Citrus Industrial Council

Fred Sikes, Retired Vice-President for Personnel, U.S. Sugar Corporation

George Sorn, Manager, FFVA Labor Division, Florida Fruit and Vegetable Association

Gary Stephens, Managing Attorney, Florida Rural Legal Services, Inc.

Jon Shebel, President, Associated Industries of Florida

Frank Deluca, Florida Retail Federation

Argyll Campbell, Director, Industrial Relations, Louisiana Association of Business and Industry

Clyde A. McLeod, Director, Business Services, Mississippi Economic Council

Raymond H. Berndt, Chairman, UAW Mid-Florida Retired Workers Council

James Thompson, Chairman, Georgia State UAW, CAP Council

U.S. Senator Donald Riegle, Michigan

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Leonard R. Page, Assistant General Counsel, UAW

William C. Marshall, President, Michigan State AFL-CIO

Representative Perry Bullard, Michigan State House of Representatives, member of Labor Committee

Robert Adler, Vice President of Reed, Roberts Associates

Robert G. Schmelzer, Assistant Secretary of the National Electrical Contractor's Association of Southeast Michigan

U.S. Representative William M. Brodhead, 17th District, Michigan

Pat Babcock, Secretary, Michigan Department of Labor (accompanied by John Cleveland)

William Wickham, Michigan State Chamber of Commerce (accompanied by Stewart L. Bailenson, Vice President, James E. Frick, Inc.)

Joseph Danz, President of UAW, Local No. 157

Gerald Hagerman, Detroit, UAW

Tamara Bavar, Unemployment Task Force of UAW, Region 1B Women's Council

Joe Zappa, President of UAW, Local No. 212

Douglas Fraser, President of UAW (accompanied by Jordan Rossen and George Weaver)

Terry A. Romaine, President, Employer's Unemployment Compensation Council (accompanied by Irvine Richards of the Technical Study Committee and Joan Mitchell, Michigan Hospital Association)

James Guyette, Manager of Station Operations, United Airlines, Hopkins International Airport, Cleveland

Mary C. Lincoln, former employee, Ohio Bureau of Unemployment Compensation

Suzanne Bovenzi, claimant in Ohio

Warren Smith, Secretary-Treasurer, Ohio AFL-CIO

Bill Casstevens, UAW and CAP Chairman, State of Ohio

Bill Hite, representing the Council on Smaller Enterprises

Wesley Toles, Associate Vice President for Administrative Services, Case Western Reserve University

Fred Culver, Attorney with Ohio Legal Services, representing Leonard Balluck, an unemployed worker

Beaman Pound, Director of Unemployment Insurance for State of Ohio

Albert Giles, Administrator, Ohio Bureau of Employment Services

William Papier, Director of Research and Statistics, Ohio Bureau of Employment Services

Walter Mackey, employer member, Advisory Council of Ohio

Dallas Sells, Chairman, UAW Region 3 (accompanied by Elmer Huse, Benefit Representative of Chrysler Plant in Indiana, and Phillip Crone, Bendix plant worker)

Kenneth L. Young, Vice President, Delaware State UAW, Community Action Program Council

Maurice A. Miller, President, UAW Local 1968, Hanover, Pennsylvania

Barbara Sompson, Assistant General Counsel, International Union of Electrical, Radio and Machine Workers, AFL-CIO Coalition of Labor Union Women

Jane Pinsky, Director, National Women's Employment Project, Project for Working Women

Emily L. Leedy, Director of Women's Services, Ohio Bureau of Women's Services

Lea Allen, International Representative of UAW

Isabelle Katz Pinzler, Director, American Civil Liberties Union, Women's Project

Carolyn Reed, Director of National Committee on Household Employment

Geraldine Miller, Director, Bronx Household Technicians

Cheryl Katz, private citizen

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Robert L. Stein, Assistant Commissioner for Current Employment Analysis, Bureau of Labor Statistics (accompanied by Elizabeth Waldman)

Elizabeth Raymond, Assistant to Secretary for Labor Relations, U.S. Department of Housing and Urban Development

Representative Harold Clayton, State of Washington, Chairman, House Labor Committee

Albert Germano, Attorney, Puget Sound Legal Assistance Foundation

David Ah Soon, Para-legal, Puget Sound Legal Assistance Foundation.

Irma Herrera, Attorney, Evergreen Legal Services, State of Washington

Gary Iwamoto, Representative of Unemployment Representation Clinic of Seattle

Ray Thorne, Administrator, Oregon Department of Human Services, Employment Division

Libby Leonard, Deputy Administrator, Oregon Department of Human Services, Employment Division

Eugene Biglin, Chief, Division of State Program Management, UI Service, ETA, DOL

Mary Montgomery, Employment Insurance Specialist, Division of State Program Management, UIS, ETA, DOL

Eugene Weidman, Commissioner of Unemployment Security, State of Washington (accompanied by Eudora Peters, Deputy for UI Benefits and Gary Holman, Actuarial staff)

Frank Sunseri and Steve Tefler, Advisory Council on Unemployment Compensation for the State of Oregon

H. J. "Doc" Weiler, Vice President of Governmental Affairs, Association of Commerce and Industry of New Mexico

William Garvin, Legislative Counsel, Association of Washington Businesses

Lawrence Kenny, Director of Research, Washington State Labor Council, AFL-CIO

Helen Tetrault, Business Representative, Actor's Equity Association

Chester L. Migden, National Executive Secretary, Screen Actor's Guild

Mary Conklin, Senior Staff Attorney, Connecticut Legal Services

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Pam Browning, National Association of Farm Worker Organizations

Vincent Brennan, Vice-President, Bloomingdale's, New York

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John Morse, Associated Industries, New York

Lillian Layton, New York Chamber of Commerce and Industry

Anne Wingate, Vice-President for Planning and Research, Connecticut Business and Industry Association

Lillian Poses, Attorney

Harry Fleischman, Labor and Race Relations Director, The American Jewish Committee

John J. Horn, Commissioner, Department of Labor and Industry, New Jersey

John J. Gates, Senior Research Associate, International Ladies' Garment Workers' Union, AFL-CIO

John Zalusky, Economist, Research Department, AFL-CIO

Alfred Green, former Executive Director, New York State Division of Employment

Sol C. Chaikin, President, International Ladies' Garment Workers' Union, AFL-CIO

Raymond R. Corbett, President, New York State AFL-CIO

Sidney S. Korzenik, Attorney, Spokesman for the Apparel Industry of New York State

Gordon Flory, Secretary-Treasurer, Louisiana AFL-CIO

Carl L. Brewster, Unemployment Insurance Director, Office of Employment Security, Louisiana

Lewis Fulton, President of M-Ploy, Inc., Louisiana Businessman

David G. McLemore, McLemore Wholesale and Retail Stores, Inc., Louisiana Businessman

Alex Lewis, Personnel Director, Evans Cooperage Company, Inc., Louisiana Businessman

Robert N. Skinner, Director of the Indiana Employment Security Division, speaking on behalf of Governor Otis R. Bowen, of the State of Indiana

Stanley L. King, Assistant Vice President of American Telephone and Telegraph and member of Employee Benefit Committee of the Chamber of Commerce of the U.S.

Samuel Dyer, Vice President of Tax Planning, Federated Department Stores

Michael Romig, Director of Human Resources for Employee Benefits, Chamber of Commerce of the U.S.

Donald R. Bryant, Chairman of the National Governors' Association Working Group on Unemployment Insurance (accompanied by David Arnold, Associate Director, Employment and Vocational Training Program; John V. Senise, Executive Director, Bureau of Employment Securities, Pennsylvania; and Myron Joseph, Secretary of Labor and Industry, Pennsylvania)

Appendix 13.3: Chronology of Major Substantive Changes to Federal Law Concerning Unemployment Insurance During First Forty-five Years

The chronology of changes in the Federal laws summarized below shows the citation of the law, its year of enactment, and a brief description of the major provisions.

August 1935 (PL 74-271, App. 8/14/35). The Federal Social Security Act was enacted August 14, 1935, and declared constitutional by the U.S. Supreme Court May 24, 1937. The original tax, coverage, and other provisions of the Act have been described in detail in chapter 2.1, "Federal Legislative History." The Act established the basic framework of the Federal-State system of unemployment insurance. Key provisions—including the device of allowing credit against the Federal tax for taxes paid under a State law that meets Federal law requirements, Federal financing of administrative costs, and substantial State autonomy over all substantive elements of self-contained unemployment insurance laws—have not been fundamentally altered in 45 years.

June 1938 (PL 75-722, App. 6/25/38). The Railroad Retirement Act provided for a special Federal system of unemployment insurance for the railroad industry, which is excluded from the Federal Unemployment Tax Act.

February 1939 (PL 76-1, App. 2/10/39). The taxing provisions in Title IX of the Social Security Act were transferred to the Internal Revenue Code.

August 1939 (PL 76-379, App. 8/10/39). The tax base under the Federal Unemployment Tax Act was limited to the first \$3,000 of a covered worker's earnings.

Further coverage exclusions were added: (1) newsboys under 18; (2) student nurses and interns in a hospital; (3) insurance agents or solicitors on commission only; (4) domestic service in a college club or fraternity; (5) casual labor not in the employer's trade or business; and (6) students employed in a school where they are enrolled, if they earn \$45 or less in a calendar quarter.

Coverage was extended to (1) Federal instrumentalities not wholly owned by the Federal Government, such as national banks and State banks that are members of the Federal Reserve System; and (2) instrumentalities not wholly owned by State and local governments unless they have constitutional immunity.

States were required to establish merit systems for personnel who administer the unemployment insurance program.

September 1944 (PL 78-346). The Servicemen's Readjustment Act of 1944 (the G.I. bill) provided readjustment allowances of \$20 a week for a maximum of 52 weeks to unemployed veterans of World War II and to self-employed veterans with net monthly profits under \$100. For most veterans, this program ended in July 1952.

October 1944 (PL 78-458, App. 10/3/44). The George Loan Fund was established under the War Mobilization and Reconversion Act of 1944 for Federal loans to States whose revenues were inadequate for the increased benefits payments expected to result from the reconversion to peace. This fund was never used and the legislation lapsed.

August 1946 (PL 79-719, App. 8/10/46). Coverage was extended to maritime service. A State could cover the crew of an American vessel if the operating office was within the State. It provided that States could withdraw employee contributions from the fund for payment of benefits under a temporary disability insurance program.

Seamen formerly employed by the U.S. War Shipping Administration were eligible for Reconversion Unemployment Benefits for Seamen, paid under the law of the State in which they filed the claim. This program ended on June 30, 1950.

July 1947 (PL 80-226, App. 7/24/47). Voluntary contributions used in the computation of reduced rates were permitted.

June 1948 (PL 80-642, App. 6/14/48). Following a Supreme Court decision, the term "employee" in the Federal Unemployment Tax Act was limited to employees under the common law rule of "master-servant" relationship retroactive to 1939. Federal coverage was withdrawn from some 500,000 persons, including outside salesmen.

October 1952 (PL 82-550). The Veterans Readjustment Assistance Act of 1952 (UCV program) provided up to 26 weeks of benefits at \$26 a week, or a total of \$676, to unemployed veterans of the Korean conflict discharged between June 27, 1950, and February 1, 1955. Federal supplements raised the State benefits to \$26 or paid veterans after they exhausted State benefits. This program ended for most veterans on July 26, 1958, and for all on January 31, 1960.

August 1954 (PL 83-567, App. 8/5/54). The Employment Security Administrative Financing Act of 1954 (Reed Act) earmarked all proceeds of the Unemployment Tax Act to unemployment insurance purposes by automatically appropriating to the Federal Unemployment Trust Fund any annual excess of Federal tax receipts over employment security administrative expenditures approved by the Congress.

This bill also created a loan fund to provide interest-free loans to States whose unemployment insurance trust funds fall below the amount they paid out in benefits for the previous year. A State has four years to repay before its Federal tax is increased as a means of repayment. The Act also provided for the return to the States of any excess above a \$200 million reserve in the Loan Fund, to be used for paying benefits and, under certain conditions, for State administrative expenses, including buildings.

September 1954 (PL 83-767, 9/1/54). States were allowed to reduce the tax rate for newly covered employers with at least 1 year's (instead of 3 years') experience with the risk of unemployment.

Title XV of the Social Security Act, under the Unemployment Compensation for Federal Employees (UCFE) program, extended coverage to Federal civilian employees employed after December 31, 1954, subject to benefit provisions of State laws.

Coverage was extended effective January 1, 1956, to employers of four or more workers in 20 weeks in a calendar year.

June 1958 (PL 85-441, App. 6/4/58). The Temporary Unemployment Compensation Act of 1958 (TUC) permitted any State which signed an agreement with the U.S. Secretary of Labor to pay extended benefits of half the regular duration to individuals who had exhausted benefits after June 30, 1957, and before April 1, 1959 (up to 13 additional weeks of benefits to such workers).

The Federal Government financed the program through loans to participating States, which they repaid by reducing the tax offset for 1963 and thereafter, if the amount had not been repaid to the Federal Treasury by November 10 of the taxable year. The TUC program began on June 23, 1958, and ended in July 1959—on April 10, or for Federal employees and veterans, on June 30.

August 1958 (PL 85-840, App. 8/28/58). The Internal Revenue Code was amended to exempt unemployment insurance from taxation.

October 1958 (PL 85-848, App. 8/28/58). The Ex-servicemen's Unemployment Act of 1958 (UCX), a permanent program, provided benefits for veterans under the law of the State in which the claim was filed.

September 1960 (PL 86-778, App. 9/13/60). Advances from the Federal Loan Fund were limited to only those States which were unable to meet benefit claims in the current or following month, and limited the amount to that required for 1 month's benefits. Recovery of the funds advanced through an increase in the Federal unemployment tax was to begin in 2 years instead of 4.

Effective January 1, 1961, coverage under the Unemployment Compensation for Federal Employees (UCFE) program was extended to certain instrumentalities that were neither wholly nor partially covered by the United States, such as Federal Reserve banks, land banks, and credit unions. Puerto Rico was brought into the Federal-State system.

The Federal payroll tax was increased from 3 to 3.1 percent without change in the 2.7 percent offset provision, thus increasing the Federal share of the tax—which cannot be offset—from 0.3 to 0.4 percent. Receipts from this 0.4 percent tax were credited to a new Employment Security Administrative Account, from which an annual maximum of \$350 million was allowed for State administration. At the end of each fiscal year, the excess amount was to be transferred to the Federal Unemployment Account (Loan Fund) to build up a balance of \$550 million (formerly \$200 million) or 0.4 percent of taxable payrolls, if higher.

Any surplus over this stipulated ceiling was to be returned to the States.

March 1961 (PL 87-6, App. 3/24/61). The Temporary Extended Unemployment Compensation Act (TEUC) of 1961 provided for Federally financed extended benefits of one-half the regular benefit entitlement up to a maximum of 13 weeks and a combined maximum of 39 weeks to workers, including Federal civilian employees and ex-servicemen, who exhausted regular benefits after June 30, 1960, and before April 1, 1962. States which paid either regular benefits or State additional benefits beyond 26 weeks were reimbursed for such excess benefits, which counted toward the 13 weeks' Federal benefit maximum.

The program, which expired June 30, 1962, was financed by a temporary additional Federal unemployment tax of 0.4 percent for 1962 and 0.25 percent for 1963.

September 1960 (PL 86-778, App. 9/13/60). Effective January 1, 1962, coverage was extended to employees on American aircraft working outside the United States; nonprofit institutions not exempt from income tax; "feeder organizations" of nonprofit institutions; and various employees of certain income-tax-exempt organizations (except persons who earned less than \$50 in a calendar quarter or were students).

August 1970 (PL 91-373, App. 8/10/70). Under the Employment Security Amendments of 1970, the Federal unemployment tax was increased to 3.2 percent with 0.5 percent apportioned to the Federal Government, effective January 1970. Receipts from the 0.1 percent increase were earmarked in 1970 and 1971 for a new Federal Extended Unemployment Compensation Account.

The Employment Security Amendments of 1970 also provided for judicial review of adverse determinations by the U.S. Secretary of Labor in State conformity or compliance proceedings. States may appeal to a U.S. Court of Appeals.

The U.S. Secretary of Labor was to establish a Federal unemployment insurance research program, a Federal program of grants to train unemployment insurance personnel (Federal and State), and a Federal Advisory Council on Unemployment Compensation, composed of individuals representing management, labor, and the public, to review the program and recommend improvements.

The 1970 amendments repealed a Federal statute that denied unemployment benefits to ex-servicemen during periods to which military terminal leave is allocated. Ex-servicemen are treated similarly to all unemployed workers as to their accrued military leave.

The 1970 amendments created the Extended Unem-

ployment Compensation Program, a permanent program to extend duration of benefits during recessions. The national program triggered in after January 1, 1972, whenever the seasonally adjusted insured unemployment rate for the nation is 4.5 percent or more for 3 consecutive months.

A State was permitted to institute such a program on or after October 10, 1970, to become operative whenever its insured unemployment rate averaged 4 percent or more for 13 consecutive weeks *and* was at least 20 percent higher than the average of such rates for the corresponding 13-week periods in the 2 preceding years.

An extended benefit period ends when the specified unemployment conditions nationally and within the State no longer exist, but must remain in effect at least 13 weeks in any State. Claimants who exhaust regular benefit rights during an extended benefit period are eligible for up to 13 additional weeks of benefits or the equivalent of half of the maximum weeks of regular benefits in the State, if that is less, with a 39-week ceiling in total benefits (regular plus extended).

The Federal Government funds half of the extended benefit cost, financing the program by receipts for 1970 and 1971 from a 0.1 percent increase in the Federal unemployment tax and thereafter by one-tenth of Federal tax receipts. An Extended Unemployment Compensation Account was established with a ceiling of \$750 million or 0.125 percent of total wages in covered employment, if larger. Any remainder was to be retained in the Employment Security Administration Account.

The Federal Unemployment Account (Loan Fund) ceiling was changed to \$550 million or 0.125 percent of total wages in covered employment, whichever is larger.

When all three accounts have reached their statutory limits and when any advances from Treasury general funds have been repaid, any excess is to be distributed to accounts of the individual States.

Effective January 1, 1972, coverage was extended to (1) employers who have one or more employees performing service in 20 weeks in a calendar year or a quarterly payroll of \$1500; (2) nonprofit organizations of four or more employees (excluding churches, religious organizations, and primary or secondary schools) and State hospitals and State institutions of higher education (by requiring States to provide mandatory coverage); (3) outside salesmen and agents and commission drivers; (4) certain categories of agricultural processing workers; and (5) U.S. citizens working for American firms outside the U.S. (who must file their benefit claims in person within the U.S.). College faculty and other professional workers in colleges were covered but are not eligible for benefits (based on college employment) in summers or between terms if they have a contract to resume such work.

States could exclude from otherwise required coverage students employed under work-study programs, students' spouses employed by schools under certain conditions, and workers in hospitals in which they are patients.

States are required to give covered nonprofit organizations the option of either reimbursing the fund for benefit charges based on work performed for them or paying taxes on the same basis as other employers. States are required to extend to municipal corporations or other governmental subdivisions the right to elect coverage for hospitals and colleges which they operate, but if they do so elect, they must make payments in lieu of contributions.

Effective January 1, 1972, the taxable wage base was raised to \$4,200. New employers could be assigned a reduced rate of not less than 1 percent on a reasonable basis other than experience with unemployment.

Effective January 1, 1972, State laws were required to include these provisions:

1. Benefits may not be paid unless the claimant has had some employment since the beginning of the preceding benefit year.

2. Benefits may not be denied to workers who are in approved training.

3. Benefits may not be reduced or denied because a person who has worked in one State files a claim in another State or Canada.

4. States must participate in arrangements for combining wage credits when the earnings are in two or more States.

5. Cancellation of wage credits or total reduction in benefit rights is prohibited except for misconduct in connection with the work, fraud in connection with a claim, or receipt of disqualifying income, such as a pension.

December 1971 (PL 92-224, App. 12/29/71). The Emergency Unemployment Compensation Act of 1971 created a new temporary program providing additional extended benefits, effective January 30, 1972, and ending September 30, 1972.

Financed entirely by the Federal Government, the program triggered on for a State when its insured unemployment rate, plus an adjustment rate for exhaustees, was 6.5 percent or more, provided the trigger for payment of benefits under the Federal-State Extended Unemployment Compensation Act of 1970 was in effect or had terminated solely because the State no longer met the requirement of an insured unemployment rate of at least 120 percent of the average of the rates for the corresponding periods of the two preceding years. During this emergency benefit period a claimant was eligible for either up to 13 more weeks of benefits or half of the claimant's maximum of regular benefits, whichever was less.

The new act also extended to 1983 (from 1973) the authorization to return to the States any surplus in Federal unemployment tax receipts over stipulated ceilings in the Federal Unemployment Account (Loan Fund) and Extended Unemployment Compensation Account.

June 1972 (PL 92-329, App. 6/30/72). The Emergency Extended Unemployment Compensation Act of 1971 was extended to March 31, 1973. To finance this extension, the Federal unemployment tax for 1973 was increased from 3.2 percent to 3.28 percent, the Federal share of which was 0.58 percent.

October 1972/October 1976. Between October 1972 and the end of 1976, several bills were enacted by the Congress suspending temporarily the 120 percent requirement of the permanent extended benefit program provided in Public Law 91-373. PL 93-572, approved December 31, 1974 (Federal Supplemental Benefits), waived the 120 percent requirement until December 31, 1976, and permitted the States temporarily (for weeks of unemployment beginning before December 31, 1976, and beginning after December 31, 1974) to change the national "off" and "on" triggers specified in the State laws from 4.5 percent to 4.0 percent. The latest such bill, PL 94-566, approved October 20, 1976, permitted States permanently to waive the 120 percent factor when the State insured unemployment rate reaches 5 percent. The provision applies to weeks beginning after March 30, 1977. The list of these bills is as follows: (1) PL 92-599, approved October 27, 1972; (2) PL 93-53, approved July 1, 1973; (3) PL 93-233, approved December 31, 1973; (4) PL 93-256, approved March 28, 1974; (5) PL 93-329, approved June 30, 1974; (6) PL 93-368, approved August 7, 1974; (7) PL 93-572, approved December 31, 1974; (8) PL 94-45, approved June 30, 1975; and (9) PL 94-566, approved October 20, 1976.

December 1974 (PL 93-567, App. 12/31/74). The Emergency Jobs and Unemployment Assistance Act provided wholly Federally financed Special Unemployment Assistance (SUA) to individuals who have no benefit rights under regular unemployment insurance programs. It directed that a determination of individuals' rights to SUA be made under the terms of the applicable State unemployment insurance law subject to certain modifications. All of their employment and wages during the base period are to be considered, whether or not covered under the State unemployment insurance law. The base period to be used, regardless of the provisions of the State unemployment insurance law, is the 52-week period immediately preceding the filing of a valid initial claim for SUA. The maximum duration of SUA for any individual is 26 weeks. This program, originally scheduled to expire at the end of

1975, was extended by PL 94-566 for new claims to January 1, 1978, and for continued claims to July 1, 1978.

December 1974 (PL 93-572, App. 12/31/74, and other Federal Supplemental Benefits). This act created an emergency unemployment compensation program in which States could participate under agreement with the Secretary of Labor. Up to 13 weeks of wholly Federally financed Federal Supplemental Benefits (FSB) were paid to individuals who had exhausted all regular and extended benefits to which they were entitled. Benefits were not payable before January 1, 1975, and not after December 31, 1976, for new claims and March 31, 1977, for continued claims. Benefits were payable on the basis of the same triggers as in the extended benefits program. PL 94-12 (approved 3/29/75) and PL 94-45 (approved 6/30/75) increased the maximum number of weeks payable from 13 to 26 until January 1, 1976. PL 94-45 also added that, in order for an FSB trigger to be on, not only must the State or national trigger be on but the insured unemployment rate in the State for the preceding 13-week period must equal at least 5.0 percent. It limited the maximum duration of benefits in a 5 percent period to 13 weeks. It extended the program for all claimants until March 31, 1977. PL 95-19 (approved 4/12/77) limited the payment of emergency benefits so that no such payment is made more than 2 years after the end of the benefit year for which the claimant exhausted regular benefits; reduced the length of an emergency benefit period from 26 to 13 weeks; extended the program to November 1, 1977, for new claims and February 1, 1978, for continued claims; added special Federal disqualifications for refusal of suitable work and failure to actively seek work; defined suitable work for the FSB program; and added special penalty and repayment provisions for fraudulent acts on the part of either claimant or employer. The act also provided general revenue financing of FSB from April 1, 1977.

June 1975 (PL 94-45, App. 6/30/75). In addition to amending the FSB program (see above), this act provided for a 3-year deferral of the tax credit reduction provisions applicable to borrowing States provided they meet conditions prescribed by the Secretary of Labor.

October 1976 (PL 94-444, App. 10/1/76). This act provides for Federal reimbursement to the States for unemployment insurance paid to individuals separated from public service jobs.

October 1976 (PL 94-566, App. 10/20/76). Title I of the Unemployment Compensation Amendments of 1976 contains the following provisions concerning coverage:

1. Effective January 1, 1978, coverage extended to

(a) agricultural labor for employers having 10 or more workers in 20 weeks or paying \$20,000 or more in wages in any calendar quarter; (b) household workers of employers who paid \$1,000 or more in any calendar quarter for such services; (c) State and local government employees with certain minor exceptions; and (d) employees of nonprofit elementary and secondary schools.

2. The Virgin Islands is permitted to become part of the Federal-State unemployment insurance system.

3. A transition is provided from coverage under SUA to coverage under the regular program by stipulating that, if a State agrees to pay benefits to qualified newly covered workers as of January 1, 1978, based on wages earned prior to that date, such benefits paid through June 30, 1978, or after would be reimbursed from general Federal revenues.

The Federal reimbursement will be based on the ratio of a claimant's otherwise uncovered wages to the claimant's total base period wages.

A State may, by law, provide that neither contributions-paying employers nor reimbursing employers will be liable for the cost of benefits for which the State is reimbursed under the terms of the transition provisions.

4. Special Unemployment Assistance (SUA) is extended until December 31, 1977, for new claims and the program terminated for all claimants on June 30, 1978.

Title II of the 1976 amendments contains the following financing provisions:

1. The taxable wage base is increased from \$4,200 to \$6,000 as of January 1, 1978.

2. The net Federal tax rate is increased from 0.5 percent to 0.7 percent as of January 1, 1977, to return to 0.5 percent after all advances to the Federal extended unemployment compensation account have been repaid. The proportion of Federal Unemployment Tax Act revenues allocated to the Federal extended unemployment compensation account is increased from one-tenth to five-fourteenths as long as the net Federal tax rate is 0.7 percent.

3. Any sharing by the Federal Government of costs of extended benefits based upon services performed by workers for State and local governments is eliminated, effective January 1, 1979.

4. States are allowed to request loans from the Federal Unemployment Trust Fund to pay benefits for a 3-month period, rather than a 1-month period, but funds will continue to be paid only on a month-to-month basis.

5. Pro-rata sharing of benefit costs is provided when an individual's unemployment compensation benefits are based on both Federal and non-Federal employ-

ment. Federal share would be based on the ratio of Federal wages to total base period wages.

Title III contains the following provisions relating to benefits:

1. Effective for weeks beginning after March 30, 1977, the triggers are modified in the extended benefits program to provide for the payment of extended benefits (benefit weeks 27–39) in a State when either of the following conditions is met:

a. there is a seasonally adjusted national insured unemployment rate of 4.5 percent, based on the most recent 13-week period; or

b. the unadjusted State insured unemployment rate is 4.0 percent, based on the most recent 13-week period, and the rate is 20 percent higher than the State's average insured unemployment rate for the corresponding 13-week periods in the two preceding years. However, this latter condition may be waived by the State whenever the unadjusted insured unemployment rate is 5 percent or more.

2. Disqualification for unemployment compensation benefits solely on the basis of pregnancy is prohibited.

3. Federal employees are afforded the same unemployment compensation appeal procedures available to other unemployment compensation claimants in contesting the determination of the employing agency on the issue of cause of separation from work and work history.

4. State UI laws are required to prohibit payment of benefits:

a. to a professional athlete between successive seasons who has "reasonable assurance" of reemployment;

b. to an alien not legally admitted to the United States for permanent residence; and

c. to a claimant receiving a pension. Weekly benefit shall be reduced by amount of weekly pension. (Effective October 1, 1979.)

5. Payment of benefits based on services performed for educational institutions in instructional, research, or principal administrative capacities during periods between academic years or terms is prohibited if an individual has either a contract or reasonable assurance of employment for both the prior and forthcoming academic terms. It permits States to deny benefits based on services performed for educational institutions during periods between school terms to nonprofessional employees of primary and secondary educational institutions if an individual was employed at the end of the prior term and there is reasonable assurance that the individual will be so employed during the forthcoming term.

6. It requires that, except for the between-terms

denial provisions, compensation based on service performed for a State, a local government, or a nonprofit organization must be paid on the same terms and conditions as compensation based on other covered services.

Title IV of the 1976 amendments establishes a 13-member commission to study and report on the unemployment insurance program, with an interim report by March 31, 1978, and a final report due not later than January 1, 1979. Members to be appointed are: seven by the President, who designates the Chairman, and three each by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. It requires that labor, industry, the Federal Government, local government, and small business each be represented. The Commission is directed to study and evaluate the present unemployment compensation programs in order to assess the long-range needs of the programs, to consider alternatives, and to recommend any appropriate changes.

April 1977 (PL 95–19, App. 4/12/77). In addition to amending the Federal Supplemental Benefits program (see above), the act extended the deferral period for borrowing States for two years (in addition to the original 3-year deferral provided in PL 94–45) to 1980. The act clarified the Federal standard requiring the denial of benefits to undocumented aliens. The act also permitted States to extend the blanket between-terms denial provision applicable to school employees to weeks of unemployment occurring during vacation periods and holiday recesses (in addition to weeks occurring between school terms or academic years) if the individual has reasonable assurance of reemployment. The act also extended the due date of the final report of the National Commission from January 1, 1979, to July 1, 1979, and the effective date of the Federal requirement requiring reduction of benefits by retirement income from October 1, 1979, to April 1, 1980.

1977 (PL 95–171). This act permits States to extend the blanket between-terms denial requirement applicable to school employees to employees of educational service agencies.

December 1977 (PL 95–216, App. 12/20/77). This Act requires State agencies to provide wage information to welfare agencies on request. It also provides for the annual (rather than quarterly) reporting of FICA wages. The Act also provides that for the Federal Unemployment Tax Act purposes if two related corporations concurrently employ the same individual and pay the person through a common paymaster, each corporation will be deemed to have paid only the amount actually disbursed by it to the person.

November 1978 (PL 95-600, Adopted 11/6/78). The Revenue Act of 1978 subjects unemployment benefits to taxation for those whose total income exceeds prescribed amounts.

October 1979 (PL 96-84, Adopted 10/10/79). This bill extends the exclusion from the Federal Unemployment Tax Act of certain alien farmworkers for 2

years (in addition to the 2 years prescribed in PL 94-566) but provides that these workers may be counted for determining if a farm operator has enough workers or payroll to be subject to Federal Unemployment Tax Act coverage. The bill also extends the final reporting date of the National Commission to June 30, 1980; the Commission shall cease to exist 90 days after the date of the final report.

Appendix 13.4: Significant Provisions of State Laws (July 6, 1980)

U.S. DEPARTMENT OF LABOR



EMPLOYMENT AND TRAINING ADMINISTRATION
Unemployment Insurance Service

Significant Provisions of State Unemployment Insurance Laws, JULY 6, 1980

PREPARED FOR READY REFERENCE. CONSULT THE STATE LAW AND STATE EMPLOYMENT SECURITY AGENCY FOR AUTHORITATIVE INFORMATION

State	BENEFITS									COVERAGE Size of firm (1 worker in specified time and/or size of payroll) ¹⁶	TAXES	
	Qualifying wage or employment (number x wba or as indicated) ¹	Waiting week ²	Computation of wba (fraction of hqw or as indicated) ^{1,3}	Wba for total unemployment ⁴		Earnings disregarded ⁵	Duration in 52-week period		Benefit weeks for total unemployment ⁷		1979 Tax rates (percent of wages) ⁹	
							Proportion of base-period wages ⁶	Max.				
				Min.	Max.							
Ala.	1-1/2 x hqw; not less than \$522.01	0	1/24	\$15	\$90	\$6	1/3	11+	26	20 weeks	⁹ 1.0	⁹ 4.0
Alaska	\$750; \$100 outside HQ	1	2.3-1.1% of annual wages, + \$10 per dep. up to \$30	18-28	90-120	Greater of \$10 or 1/2 basic wba	⁶ 34-31%	14	28	Any time	⁹ 2.6	⁹ 5.1
Ariz.	1-1/2 x hqw; \$725 in HQ	1	1/25	29	95	\$15	1/3	12+	26	20 weeks	0.15	3.50
Ark.	30; wages in 2 quarters	1	1/26 up to 66-2/3% of State aww	15	136	2/5	1/3	10	26	10 days	0.5	4.4
Calif.	\$900	1	1/25-1/34	30	120	Lesser of \$25 and 25% of wages	1/2	⁷ 12+-15	⁷ 26	Over \$100 in any quarter	⁹ 1.3	4.8
Colo.	30	1	60% of 1/13 of claimant's hqw up to 50% of State aww	25	150	1/4 wba	1/3	7+-10	26	13 weeks or \$500 in CQ	0.2	4.0
Conn.	40	0	1/26, up to 60% of State aww + \$5 per dep. up to 1/2 wba	15-22	134-184	1/3 wages	Uniform	⁷ 26	⁷ 26	20 weeks	1.5	6.0
Del.	36	0	1/26, up to 66-2/3% of State aww ¹⁴	20	150	Greater of \$10 or 30% of wba	1/2	11-18 ⁸	26	20 weeks	1.6	4.5
D.C.	1-1/2 x hqw; not less than \$450; \$300 in 1 quarter	-	1/23 up to 66-2/3% of State aww + \$1 per dep. up to \$3	13-14	⁴ 181	1/5 wages	1/2	17+	34	Any time	1.0	5.4
Fla.	20 weeks employment at average of \$20 or more	1	1/2 claimant's aww	10	95	\$5	1/2 weeks employment	10	26	20 weeks	0.4	4.5
Ga.	1-1/2 x hqw	² 1	1/25+\$1.00	27	90	\$8	1/4	4	26	20 weeks	0.07	5.71
Hawaii	30; 14 weeks employment	¹⁰ 1	1/25 up to 66-2/3% of State aww	5	144	\$2	Uniform	⁷ 26	⁷ 26	Any time	⁹ 1.8	⁹ 4.5

State	BENEFITS									COVERAGE Size of firm (1 worker in specified time and/or size of payroll) ¹⁶	TAXES		
	Qualifying wage or employment (number x wba or as indicated) ¹	Waiting week ²	Computation of wba (fraction of hqw or as indicated) ^{1,3}	Wba for total unemployment ⁴		Earnings disregarded ⁵	Duration in 52-week period		Benefit weeks for total unemployment ⁷		1979 Tax rates (percent of wages) ⁹	Min.	Max.
							Proportion of base-period wages ⁶	Max. ⁸					
				Min.	Max.								
Idaho	1-1/4 x hqw; not less than \$910.01 in 1 quarter; wages in 2 quarters	1	1/26 up to 60% of State aww.	\$36	\$132	1/2 wba	Weighted schedule of bpw in relation to hqw	10	26	20 weeks or \$300 in any quarter	⁹ 0.9	⁹ 4.0	
Ill.	\$1,400; \$385 outside HQ	10 1	1/2 claimant aww up to 50% of State aww ¹³	15	135-180	\$7	Uniform	26	26	20 weeks	⁹ 0.1	⁹ 4.0	
Ind.	1-1/4 x hqw; not less than \$1,500; \$900 in last 2 quarters	1	4.3% of high quarter ^{3/} wage credits	40	84-141	20% of wba from other than BP employer	1/4	3+	26	20 weeks	0.3	3.3	
Iowa	1-1/4xhqw \$200 in qtr other than HQ	0	<u>3/ 13/</u>	17-18	134-162	1/4 wba	1/3	15	26	20 weeks	⁹ 0.6	⁹ 6.0	
Kans.	30; wages in 2 quarters	1	4.25% of Hqw up to 60% of State aww	34	136	\$8	1/3	10	26	20 weeks	0	3.5	
Ky.	1-3/8 x hqw; 8 x wba in last 2 quarters; \$500 in 1 quarter and \$500 in other quarters	0	1/23 up to 55% of State aww	22	120	1/5 wages	1/3	15	26	20 weeks	0.5	5.0	
La.	30	10 1	1/20-1/25 ^{14/}	10	149	1/2 wba	2/5	12	28	20 weeks	1.63	4.53	
Maine	2 x annual aww in each of 2 qtrs. & 7 x annual aww in BP	0	1/22 up to 52% of State aww +\$5 per dep. to 1/2 wba	12-17	104-156	\$10	1/3	13+-25	26	20 weeks	2.4	5.0	
Md.	1-1/2 x hqw; \$576.01 in 1 quarter; wages in 2 quarters	0	1/24 + \$3 per dep. up to \$12	25-28	⁴ 120	\$10	Uniform	26	26	Any time	3.1	5.0	
Mass.	30; not less than \$1,200	1	1/21-1/26 up to 57.5% of State aww, + \$6 per dep. up to 1/2 wba ³	12-18	131-197	40% not less than \$10 nor more than \$30	36%	9+-30	30	13 weeks	2.6	6.4	
Mich.	14 weeks employment at \$25.01 or more	0	60% of claimant's aww up to \$97 with variable max. for claimants with dep. ³	⁴ 16-18	97-136	Up to 1/2 wba ⁵	3/4 weeks employment	11	26	20 weeks or \$1,000 in CY	1.0	8.0	
Minn.	15 weeks employment at \$50 or more	10 1	<u>13/</u>	30	162	\$25	7/10 weeks employment	13	26	20 weeks	⁹ 1.0	⁹ 7.5	
Miss.	36; \$160 in 1 quarter; wages in 2 quarters	1	1/26	10	90	\$5	1/3	12	26	20 weeks	2.6	2.7	

State			BENEFITS							COVERAGE Size of firm (1 worker in specified time and/or size of payroll) ¹⁶	TAXES	
	Qualifying wage or employment (number x wba or as indicated) ¹	Waiting week ²	Computation of wba (fraction of hqw or as indicated) ³	Wba for total unemployment ⁴		Earnings disregarded ⁵	Duration in 52-week period		1979 Tax rates (percent of wages) ⁹		Min.	Max.
							Proportion of base-period wages ⁶	Benefit weeks for total unemployment ⁷				
				Min.	Max.				Min. ⁸	Max.		
Mo.	30 x wba; \$300 in 1 quarter; wages in 2 quarters	¹⁰ 1	4.5%	\$15	105	\$10	1/3	10-13+	26	20 weeks	0.5	3.2
Mont.	20 weeks employment at \$50 or more	1	1/2 wks. of claimant's employment	30	131	1/2 wages in excess of 1/4 wba	Weighted schedule of bpw in relation to hqw	8	26	Over \$500 in current or preceding year	⁹ 1.9	⁹ 4.4
Neb.	\$600; \$200 in each of 2 quarters	1	1/19-1/23	12	106	Up to 1/2 wba	1/3	17	26	20 weeks	0.1	2.7
Nev.	1-1/2 x hqw	0	1/25, up to 50% of State aww	16	123	1/4 wages	1/3	11	26	\$225 in any quarter	⁹ 1.1	⁹ 3.5
N.H.	\$1,200; \$600 in each of 2 quarters	0	1.8-1.2% of annual wages	21	114	1/5 wba	Uniform	26	26	20 weeks	.05	6.5
N.J.	20 weeks employment at \$30 or more; or \$2,200	¹⁰ 1	66-2/3% of claimant's aww up to 50% of State aww	20	123	Greater of \$5 or 1/5 wba	3/4 weeks employment	15	26	\$1,000 in any year	⁹ 1.2	⁹ 6.2
N.Mex.	1-1/4 x hqw	1	1/26; not less than 10% nor more than 50% of State aww	22	106	1/5 wba	3/5	18+	26	20 weeks or \$450 in any quarter	⁹ 0.9	⁹ 4.5
N.Y.	20 weeks employment at average of \$40 or more ¹¹	¹² 1	67-50% of claimant's aww	25	125	(12)	Uniform	26	26	\$300 in any quarter	1.8	5.5
N.C.	1-1/2 x hqw; not less than \$565.50; \$150 in 1 quarter	1	1/26 up to 66-2/3% of State aww	15	130	1/2 wba	1/3 bpw	13	26	20 weeks	0.1	5.7
N.Dak.	40 x min. wba; wages in 2 quarters	1	1/26 up to 67% of State aww	39	143	1/2 wba	Weighted schedule of bpw in relation to hqw	12	26	20 weeks	⁹ 0.3	⁹ 4.8
Ohio	20 weeks employment at \$20 or more	¹⁰ 1	1/2 claimant's aww + d.a. of \$1-74 based on claimant's aww and number of dep. <u>3/17/</u>	10	128-202	1/5 wba	20 x wba + wba for each credit week in excess of 20	20	26	20 weeks	.9	4.6
Okla.	1-1/2 x hqw; not less than \$1,000 in BP; \$6,000	1	1/25 up to 66-2/3% of State aww	16	156	\$7	1/3	20+	26	20 weeks	0.6	4.7
Oreg.	18 weeks employment at average of \$20 or more; not less than \$700	1	1.25% of bpw up to 55% of State aww	38	138	1/3 wba	1/3	6	26	18 weeks or \$225 in any quarter	⁹ 2.6	⁹ 4.0

State	BENEFITS									COVERAGE Size of firm (1 worker in specified time and/or size of payroll) ¹⁶	TAXES		
	Qualifying wage or employment (number x wba or as indicated) ¹	Waiting week ²	Computation of wba (fraction of hqw or as indicated) ^{1,3}	Wba for total unemployment ⁴		Earnings disregarded ⁵	Duration in 52-week period		Benefit weeks for total unemployment ⁷		1979 Tax rates (percent of wages) ⁹	Min.	Max.
							Proportion of base-period wages ⁶	Max.					
				Min.	Max.								
Pa.	32 + -36; \$120 in HQ and \$440 in BP; at least 20% of bpw outside HQ	0	1/20-1/25 up to 66-2/3% of State aww + \$5 for 1 dep; \$3 for 2d	\$13-18	\$162-170	Greater of \$6 or 40% wba	Uniform	30	30	Any time	1.0	4.0	
P.R.	21 + -30; not less than \$280; \$75 in 1 quarter; wages in 2 quarters	1	1/11-1/26; up to 50% of State aww	7	84	wba	Uniform	7 20	7 20	Any time	92.95	92.95	
R.I.	20 weeks employment at \$58 or more; or \$3,480	2 1	55% of claimant's aww up to 60% of State aww, + \$5 per dep. up to \$20	32-37	130-150	\$5	3/5 weeks employment	12	26	Any time	9 2.2	9 4.0	
S.C.	1-1/2 x hqw; not less than \$300; \$180 in 1 quarter	1	1/26 up to 66-2/3% of State aww	10	114	1/4 wba	1/3	10	26	20 weeks	1.3	4.10	
S.Dak.	\$600 in HQ; 20 x wba outside HQ	1	1/22 up to 62% of State aww	28	119	1/2 wages up to 1/2 wba	1/3	13+	26	20 weeks	0	5.0	
Tenn.	36; \$494.01 in 1 quarter	1	1/26-1/31	20	110	\$20	1/3	12	26	20 weeks	.30	4.0	
Tex.	1-1/2 x hqw; not less than \$500 or 2/3 FICA tax base	10 1	1/25 ¹⁷	18	105	Greater of \$5 or 1/4 wba	27%	9	26	20 weeks	0.1	4.0	
Utah	19 weeks employment at \$20 or more; not less than \$700	1	1/26 up to 65% of State aww	10	150	3/10 wba than regular employer	Weighted schedule of bpw in relation to hqw	10-22	36	\$140 in CQ in current or preceding CY	9 1.3	9 2.8	
V.I.	26+-30; not less than \$99 in 1 quarter and wages in 2 quarters	1	1/23-1/25	15	90	1/4 wages in excess of \$5	Uniform	26	26	Any time	3.7	3.7	
Vt.	20 weeks employment at \$35 or more	1	1/2 claimant's aww for highest 20 weeks up to 60% of State aww	18	125	\$15 + \$3 for each dep. up to \$5	Uniform	26	26	20 weeks	1.7	6.0	
Va.	36; wages in 2 quarters	10 1	1/25	38	122	Greater of 1/3 wba or \$10	1/3	12	26	20 weeks	.07	4.48	
Wash.	680 hours	1	1/25 of average of 2 highest quarter wages up to 55% of State aww	41	150	\$5 + 1/4 wages	1/3	8+-25+	30	Any time	9 3.3	9 3.3	

State	BENEFITS									COVERAGE	TAXES		
	Qualifying wage or employment (number x wba or as indicated) ¹	Waiting week ²	Computation of wba (fraction of hqw or as indicated) ^{1,3}	Wba for total unemployment ⁴		Earnings disregarded ⁵	Duration in 52-week period		Benefit weeks for total unemployment ⁷		Size of firm (1 worker in specified time and/or size of payroll) ¹⁶	1979 Tax rates (percent of wages) ⁹	
				Min.	Max.		Proportion of base-period wages ⁶	Min. ⁸		Max.		Min.	Max.
W.Va.	\$1,150 and wages in 2 quarters	² ₁	1.5-1.0% of annual wages up to 70% of State aww	18	184	\$25	Uniform	28	28	20 weeks	0	3.3	
Wisc.	15 weeks employment; average of \$56.01 or more with 1 employer	0	50% of claimant's aww up to 66-2/3% of State aww	30	160	Up to 1/2 wba	8/10 weeks employment	1-12+	34	20 weeks	0.5	6.5	
Wyo.	1-6/10 x hqw; not less than \$600 in 1 quarter	1	1/25 up to 55% of State aww	24	146	Greater of \$15 or 25% wba	3/10	12-26	26	\$500 in current or preceding yr	0.37	3.07	

¹Weekly benefit amount abbreviated in columns and footnotes as wba; base period, BP; base-period wages, bpw; high quarter, HQ; high-quarter wages, hqw; average weekly wage, aww; benefit year, BY; calendar quarter, CQ; calendar year, CY; dependent, dep.; dependents allowances, da.; minimum, min.; maximum, max.

²Unless otherwise noted, waiting period same for total or partial unemployment. W.Va., no waiting period required for partial unemployment. Waiting period may be suspended if Governor declares State of emergency following disaster, N.Y., R.I. In Ga. no waiting week if claimant unemployed not through own fault.

³When States use weighted high-quarter, annual-wage, or average weekly-wage formula, approximate fractions or percentages figured at midpoint of lowest and highest normal wage brackets. When da provided, fraction applies to basic wba. In States noted variable amounts above max. basic benefits limited to claimants with specified number of dep. and earnings in excess of amounts applicable to max. basic wba. In Ind. da. paid only to claimants with earnings in excess of that needed to qualify for basic wba and who have 1-4 depts. In Iowa, Mich. and Ohio claimants may be eligible for augmented amount at all benefit levels but benefit amounts above basic max. available only to claimants in dependency classes whose hqw or aww are higher than that required for max. basic benefit. In Mass. for claimant with aww in excess of \$66 wba computed at 1/52 of 2 highest quarters of earnings or 1/26 of highest quarter if claimant had no more than 2 quarters work.

⁴When 2 amounts given, higher includes da. Higher for min. wba includes max. allowance for one dep.; Mich. for 1 dep. child or 2 dep. other than a child. In D.C. and Md., same max. with or without dep.

⁵In computing wba for partial unemployment, in States noted full wba paid if earnings are less than 1/2 wba; 1/2 wba if earnings are 1/2 wba but less than wba.

⁶States noted have weighted schedule with percent of benefits based on bottom of lowest and highest wage brackets.

⁷Benefits extended under State program when unemployment in State reaches specified levels: Calif., Hawaii, by 50%; Conn. by 13 weeks. In P.R. benefits extended by 32 weeks in certain industries, occupations or establishments when special unemployment situation exists. Benefits also may be extended during periods of high unemployment by 50%, up to 13 weeks, under Federal-State Extended Compensation Program.

⁸For claimants with min. qualifying wages and min. wba. When two amounts shown, range of duration applies to claimants with min. qualifying wages in BP; longer duration applies with min. wba; shorter duration applies with max. possible concentration of wages in HQ; therefore highest wba possible for such BP earnings. Minimum in Del. applies to seasonal employment. Wis. determines entitlement separately for each employer. Lower end of range applies to claimants with only 1 week of work at qualifying wage; upper end to claimants with 15 weeks or more of such wages.

⁹Represents min.-max. rates assigned employers in CY 1979. Ala., Alaska, N.J. require employee taxes. Contributions for 1980 required on wages up to \$6,000 in all States except Ill., \$6,500; Ala., \$6,600; N.J., \$6,900; N.Mex., and R.I., \$7,200; Iowa, \$7,400; Mont., and N.Dak., \$7,600; Nev., \$7,900; Minn., \$8,000; Wash., \$9,600; Alaska and Oreg., \$10,000; Idaho, \$10,800; Utah, \$11,000; Hawaii, \$11,200; P.R. all wages.

¹⁰Waiting period compensable if claimant entitled to 12 consecutive weeks of benefits immediately following, Hawaii; unemployed at least 6 weeks and not disqualified, La.; after 9 consecutive weeks benefits paid, Mo.; when benefits are payable for third week following waiting period, N.J.; after benefits paid 4 weeks, Tex., Va.; after any 4 weeks in BY, Minn.; after 3d week unemployment, Ill.; after 3d week of total unemployment, Ohio.

¹¹Or 15 weeks in last year and 40 weeks in last 2 years of aww of \$40 or more, N.Y.

¹²For N.Y., waiting period is 4 effective days accumulated in 1-4 weeks; partial benefits 1/4 wba for each 1 to 3 effective days. Effective days: fourth and each subsequent day of total unemployment in week for which not more than \$125 is paid.

¹³To 60% State aww if claimant has nonworking spouse; 66-2/3% if he had dep. child, Ill.; 1/19-1/23 up to 58% of State aww for claimants with no dep. variable max., up to 70% of State aww for claimants with dep., Iowa; 60% or first \$85, 40% of next \$85, 50% of balance. Max. set at 66-2/3%, Minn.

¹⁴Up to 66-2/3% of State aww, La. 63% until 1981, Del.

¹⁶\$1,500 in any CQ in current or preceding CY unless otherwise specified.

¹⁷Max. amount adjusted annually: by same percentage increase as occurs in State aww (Ohio) by \$7 for each \$10 increase in average weekly wage of manufacturing production workers (Texas).

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Appendix 13.5: Federal Standards and Requirements and Sanctions for Violations

While the original Social Security Act included certain basic requirements for State unemployment compensation laws, there were no detailed specifications with respect to benefit amount, duration, or general eligibility requirements. In the course of time, although no specific quantitative requirements have been established in Federal law, a number of substantive qualitative criteria have been adopted.

I. Tax offset credit and administrative grants

To avoid denial or certification for the Federal tax-offset credit and the withholding of administrative grants, State laws must include certain provisions. Following is a list of the Federal laws and the applicable provisions.

303(a)(2) SSA *3304(a)(1) FUTA*

1. Payment of benefits only through public employment offices or such other agencies as the Secretary of Labor may approve.

303(a)(4) SSA *3304(a)(3) FUTA*

2. Payment of all money received in the State's unemployment fund (except for certain refunds) immediately to the Secretary of the Treasury to the credit of the Unemployment Trust Fund.

303(a)(5) SSA *3304(a)(4) FUTA*

3. Expenditure of all money withdrawn from State's unemployment fund only for unemployment compensation and certain refunds, but employee payments and Reed Act moneys may be used for certain other purposes.

3304(a)(2) FUTA

4. No payment of compensation for unemployment occurring within 2 years after the first day on which contributions are required. (Obsolete.)

3304(a)(5) FUTA

5. Labor standards (no benefits denied for failure to accept a job that is vacant because of a labor dispute or requiring membership in a company union or non-membership in a bona fide labor organization or involving substandard wages, hours, or working conditions).

3304(a)(17) FUTA

6. Savings clause authorizing the legislature to amend or repeal the law at any time.

3304(a)(7) FUTA

7. Individuals who have received compensation during their benefit year are required to have had work since the beginning of such year in order to qualify for compensation in their next benefit year. (*Added by 1970 Amendments.*)

3304(a)(8) FUTA

8. Compensation shall not be denied to an individual for any week because the individual is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work). (*Added by 1970 Amendments.*)

3304(a)(9)(A) FUTA

9. Compensation shall not be denied or reduced to an individual solely because the individual files a claim in another State or Canada or because the individual resides in another State or Canada at the time of filing a claim for unemployment compensation. (*Added by 1970 Amendments.*)

3304(a)(9)(B) FUTA

10. The State shall participate in arrangements or plans (approved by the Secretary of Labor in consultation with State agencies) for combining an individual's wages and employment covered under more than one State law, for the purpose of assuring prompt and full payment of compensation. (*Added by 1970 Amendments.*)

3304(a)(10) FUTA

11. Compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of the individual's benefit rights for any cause other than discharge for misconduct connected with work, fraud in connection with a claim for compensation, or receipt of disqualifying income. (*Added by 1970 Amendments.*)

3304(a)(6) FUTA

12. Compensation shall be payable (in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other covered employment) on the basis of services performed for nonprofit organizations and for State and local governmental entities. States are required to deny benefits between school terms to professional employees of schools.

States shall provide that an organization with respect to which such service is performed may elect to pay (in lieu of contributions) amounts equal to the amounts of benefits paid that were based on such service. (*Added by 1970 and 1976 Amendments.*)

3304(a)(11) FUTA

13. Extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970. (*Added by 1970 Amendments.*)

3304(a)(12) FUTA

14. No person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy. (*Added by 1976 Amendments.*)

3304(a)(13) FUTA

15. Compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week that commences during the period between two successive sport seasons if such individual performed such services in the first of such seasons and there is reasonable assurance that such individual will perform such services in the second of such seasons. (*Added by 1976 Amendments.*)

3304(a)(14) FUTA

16. (A) Compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act.

(B) Any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation.

(C) In the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of the individual's alien status shall be made except upon a preponderance of evidence. (*Added by 1976 Amendments.*)

3304(a)(15) FUTA

17. The amount of compensation payable to an individual for any week that begins after March 31, 1980, and begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar

periodic payment that is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week. (*Added by 1976 Amendments.*)

3304(a)(16) FUTA

18. (A) Wage information that is contained in the records of the agency administering the State law and is necessary (as determined by the Secretary of Health, Education and Welfare in regulations) for purposes of determining an individual's eligibility for aid or services, under a State plan for aid and services to needy families with children approved under Part A of Title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes.

(B) Such safeguards as established as are necessary (as determined by the Secretary of Health, Education and Welfare in regulations) to ensure that such information is used only for purposes authorized under subparagraph (A). (*Added by 1976 Amendments.*)

Section 303(b)(2) of the Social Security Act (SSA) requires that States comply substantially with the provisions of State law required by Section 303(a) SSA. Section 304 SSA provides for the right of appeal and judicial review of findings by the Secretary of Labor that a State has not met requirements prescribed in Title III SSA.

Section 3304(c) Federal Unemployment Tax Act (FUTA) provides for certification of States that contain in their law and comply substantially with provisions required by 3304(a) FUTA. Section 3303(b) provides for certification for additional tax credit of States meeting Federally prescribed standards for experience rating. Section 3310 FUTA provides for the right of appeal and judicial review of findings by the Secretary of Labor that require the withholding of certification under Section 3304(c) or 3303(b) FUTA.

II. Administrative grants

To avoid the withholding of administrative grants, State laws must be approved for the tax offset (302[a] SSA). In addition, State laws must include certain provisions described below.

303(a)(1) SSA

1. Methods of administration (including personnel standards on a merit basis) as are found by the Secretary of Labor to be reasonably calculated to ensure full payment of unemployment compensation when due.

303(a)(3) SSA

2. Opportunity for fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.

303(a)(6) SSA

3. Making such reports in such form and containing such information as the Secretary of Labor may from time to time require and in compliance with such provisions as the Secretary finds necessary to assure correctness and verification of such report.

303(a)(7) SSA

4. Making available upon request, to any Federal agency charged with the administration of public works or assistance through public employment, the name, address, and ordinary occupation and employment status of each recipient of unemployment compensation, as well as a statement of such recipient's rights to further compensation.

303(a)(8) SSA

5. Expenditure of Federal grants solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of the law.

303(a)(9) SSA

6. Replacement within a reasonable time of grants that, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of the law.

Grants are suspended if, in the administration of the State law, the following occurs.

303(b)(1) SSA

7. Denial of benefits, in a substantial number of cases, to individuals entitled thereto under the State law.

303(c)(1) SSA

8. Failure to make records available to the Railroad Retirement Board.

303(c)(2) SSA

9. Failure to afford reasonable cooperation with every Federal agency administering any unemployment compensation law.

303(d) SSA

10. (A) Disclosure to officers and employees of the Department of Agriculture and of any State food stamp agency any of the following information contained in

the records of such agency: (1) wage information; (2) information about whether an individual is receiving, has received, or has made application for unemployment compensation and the amount of any such compensation being received (or to be received) by such individual; (3) the current (or most recent) home address of such individual; and (4) information about whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor.

(B) The State agency shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977. (*Added by Food Stamp Amendments of 1980, effective January 1, 1983.*)

303(d) SSA

11. (A) Disclosure directly to officers of any State or local child support enforcement agency any wage information contained in the records of the State agency.

(B) The State agency shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of establishing child support obligations and locating and collecting from individuals owing such obligations. (*Added by Social Security Disability Amendments of 1980, effective January 1, 1983.*)

As enacted, the two measures cited above add a new subsection (d) to Section 303 SSA.

III. Certification for additional tax offset credit

If a State is not certified for additional tax offset credit, all employers in the State subject to the FUTA would be required to pay to the Federal Government the difference between what they paid to the State and 2.7 percent, as well as the 0.7 percent already required. To be certified, State law must include certain provisions, described below.

3303(a)(1) FUTA

1. With respect to a pooled-fund system, rating employers on the basis of their experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during 3 consecutive years preceding the computation date.

States may reduce rates (but to not less than 1 percent) for newly subject employers on a reasonable

basis until they have sufficient experience to be rated under the State's experience rating system. (*Added by 1970 Amendments.*)

3303(a)(3) FUTA

2. A reserve account system, with reduced rates only to employers with a balance equal to five times the largest amount of benefits paid to them any 1 of the last 3 years and 2½ percent of payrolls for the past 3 years. (Obsolete.)

IV. Denial of tax offset credit for certain employers

This "sanction" is actually the consequence to individual employers of a State's failure to require (1) that

employers and employment subject to the FUTA shall also be subject to the State law; (2) that wages subject to Federal tax shall be subject to State tax; (3) that the same treatment apply to employees of covered Federal instrumentalities, national banks, and maritime workers as applies to other covered workers.

Employers subject to the FUTA but not to the State tax must pay the full Federal tax (3.4 percent) to the Federal Government. Their workers receive no unemployment compensation protection. Wages subject to Federal but not State tax will be taxed at the rate of 3.4 percent. Federal instrumentalities, national banks, and the maritime industry, whose workers do not receive the same treatment under the State law as other covered workers, will be denied tax offset credit.

Appendix 13.6: Glossary of Terms

Additional Benefits (AB). The program in some States that pays additional compensation to exhaustees of regular compensation by reason of conditions of high unemployment or other special factors. This program is totally financed under State unemployment compensation law, except that such benefits paid to UCFE and UCX claimants are financed by Federal funds.

Additional Claim. A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when there has been intervening employment (one of three types of initial claims).

Administrative Appeal. A request for a hearing to be held by an appeals authority on a State agency's determination or redetermination, or a request for a review to be held by a higher appeals authority on a decision made by a lower appeals authority.

Agent State. The State in which a claimant files an interstate claim for compensation against another (liable) State where wages were earned.

Alien Claimant, Illegal. An individual (1) who was not lawfully admitted for permanent residence at the time services were performed, (2) who was not lawfully present for purposes of performing services, (3) who was not permanently residing in the United States under color of law at the time services were performed, and (4) whose eligibility for unemployment compensation is determined consistently with appropriate sections of the Federal Unemployment Tax Act (FUTA).

Annual Wage Formula. A benefit formula which computes the individual's weekly benefit amount as a per-

centage of total wages in the base period as opposed to a high quarter or average weekly wage formula.

Appeal. A request for a hearing to be held by an appeals authority on a State agency's determination or redetermination, or a request for a review to be held by a higher appeals authority on a decision made by a lower appeals authority.

Appeal Decision. The disposition of an appeals case by a written ruling that is issued to one or more parties. A disposition which is not written and issued to any party is not a decision. In a multclaimant case, only one decision is made which applies to all the claimants involved regardless of their number.

Augmented Weekly Benefit Amount. The weekly benefit amount inclusive of an allowance for dependents of claimant with dependents.

Average Weekly Benefit Amount for Total Unemployment. The amount computed by dividing the amount of compensation paid for total unemployment during a given period by the corresponding number of weeks for which compensation for total unemployment was paid.

Average Weekly Wages. (1) For an individual worker, the result obtained by dividing the individual's total wages in a specified period either by the total number of weeks in the period or by the number of weeks for which wages were payable to the individual during the period. (2) For a group of workers, the result obtained by dividing the total wages for one or more quarters by the number of weeks in the period and then dividing by the average monthly employment for the payroll period including the 12th of each month during the period.

Average Weekly Wage Formula. A benefit formula that uses a computation of an individual's average weekly

wage during the base period as a basis for determining the individual's weekly benefit amount.

Base Period (Base Year). A specified period of 12 consecutive months or, in some States, of 52 weeks during which an individual must have the required employment and/or wages in order to establish entitlement to compensation or allowances under an applicable program and begin a benefit year.

Base Period Weeks. Weeks of work within the base period necessary to meet the qualifying requirements for compensation or allowances under the eligibility provisions of some State unemployment compensation laws.

Basic Weekly Benefit Amount. The weekly benefit amount of a claimant for a week of total unemployment excluding any allowance for dependents.

Beneficiary. A claimant who receives unemployment compensation or allowance payments under any State or Federal program.

Benefit Eligibility Conditions (Eligibility Requirements). Statutory requirements which must be satisfied by an individual with respect to each week of unemployment for which compensation or allowance payments are claimed before payment for the week is made.

Benefit Formula. A mathematical formula specified in State unemployment compensation law or Federal laws used as the basis for determining an individual's weekly benefit amount and potential maximum benefit entitlement.

Benefit Payment Account. An account in the State unemployment fund which is a record of (1) deposits transferred from the Unemployment Trust Fund and (2) withdrawals for the payment of benefits.

Benefit Rights Interview. Information provided to a claimant for the purpose of explaining the individual's rights and responsibilities under the applicable State unemployment compensation law or Federal law.

Benefit Year. A period, generally a 52-week period, during which individual claimants may receive their maximum potential benefit amount.

Calendar Week. A period of 7 consecutive days beginning and ending at Saturday midnight, used as a unit in the measurement of employment, unemployment, and insured unemployment.

Certification of Approval to the Secretary of the Treasury. The certification by the Secretary of Labor on October 31 of each taxable year listing those States whose unemployment compensation laws and administration have, during the year, met the conditions for tax credit to employers established by the Federal Unemployment Tax Act.

Certification for Additional Credit Allowance.

To the Secretary of the Treasury. The certification by the Secretary of Labor to the Secretary of the Treasury on October 31 for the 12-month period ending on the date listing those States under whose unemployment compensation laws reduced rates were allowable with respect to such year only in accordance with the conditions for additional tax credit established by the Federal Unemployment Tax Act.

To a State. The certification by the Secretary of Labor to a State that the provisions of its unemployment compensation law for reduced employer contribution rate are in accordance with the conditions for additional allowance established by the Federal Unemployment Tax Act.

Claim. A notice of unemployment filed to request a determination of eligibility and the amount of benefit entitlement or to claim benefits or waiting period credit.

Claimant. A person who files either an initial claim or a continued week claimed under (1) any State or Federal unemployment compensation program or (2) any other program administered by the State agency.

Claimant Fraud. The willful misrepresentation or non-disclosure of a material fact by a claimant for the purpose of obtaining benefits to which the claimant is not entitled.

Claim Series. A series of claims filed for continuous weeks of total, part-total, or partial unemployment.

Combined Wage Claim. A claim filed in one State against wage credits earned in two or more States.

Commuter. Under the Interstate Benefit Payment Plan, a worker who travels regularly across a State line from home to work and, by mutual agreement between States, is required to file in the State where the individual last worked.

Compensation. Money payments (including dependents' allowances) to individuals with respect to their unemployment, including regular, additional, extended, and Federal Supplemental Benefits (emergency compensation). Excludes assistance and allowance payments of Special Unemployment Assistance, Disaster Unemployment Assistance, and Trade Readjustment Allowances.

Computation Date, Experience-Rating. The date as of which employer's experience is measured for the purpose of determining contribution rates.

Contested Claim. A claim which has not yet reached an appeal stage when benefit rights for either a monetary or nonmonetary reason are questioned by the State agency, the claimant, the employer, or another interested party.

Continued Claim. A claim filed by mail or in person for waiting period credit or payment for one or more weeks of unemployment.

Contribution Report. An employer's quarterly report of total and taxable wages and the amount of contribution due a State unemployment fund.

Contributory Employer. An employer who is required by the State unemployment compensation law to pay contributions into the State unemployment fund. Certain classes of employers are not required to pay contributions, but may elect to do so.

Coverage Determination. A determination as to whether services performed for an employer constitute employment as defined under a State unemployment compensation law.

Covered Employment. Employment, as defined in a State unemployment compensation law, performed for a subject employer, or Federal employment as defined in Chapter 85, Title 5, United States Code.

Covered Worker. An individual who has earned wages in covered employment.

Credit Allowance. Credit allowed an employer against the Federal unemployment tax for contributions paid into a State unemployment fund.

Current Spell of Unemployment. The number of uninterrupted weeks currently claimed by an individual, which includes waiting period, weeks of less than total unemployment, and pending weeks, as well as weeks for which total benefits are claimed. (It includes weeks for which a claimant is disqualified if claims were filed for such weeks.)

Decision. The disposition of an appeals case by a written ruling that is issued to one or more parties. A disposition may or may not involve a review of a previous decision. A disposition which is not written and issued to any party is not a decision. In a multi-claimant case, only one decision is made, which applies to all the claimants involved regardless of their number.

Denial of Benefits. Action imposed by a nonmonetary determination or an appeals decision which cancels, reduces, or postpones a claimant's benefit rights.

Dependents' Allowance. Special allowances provided under some State unemployment compensation laws to beneficiaries with family support responsibilities as defined under the statutory provisions of the laws.

Disaster Unemployment Assistance (DUA). The Federal program that provides assistance payments to workers whose unemployment is attributable to situations declared as disasters by the President of the United States.

Disqualification Provisions. The provisions of State unemployment compensation laws or Federal laws setting forth the conditions that bar an individual from receiving waiting period credit or payment of compensation for a specified period and/or reduce the maximum benefit amount or cancel wage credits.

Earnings Allowance. The amount prescribed by State unemployment compensation laws that a claimant may earn without any reduction in the weekly benefit amount for a week of total unemployment.

Employee Contributions. The unemployment compensation taxes required by some State unemployment compensation laws to be deducted by the employer from an employee's pay and paid with the employer's contribution to the State agency.

Employer. An employing unit, as defined below, subject to State or Federal unemployment compensation laws.

Employer Account Number. A unique identification number assigned by State agencies to subject employer accounts to control reporting and accounting functions. Not the same as the Federal Employer Identification Number assigned by the Internal Revenue Service for Federal reporting and control purposes.

Employer Contributions. Taxes, including voluntary contributions and special assessments, paid by subject employers into a State unemployment fund.

Employer Field Audit. A systematic examination and verification of a subject employer's books and records covering a specified period of time for which the employer is liable for reporting under the State unemployment compensation law.

Employing Unit. An individual or organization which employs one or more workers.

Employment Security Administration Account (ESAA). A special account in the Unemployment Trust Fund, financed by the Federal unemployment tax (FUTA), used to pay for the administration of the Federal-State employment security programs. Under certain conditions moneys in this account are distributed to other special funds: (1) the Federal Unemployment Account (FUA); (2) the Extended Unemployment Compensation Account (EUCA); and (3) State Accounts in the Unemployment Trust Fund.

Experience Rate. A rate of contribution that differs from the standard contribution rate, computed for an individual employer under the experience-rating provisions of a State unemployment compensation law.

Experience Rating. A method for determining the contribution rates of individual employers on the basis of the factors specified in the State unemployment com-

pensation law for measuring employers' experience with respect to unemployment.

Experience-Rating Account. An employer account which is maintained by the State agency for the purpose of determining the contribution rate of the employer.

Extended Benefits (EB). The supplemental program that pays extended compensation during periods of specified high unemployment to individuals for weeks of unemployment (1) after they draw the maximum potential entitlement to regular compensation within their benefit year or (2) after their benefit year ends while they are in continued unemployment status and have insufficient wage credits to establish a new claim, provided, however, that the extended benefit period in the State began prior to the end of their benefit year. Extended benefits paid to claimants under State unemployment compensation law are jointly financed on a 50-50 basis by State and Federal funds; extended benefits paid to UCFE and UCX claimants are totally financed by Federal funds.

Extended Unemployment Compensation Account (EUCA). An account in the Unemployment Trust Fund from which the Federal portion of shareable extended benefits are paid to State agencies.

Federal Contingency Fund. An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by State agencies arising from increases in workload or other specified causes.

Federal Employer Identification Number (FEIN). The identification number assigned to employers by the Internal Revenue Service to control reporting and accounting functions. Not the same as the Employer Account Number assigned by State agencies.

Federal Supplemental Benefits (FSB). A temporary Federal program totally financed by Federal funds that pays supplemental compensation during specified periods of high unemployment to individuals who have exhausted their regular compensation, State-financed additional benefits, and/or the jointly financed Federal-State extended benefits. In effect from January 1, 1975, to February 1, 1978.

Federal Unemployment Account (FUA). An account in the Unemployment Trust Fund from which repayable advances are available to States whose unemployment fund reserves are temporarily unable to meet current benefit payments.

Federal Unemployment Benefit and Allowance Account (FUBA). A special fund financed by congressional appropriation of general revenue funds for the payment of Federal unemployment benefits and allowances.

Federal Unemployment Tax. The excise tax imposed by the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

Federal Unemployment Tax Act. Chapter 23 of the U.S. Internal Revenue Code (Sections 3301-3311).

Federal Unemployment Tax Return. An annual report by an employer to the Internal Revenue Service of the amount of Federal unemployment tax liability with respect to wages paid during the calendar year.

Final Payment. The last payment to a claimant, which exhausts the individual's maximum potential benefit entitlement under a specific program.

First Payment. The first payment for a week of unemployment claimed under a specific program.

Flexible Week. A period of 7 consecutive days used as a unit in the measurement of employment or unemployment in which the day of the week, used as the beginning point, is different for individual claimants.

Full-Time Week. The number of hours or days per week currently established by schedule, custom, or otherwise as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

Full-Time Weekly Wages. The amount of wages earned by an individual employed throughout a full-time week, or the amount an individual would have earned had such individual been employed throughout a full-time week.

High-Quarter Formula. A benefit formula which uses an individual's highest quarter of wages in the base period to compute the weekly benefit amount.

Higher Appeal Authority. The higher of two administrative authorities provided by State unemployment compensation law to make decisions with respect to appeals.

Initial Claim. Any notice of unemployment filed (1) to request a determination of entitlement to and eligibility for compensation or (2) to begin a second or subsequent period of unemployment within a benefit year or period of eligibility.

In-Person Claim. A claim filed in person at an unemployment compensation office.

Insured Unemployment. Unemployment during a week for which waiting period credit or benefits are claimed under the regular compensation programs, supplemental extended benefit programs, or the railroad unemployment insurance program.

Interstate Claim. A claim filed in one (agent) State based on monetary entitlement to compensation in another (liable) State.

Interstate Combined-Wage Claim. A combined-wage claim in which the paying State is not the State in which the claim is filed and the interstate claims procedures are used in making the payment.

Interstate Reciprocal Coverage Arrangement. An administrative agreement between State agencies providing for coverage of an individual's services in the State where part of the individual's services are performed, where the individual lives, or where the employer maintains a place of business.

Intrastate Claim. A claim filed in the same State in which the individual's wage credits were earned.

Intrastate Combined-Wage Claim. A combined-wage claim in which the paying State is also the State in which the claim is filed and to which the other State or States will transfer wage credits.

Itinerant Point. A location at which employment services and/or unemployment insurance services are provided on a scheduled part-time basis by staff from a local office operated at another location.

Labor Dispute. Any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms for conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Lag Quarter(s). The quarter(s) between the end of a base period and the quarter which includes the beginning date of the benefit year.

Liable State. Any State against which a worker files a claim for compensation through the facilities of another (agent) State.

Local Office. A full-time office of a State agency maintained for the purpose of providing the placement and other services of the public employment service system, and/or the claims-taking and related unemployment insurance services.

Low Earnings Report. A report from an employing unit on the earnings of a worker whose hours of work and earnings have been reduced to the extent that the individual may be eligible for benefits or waiting period credit.

Lower Appeals Authority. The lower of two administrative authorities provided by the State unemployment compensation law to make decisions with respect to appeals. A State agency with only one appeals authority should consider that as a lower appeals authority.

Mail Claim. A claim filed by mail instead of being filed in person at an unemployment insurance office.

Mass Separation Notice. A report in some States of a mass separation sent by an employer to the State agency listing the names of workers separated and other required data, thus eliminating the need for individual separation notices.

Maximum Potential Benefit Amount. The largest amount of benefits for weeks of total unemployment that an individual may receive under a State or Federal unemployment compensation law.

Maximum Potential Duration. The highest number of weeks of total unemployment for which benefits are payable to any claimant in a benefit year or other period of eligibility under a State or Federal unemployment compensation law.

Maximum Weekly Benefit Amount. The highest weekly benefit amount for a week of total unemployment as provided under a State or Federal unemployment compensation law.

Minimum Potential Benefit Amount. The smallest amount of benefits for weeks of total unemployment that an individual may receive under a State or Federal unemployment compensation law.

Minimum Weekly Benefit Amount. The lowest weekly benefit amount for a week of total unemployment as provided in a State unemployment compensation law.

Minutes Per Unit (MPU). The unit of time, expressed in minutes, that it takes to process a workload function.

Monetary Determination. A written notice issued to inform an individual whether or not the individual meets the employment and wage requirements necessary to establish entitlement to compensation under a specific program and, if entitled, the weekly and maximum benefit amounts the individual may receive.

Monetary Determinations Reconsiderations. A record of a decision made after reconsideration and/or recomputation of a claimant's monetary entitlement based on the receipt of new employment and wage information, a nonmonetary determination, or a question raised by an interested party (whether or not a change is made in the original determination).

New Claim. The first claim filed in person, by mail, or by telephone to request a determination of entitlement to and eligibility for compensation (one of three types of initial claims).

Nonmonetary Determination. A decision made by the initial authority based on facts related to an "issue" under the following conditions: (1) the present, past, or future benefit rights of a claimant or claimants are involved; (2) there are identifiable documents showing the type and disposition of an issue, the material facts

considered in arriving at the determination, and the legal result; and (3) the determination, if it involves the denial of benefits, is issued in the form of a written determination notice to the claimant. (No determination denying benefits may be considered to be a non-monetary determination until the claimant has been afforded an opportunity to furnish any facts the claimant may have relating to disqualifying information received from other sources.)

Normal Credit Allowance. A credit against the employer's liability under the Federal Unemployment Tax Act for contributions paid by the employer to a State unemployment fund.

Overpayment. An amount of benefits paid to an individual to which the individual is not legally entitled, regardless of whether or not the amount is subsequently recovered.

Overpayment Involving Willful Misrepresentation. An overpayment for which facts material to the determination or payment of a claim are found to have been knowingly misrepresented or concealed by the claimant (claimant fraud) in order to obtain benefits to which the individual is not legally entitled.

Partially Pooled Account. An account maintained within a State unemployment fund from which benefits are payable to a claimant whose employer's reserve account is exhausted or is otherwise unavailable. Such an account is maintained only in those States whose unemployment compensation law provides for separate employer reserve accounts.

Paying State. Either (1) the State in which a claimant files a claim after qualifying in that State on the basis of combined employment and wages (thus filing an *intrastate* combined-wage claim) or (2) if a claimant files a claim in a State that is not the paying State under the criterion set forth in (1), or files a claim in Canada or the Virgin Islands, the last State in which the claimant was employed in covered employment among the States in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages (thus filing an *interstate* combined-wage claim).

Period of Eligibility. The weeks in the benefit year which begin in an extended benefit period or an additional eligibility period and, if the benefit year ends within the extended benefit period, any weeks thereafter which begin in the extended benefit period or the additional eligibility period.

Periodic Audit. An audit initiated by field audit assignment and conducted periodically for selected employers to ensure proper reporting.

Periodic Interview. An interview conducted intermittently during an active claims series to explore the

eligibility of the claimant and the degree of the claimant's attachment to the labor force and the possibilities for the claimant's reemployment.

Pooled Account. A fund in which all contributions are mingled and undivided and from which benefits are payable to all eligible claimants.

Potential Duration. The total number of weeks of total unemployment for which an individual claimant may receive benefits in a benefit year or period of eligibility, under the entitlement provisions of a State or Federal unemployment compensation program or any other program administered by a State agency.

Proof of Credit. A certification to the Internal Revenue Service of the amount of taxable wages reported and contributions paid to the State unemployment fund by a subject employer during a calendar year.

Qualifying Employment and Wages. The amount of employment and/or wages an individual must have within a specified period in order to be entitled to compensation under a specific program.

Quality Appraisal. State self-appraisal to measure performance and promptness in the areas of UI benefits, appeals, and tax.

Regular Compensation. Benefit payments to individuals with respect to their unemployment under any State unemployment compensation law, including payments pursuant to 5 U.S.C. chapter 85, but not including additional benefits, Disaster Unemployment Assistance, or Trade Readjustment Allowances.

Reimbursable Employer. Certain nonprofit organizations, State or local governments, and political subdivisions that elect to pay into the State unemployment fund a sum in lieu of contributions, as provided in the State unemployment compensation laws (usually an amount equal to unemployment benefits drawn against such employer account).

Reimbursable Employer Account. An account maintained for a reimbursing nonprofit organization, State or local government, or political subdivision for the purpose of determining the amount of reimbursement to the State unemployment fund.

Reopened Claim. The first claim filed following a break in a claim series during a benefit year that was caused by other than intervening employment—that is, illness, disqualification, unavailability, or failure to report for any reason other than job attachment.

Reporting Requirements. The rules, regulations, or procedures of a State agency concerning the manner, frequency, and time required for claimants to report to offices of the State agency. (This can be in person, by mail, by telephone, weekly, biweekly, or less frequently.)

Request Reporting. The method used by a State agency to obtain a wage and separation report from a base period employer after the claimant files a new or transitional claim.

Reserve Account. A separate account maintained in a State unemployment fund with respect to a subject employer, to which are credited contributions paid by such employer and from which are payable all and only those benefits which are based on services performed for such employer.

School Employee Claimant Between Terms. An individual who is employed by elementary or secondary schools or institutions of higher education and whose eligibility for unemployment compensation is determined consistently with appropriate sections of the Federal Unemployment Tax Act.

Self-Filing (of claim). The partial or full completion by the claimant of a claim form or request for monetary determination.

Single-Claimant Determination. A nonmonetary determination that is based upon facts which relate to an individual situation and is issued to a single claimant.

Size-of-Firm Provision. The provision of a State unemployment compensation law or of the Federal Unemployment Tax Act that specifies the minimum number of employees and/or the minimum period of employment or minimum payroll which an employing unit must have before it is liable as a subject employer.

Special Audit. An audit, initiated by a field audit assignment, of an employer selected because of one or more specific reasons known to exist when the assignment is made.

Special Tax Rate. A rate assigned to the employer account and not resulting directly from a computation method included in the regular experience-rating provisions of the State unemployment compensation law.

Special Unemployment Assistance (SUA). The temporary Federal program that during a Special Unemployment Assistance Period provides unemployment assistance to individuals who are not otherwise eligible for compensation under any State or Federal unemployment compensation law. Such wages earned in non-covered employment are then treated as though earned under State unemployment compensation law as far as qualifying and benefit entitlement determinations are concerned. This program terminated December 31, 1977, with weeks of remaining benefits entitlement payable through June 30, 1978.

Split Hearing. A hearing on the same case at the same appeals level but conducted at two or more separate locations, one for the claimant and one for the employer.

Standard Contribution Rate. The basic rate of contributions from which variations are computed under the experience-rating provisions of a State unemployment compensation law.

Standard Industrial Classification (SIC). A classification system by which each employer establishment is assigned an industry title and code on the basis of its major activity, in accordance with the *Standard Industrial Classification Manual*.

State. One of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or another governmental jurisdiction that is specifically defined as a State in applicable Federal laws.

State Agency. The agency that administers the State and Federal unemployment compensation programs or other Federal allowance programs.

State Unemployment Fund. A special fund established under a State unemployment compensation law for the receipt and management of contributions and the payment of unemployment compensation benefits. Included in this fund are moneys in the benefit payment account, clearing account, and Unemployment Trust Fund account.

Status Determination. A decision by a State agency that an employing unit is or is not subject to coverage under the State unemployment compensation law.

Status Report. A required report by an employing unit giving the information on which the State agency bases its determination as to whether or not the employing unit is subject.

Subject Employer. An employing unit covered under the State unemployment compensation law as a result of a status determination.

Successor. An employing unit which has acquired the organization, trade, or business, in whole or in part, of another employer and is declared subject as of the day on which it meets the requirement of the State unemployment compensation law for successorship.

Taxable Payroll. That part of the total payroll which is subject to the contribution provisions of the State unemployment compensation law.

Taxable Wages. That part of total wages which is subject to the tax provisions of the State unemployment compensation law, or wages subject to tax under the Federal Unemployment Tax Act.

Test Audit. An audit that examines an employer's books and records for a period not exceeding one year or four selected quarters.

Total Payroll. The total amount of wages paid or payable to workers for services performed during the period covered by the report.

Total Wages. All wages or remuneration paid to the workers on all payrolls.

Trade Readjustment Allowance (TRA). The Federal program that pays trade readjustment allowances to workers whose unemployment is certified as attributable to foreign imports.

Transferring State. A State transferring wage credits earned in that State by a combined-wage claimant to the paying State.

Transient. A claimant who is moving from place to place in search of work and who indicates to the agent State local office intention to remain in the area served by the local office for less than a full claims reporting period.

Transitional Claim. A new claim filed to request a determination of eligibility and establishment of a new benefit year that shall have an effective date within the 7-day period immediately following (1) the benefit year ending date and (2) a week for which compensation or waiting period credit was claimed (one of three types of initial claims).

Unemployment Compensation for Ex-Servicemen (UCX). The Federal program that was established by 5 United States Code, Chapter 85 to provide benefits to ex-servicemen. Supplemental extended compensation is payable to ex-servicemen under other provisions of State and/or Federal laws during periods of high unemployment.

Unemployment Compensation for Federal Employees (UCFE). The Federal program established by 5 United States Code, Chapter 85 to provide benefits to Federal employees. Supplemental extended compensation is payable to Federal employees under other provisions of State and/or Federal laws during periods of high unemployment.

Unemployment Compensation (UC). The regular State program that provides benefits to individuals covered under State unemployment compensation laws. Supplemental extended compensation is payable to eligible individuals under other provisions of State and/or Federal laws during periods of high unemployment.

Unemployment Trust Fund. A fund in the Treasury of the United States that contains all moneys deposited by State agencies to the credit of their unemployment fund accounts.

Uniform Duration. A provision of State unemployment compensation law establishing the same number of weeks of potential duration for all eligible claimants.

Variable Duration (Individual Duration). A provision of State unemployment compensation law under which the potential duration varies from individual to individual in accordance with the length of employment and amount of wages earned in the base period.

Voluntary Contributions. Voluntary payments made by a subject employer and credited to the employer's experience-rating account in order to obtain a more favorable experience rate.

Wage and Separation Report. A form used by a State agency to request a report from a base period employer regarding the wages earned by the claimant and reason(s) for separation from employment.

Wage Credits. Wages earned by persons working in employment covered by State unemployment compensation laws and, in the case of claimants under the Special Unemployment Assistance program, in non-covered employment.

Wage Record. A record maintained by a State agency of an individual employee's quarterly earnings in covered employment reported by subject employers.

Wagner-Peyser Act. "An act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes," approved June 6, 1933 (48 Stat. 113), as amended (29 U.S.C. 49 et. seq.).

Waiting Period. A week of unemployment for which a claimant does not receive compensation but must meet the same eligibility requirements that are necessary to qualify for receipt of compensation for subsequent weeks of unemployment during the benefit year. (In some States, the waiting period may become compensable after specified periods of unemployment.)

Week of Partial Unemployment. A week in which an individual: (1) works less than regular full-time hours for the regular employer because of lack of work and (2) earns less than the amount specified in the definition of a week of total employment but more than the allowable earnings prescribed by the State unemployment compensation law, so that the individual, if eligible, receives less than the full weekly benefit payment.

Week of Part-Total Unemployment. A week of otherwise total unemployment in which an individual has odd jobs or subsidiary work with other than the individual's regular employer, bringing earnings in excess of the allowable earnings prescribed by the State unemployment compensation law, so that the individual receives benefits less than the full weekly benefit payment.

Week of Total Unemployment. A week in which an individual performs no work and earns no wages or has less than full-time work and earns not more than

the allowable earnings prescribed in the State unemployment compensation law, so that the individual, if eligible, receives the full weekly benefit amount. (An exception might be the final payment when an individual's benefit balance would preclude payment of the full weekly benefit amount.)

Week of Unemployment. Any week during which an individual is totally, part-totally, or partially unemployed.

Weekly Benefit Amount. The amount payable to a claimant for a compensable week of total unemployment.

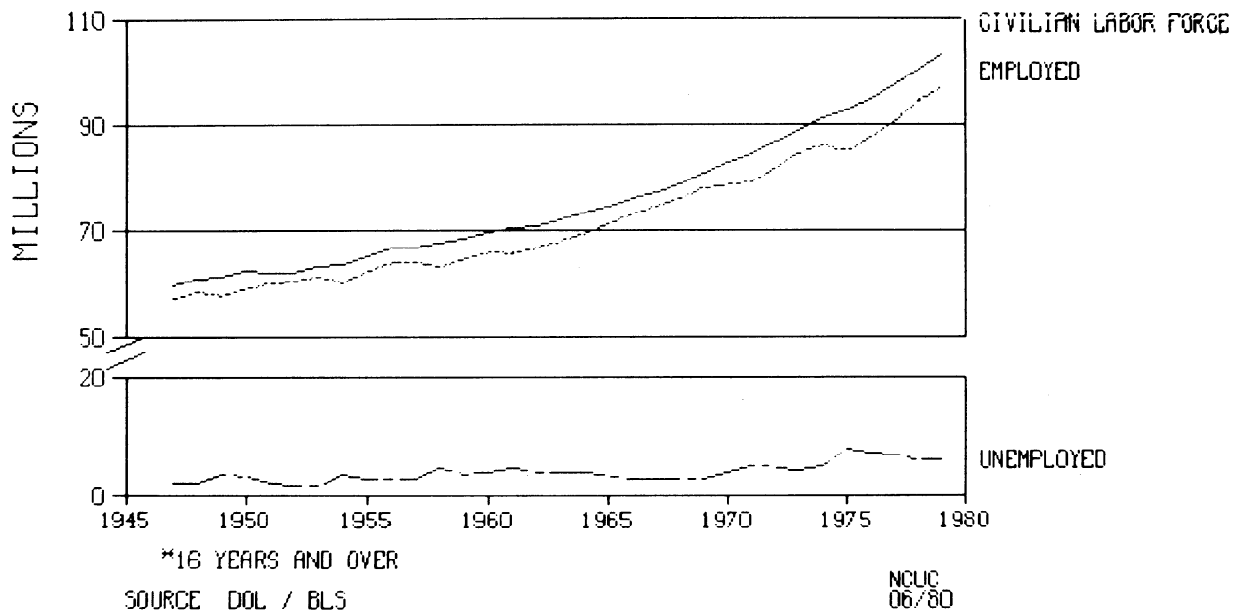
Weeks Claimed. The weeks covered by intrastate continued claims and (for the agent State only) interstate continued claims for which waiting period credit or payment of compensation is requested.

Weeks Compensated. The number of weeks of unemployment for which benefits are paid.

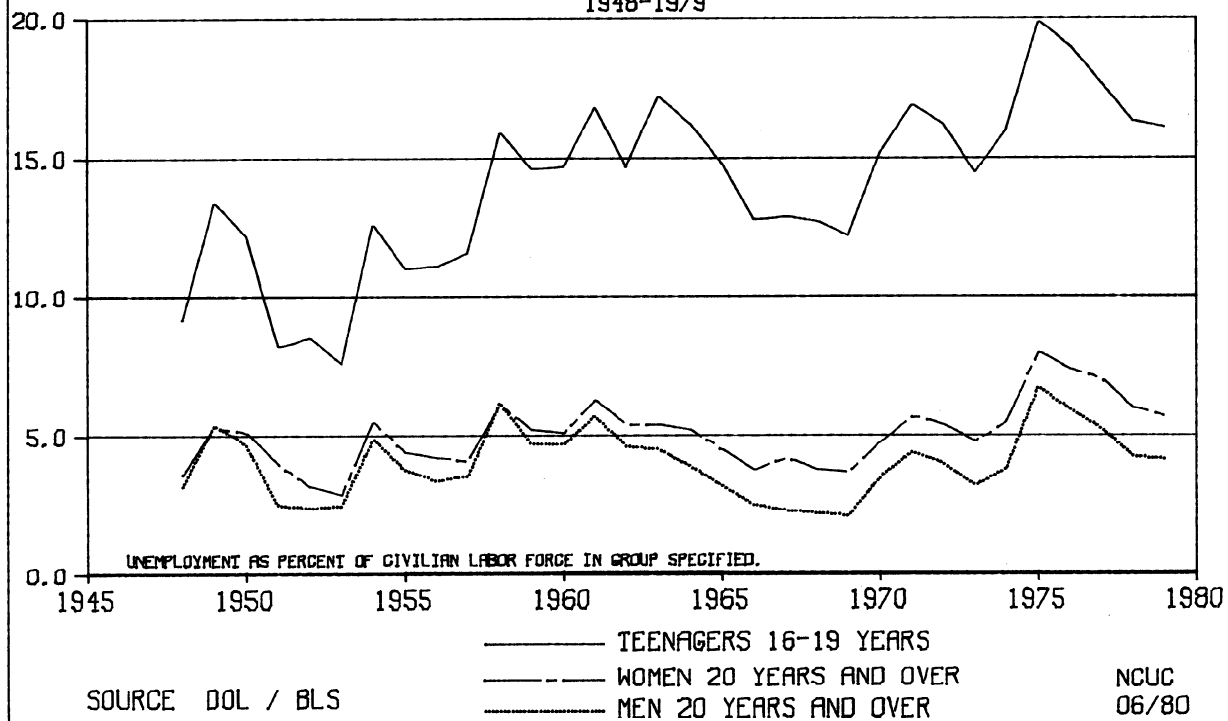
Work Test. A process through which a registered applicant is offered employment, the criteria for which are specified by the regulations for each benefit-paying agency, and the refusal of which may result in loss of applicant benefits.

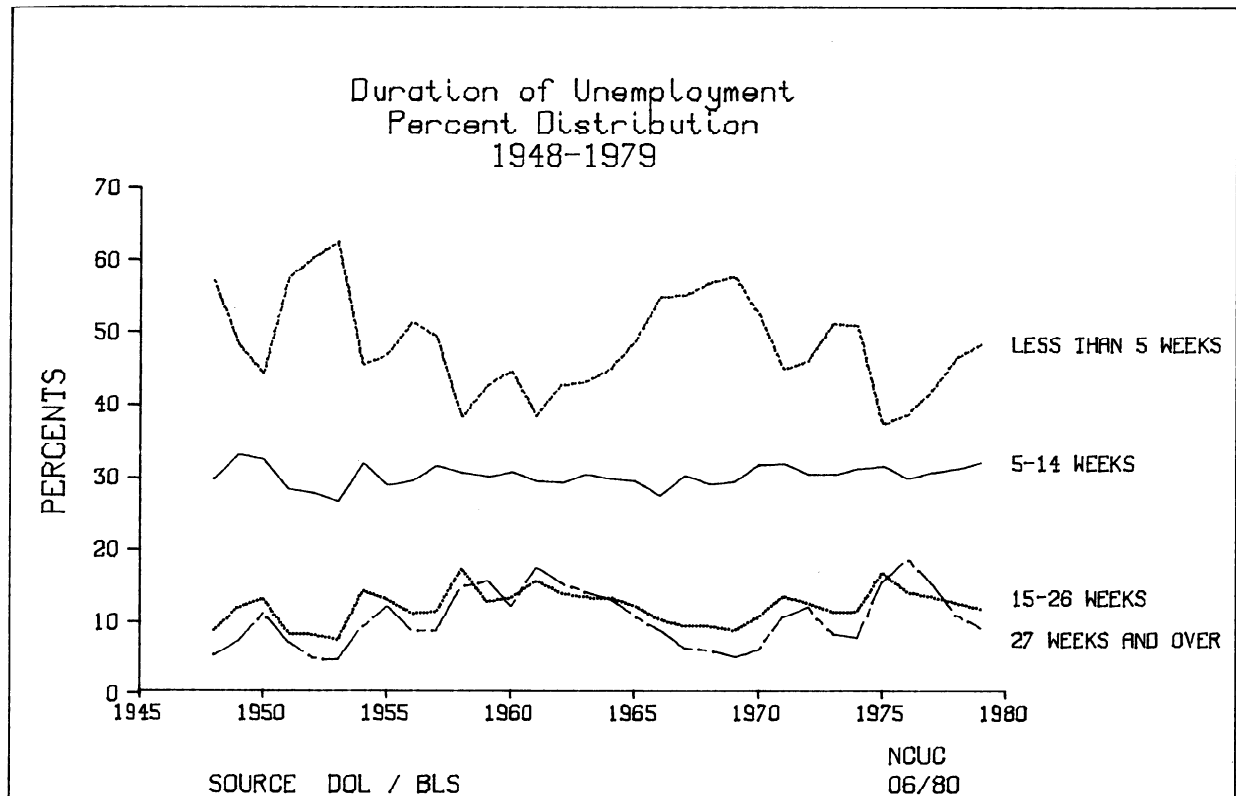
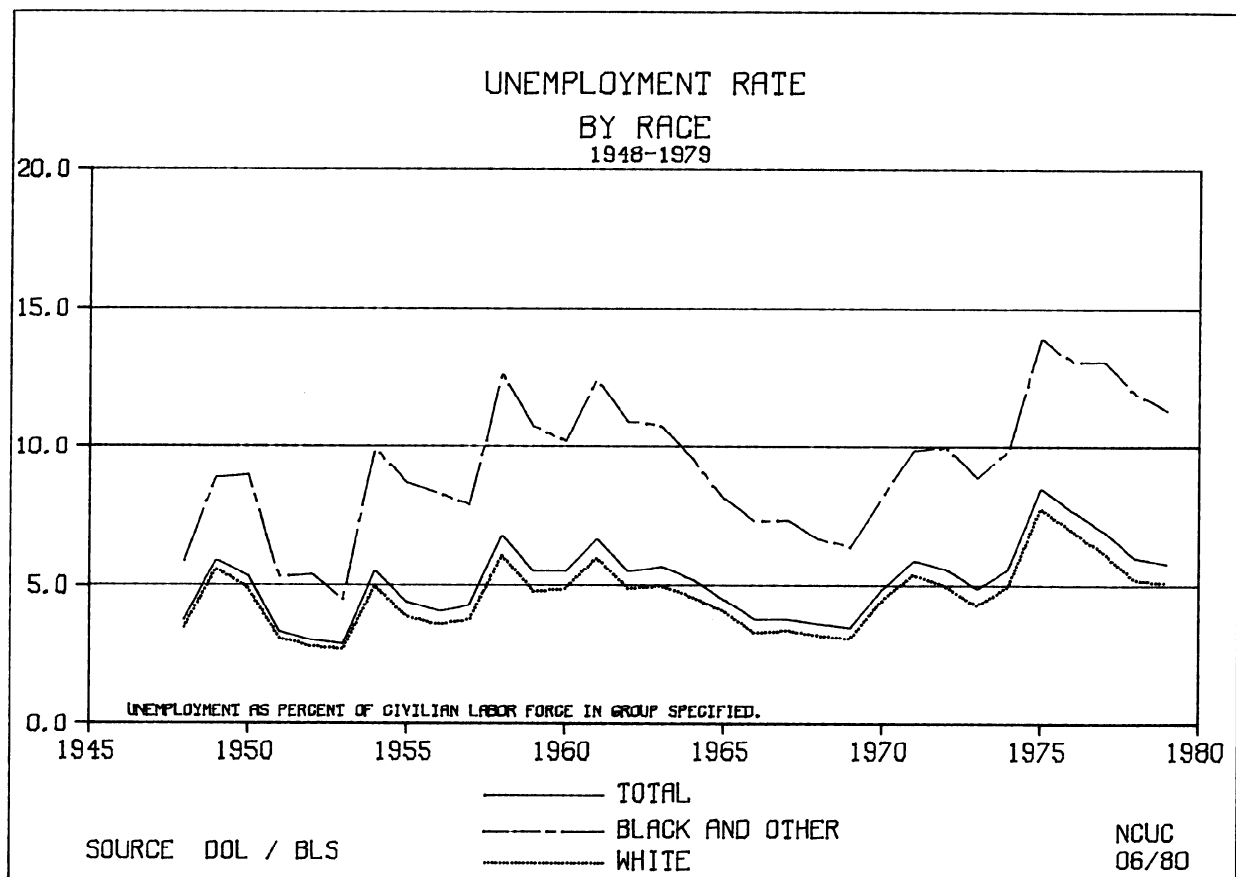
Appendix 13.7: Charts and Graphs

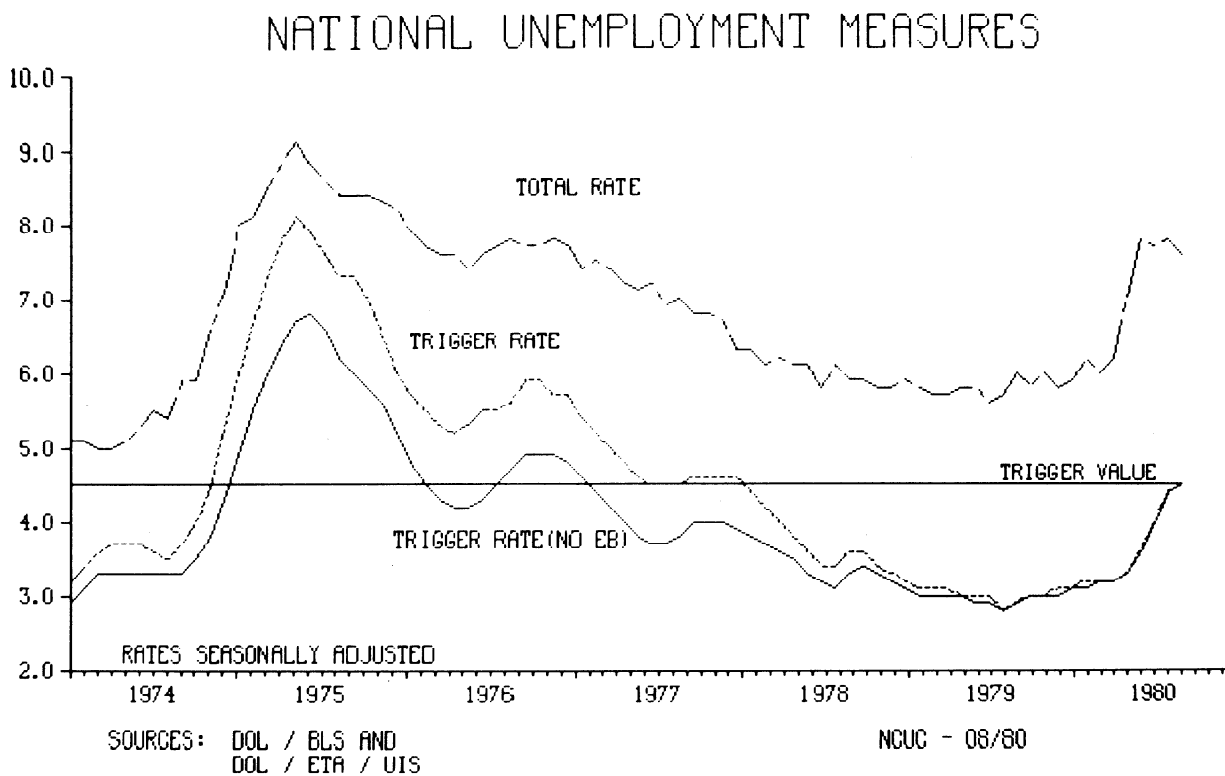
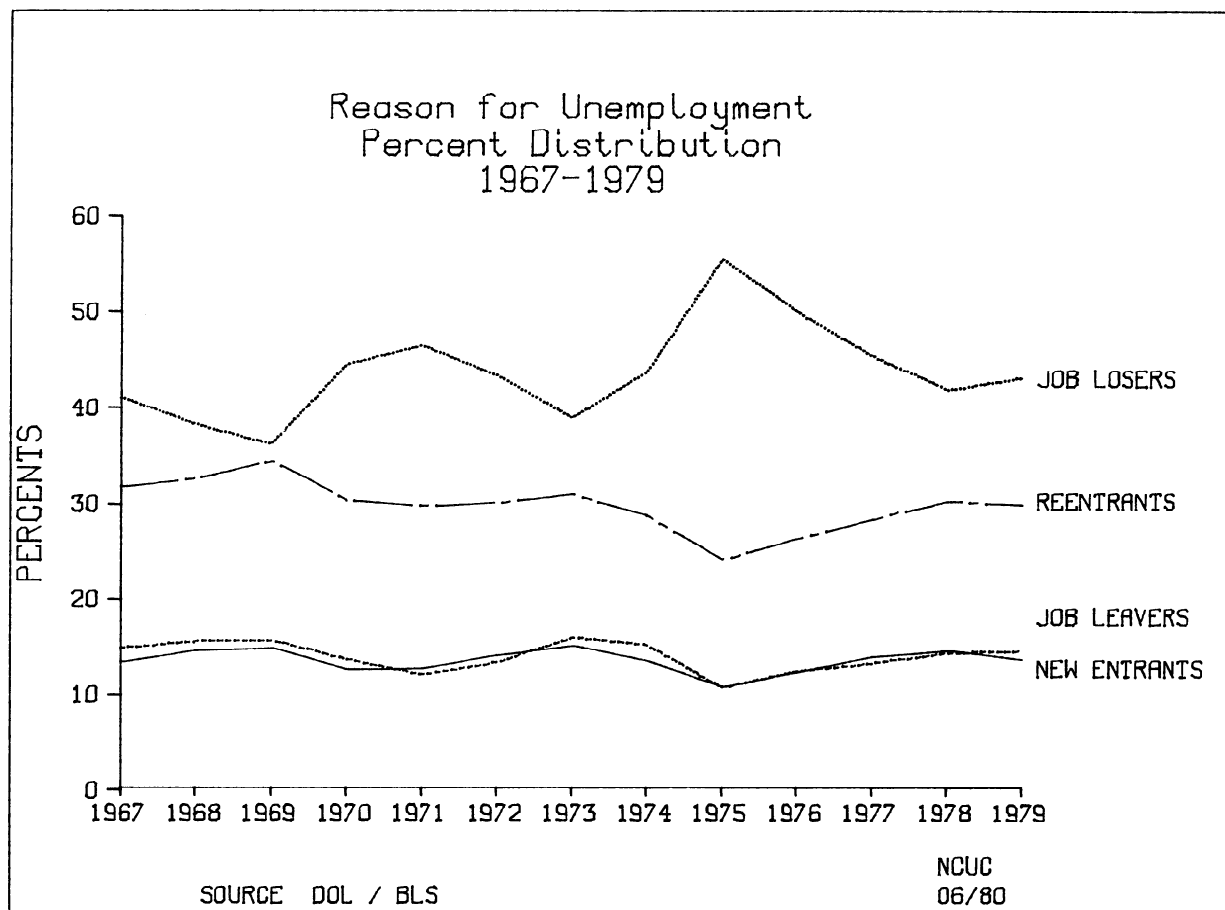
Status of Civilian Labor Force *
in millions
1947-1979



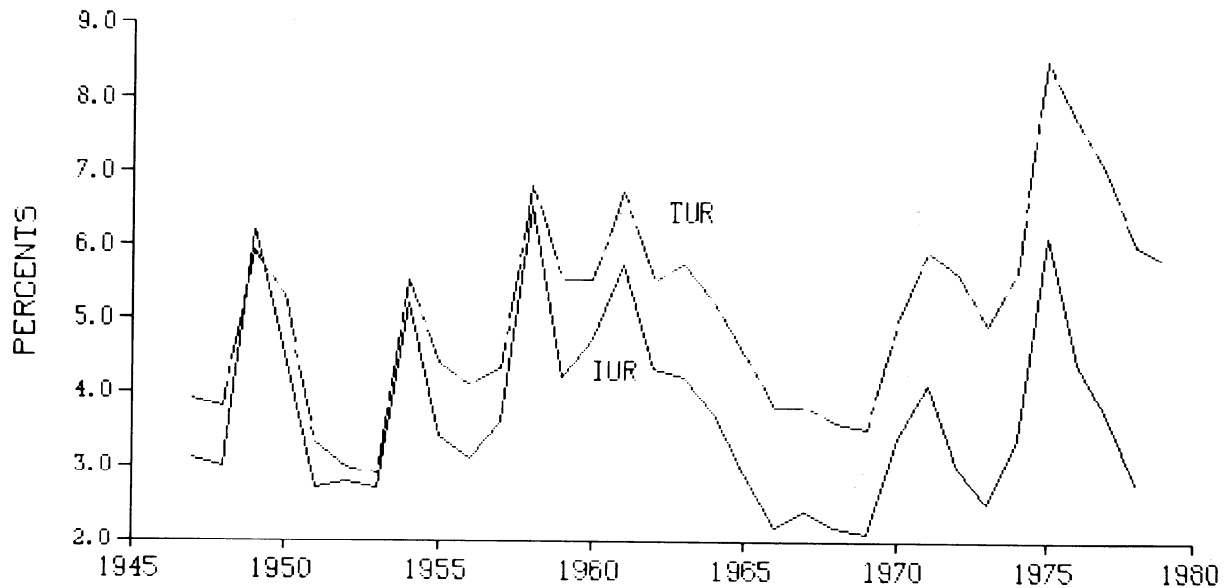
UNEMPLOYMENT RATE
BY SEX AND AGE
1948-1979







Comparison of Total Unemployment Rate (TUR) and Insured Unemployment Rate (IUR) 1947-1979



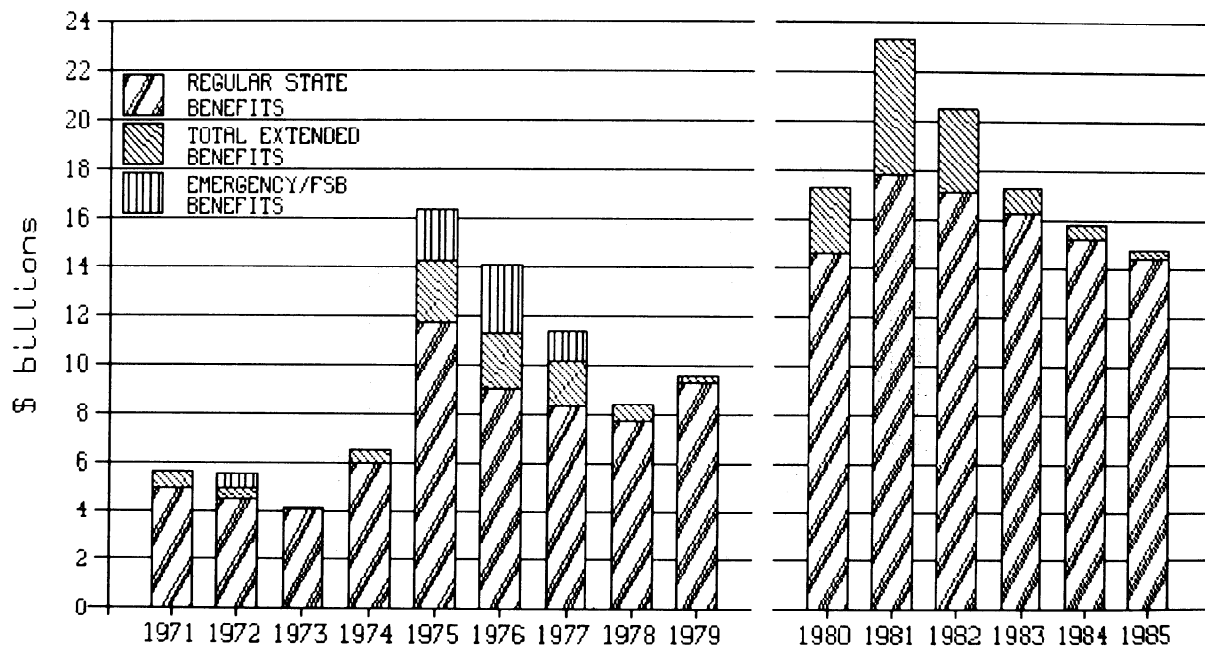
*INSURED UNEMPLOYMENT (STATE REGULAR WEEKS CLAIMED ONLY)
AS A PERCENT OF COVERED EMPLOYMENT.

SOURCES: DOL / BLS AND
DOL / ETA / UIS / DAS

NCUC
06/80

UNEMPLOYMENT INSURANCE BENEFIT PAYMENTS UNDER PRESENT LAW

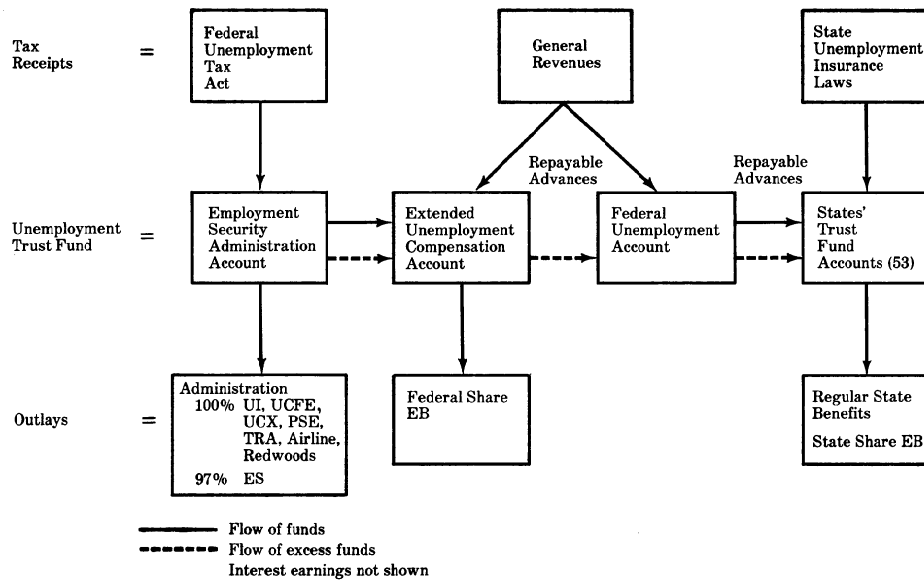
Calendar Years 1971 - 1985



SOURCE: DOL / ETA / UIS / DAS

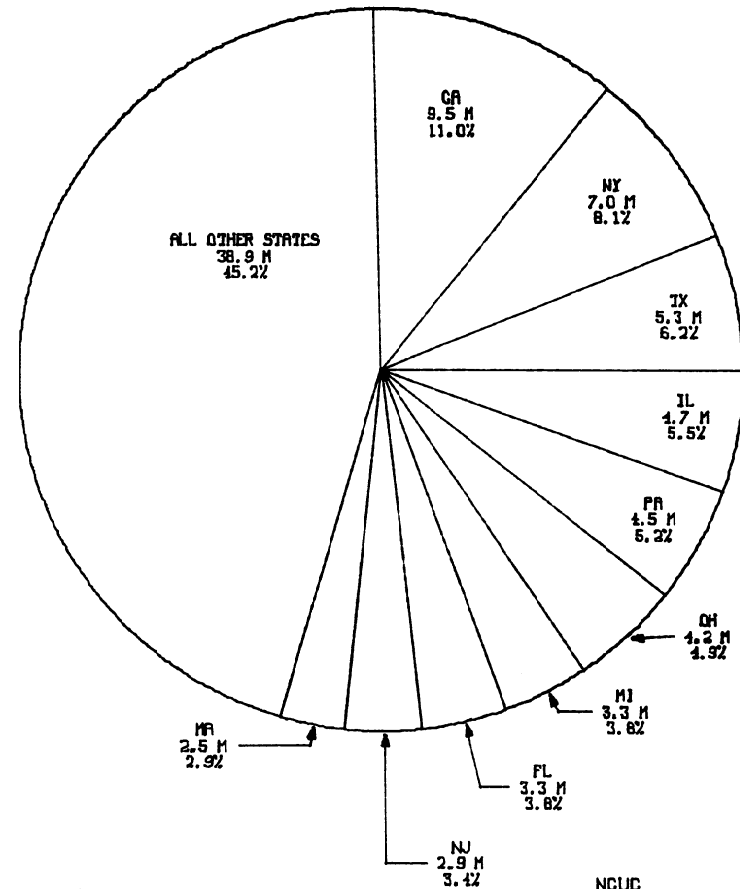
NCUC
08/80

**Federal Unemployment Trust Fund
Federal/State Unemployment Insurance Program
Flow of Funds**



**Average Employment Covered under
State Unemployment Compensation Laws
Ten Largest States and All Other States
12-Month Average as of September, 1979**

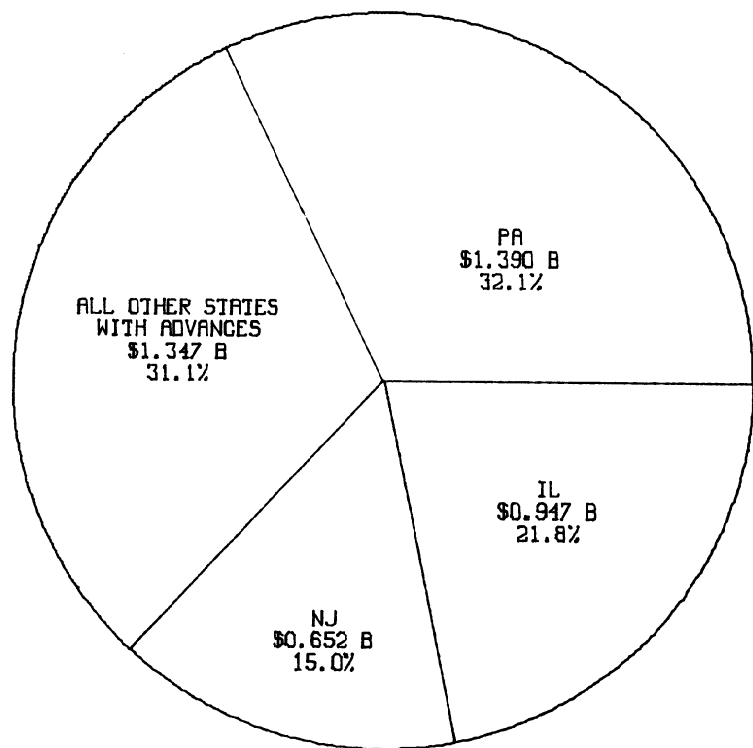
All States: 86.1 Million



SOURCE DOL / ETA / UIS / DAS

NCUC
06/80

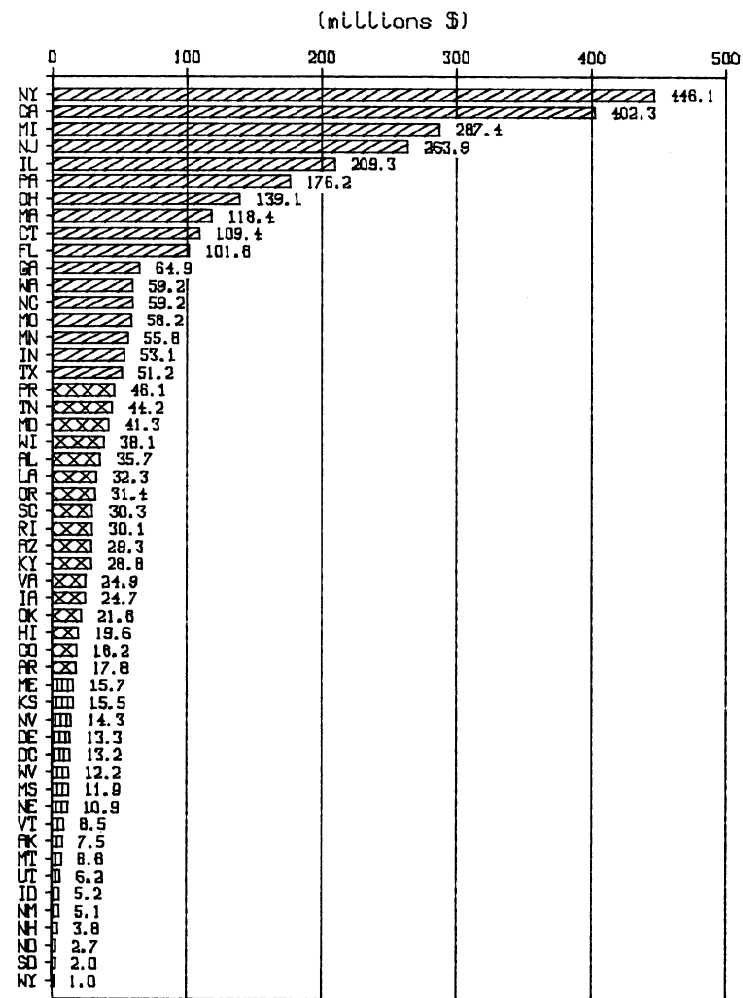
Advances to States from the
Federal Unemployment Account
As of May 31, 1980
Total Advances: \$4.336 billion



SOURCE DOL / ETA / UIS

NCUC
06/80

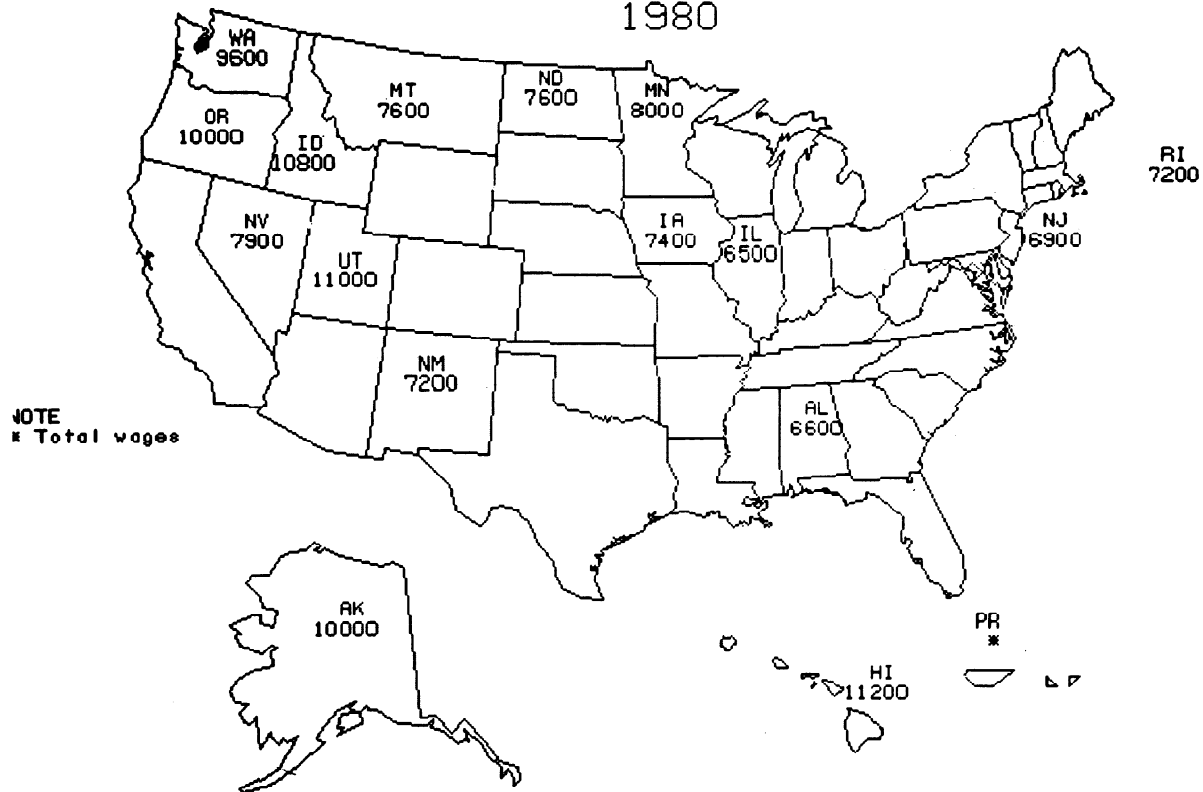
NCUC RECOMMENDED REIMBURSEMENT TO STATES
FOR EXTENDED BENEFIT OUTLAYS UNDER NATIONAL TRIGGER
1975-1978



SOURCE DOL / ETA / UIS

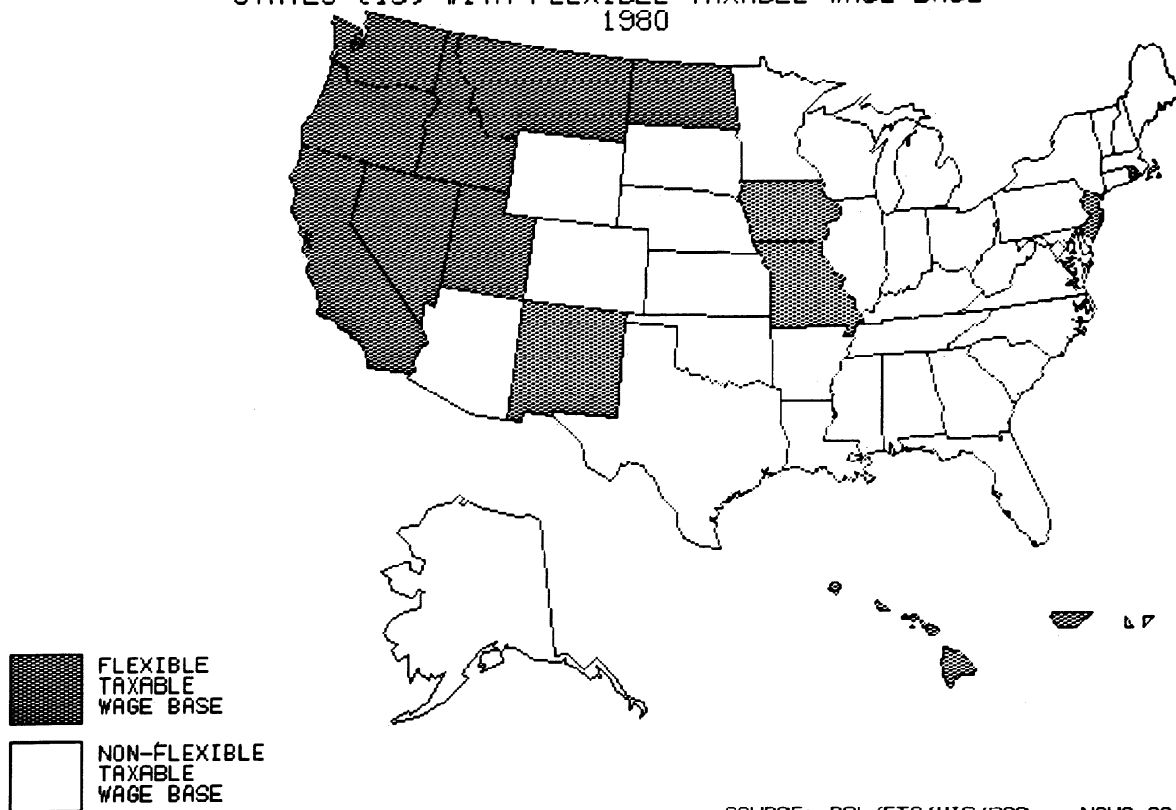
NCUC
08/80

STATES (17) WITH TAXABLE WAGE BASE ABOVE \$6000 1980



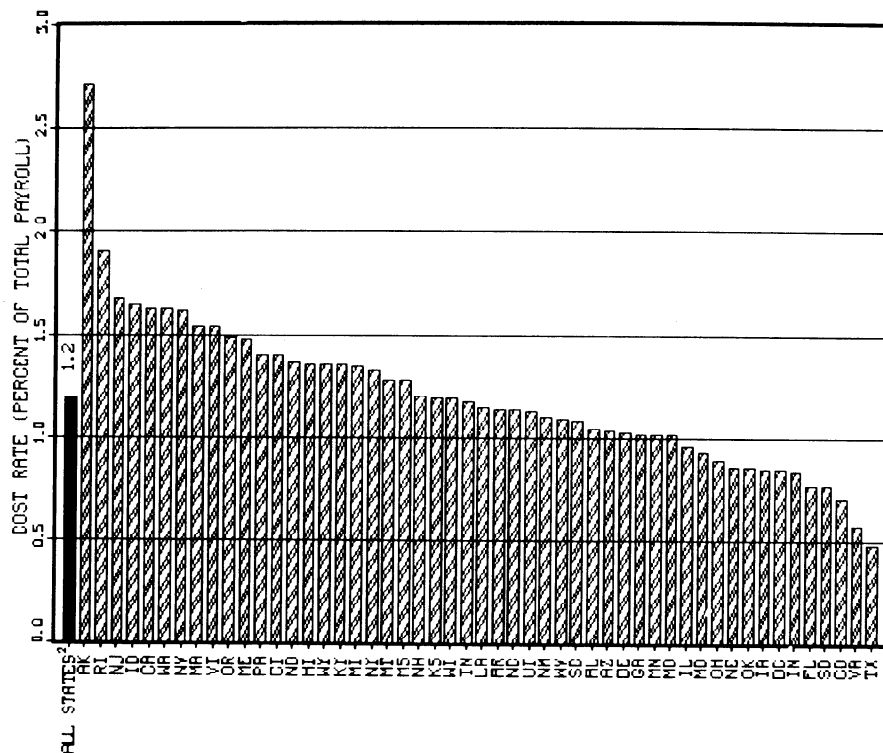
SOURCE: DOL/ETA/UIS/DAS NCUC 08/80

STATES (15) WITH FLEXIBLE TAXABLE WAGE BASE 1980



SOURCE: DOL/ETA/UIS/DAS NCUC 08/80

Average Benefit Cost Rate Under
State Unemployment Compensation Laws
Cumulative, 1940 through 1978¹

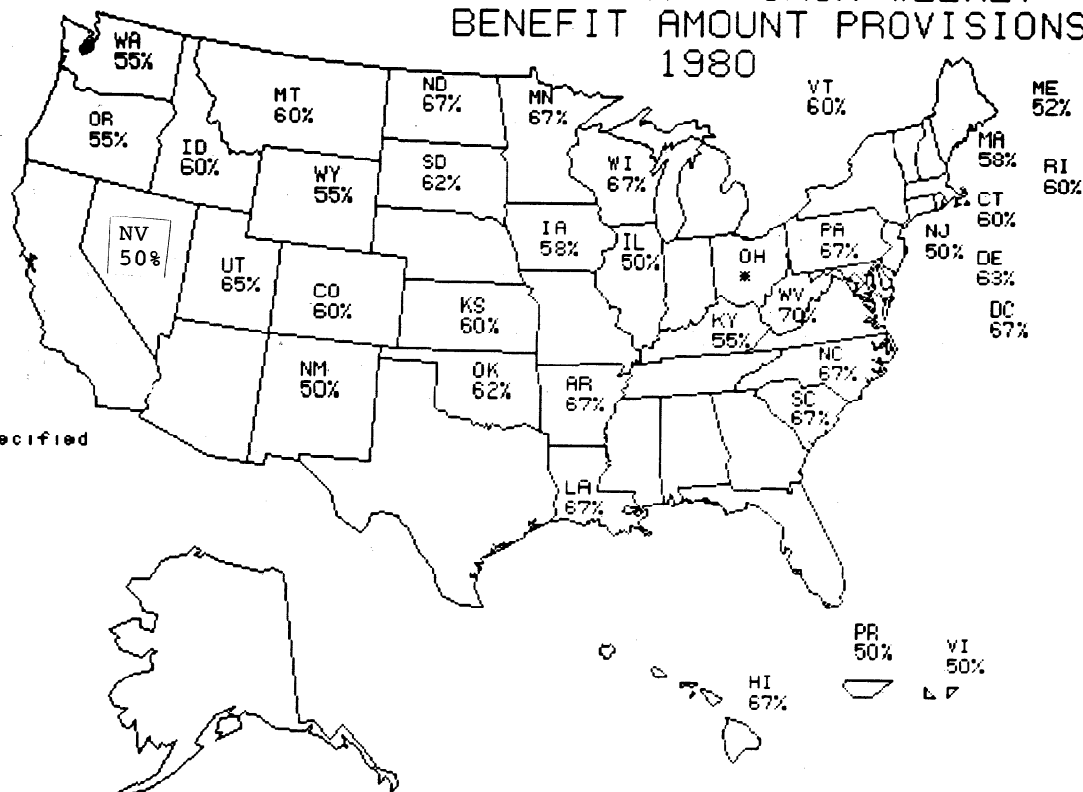


SOURCE:
USDOL / CTR / UIS
ONTO BUREAU OF EMPLOYMENT SERVICES
NCUC - 08/80

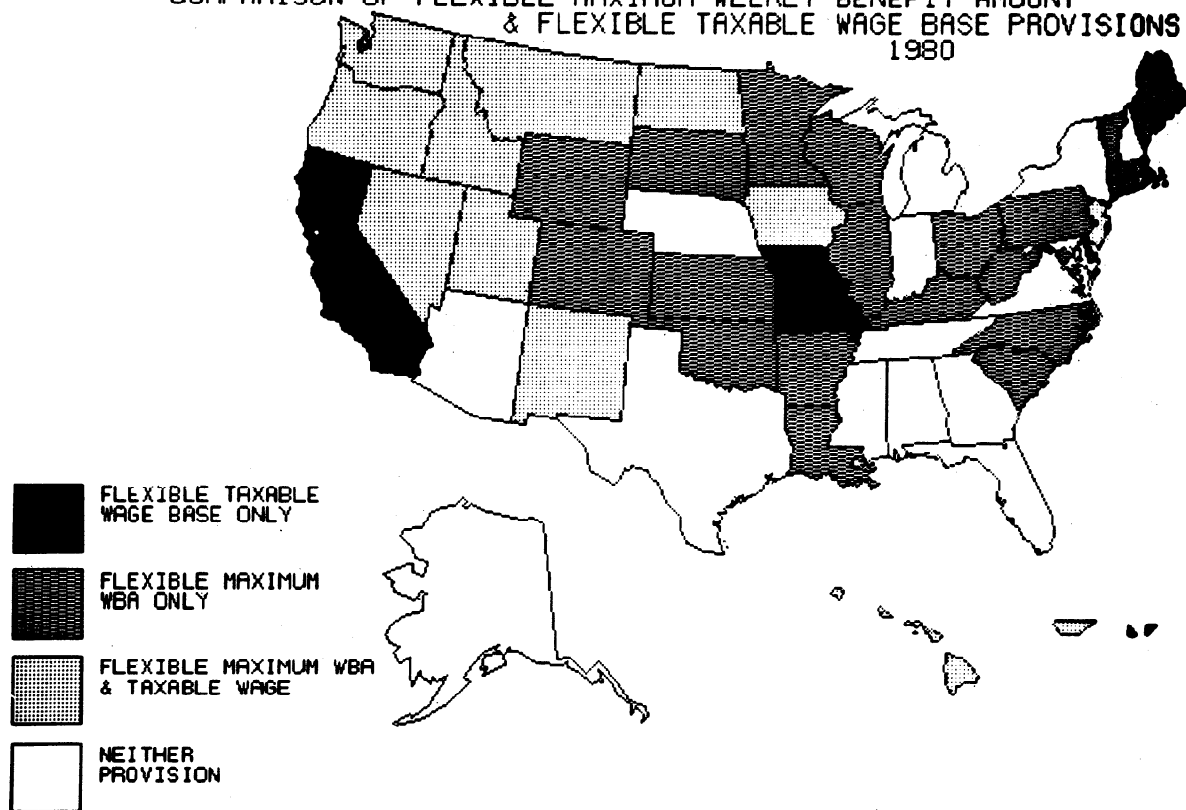
¹ CUMULATIVE TOTAL OF BENEFITS PAID PLUS BENEFIT
RESERVES AS PERCENT OF CUMULATIVE TOTAL COVERED
PAYROLL.
² EXCLUDES DATA FOR PUERTO RICO.

STATES (36) WITH FLEXIBLE MAXIMUM WEEKLY BENEFIT AMOUNT PROVISIONS 1980

NOTE
* Not specified
by law

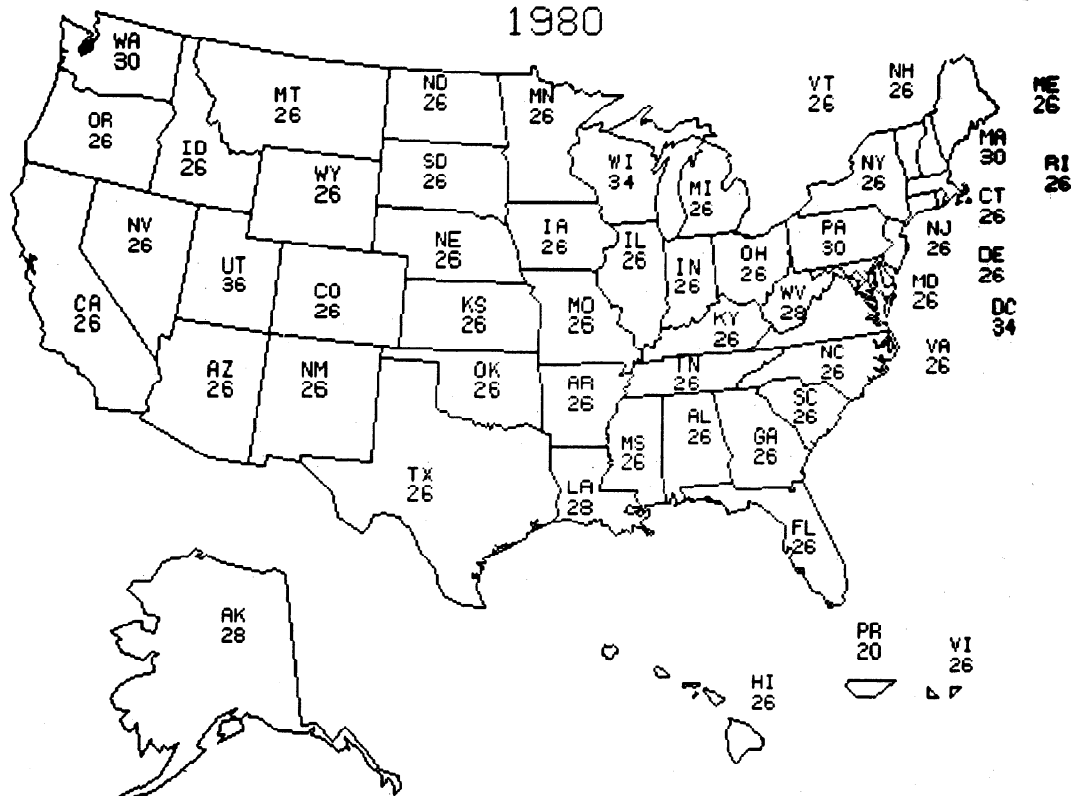


COMPARISON OF FLEXIBLE MAXIMUM WEEKLY BENEFIT AMOUNT
& FLEXIBLE TAXABLE WAGE BASE PROVISIONS
1980



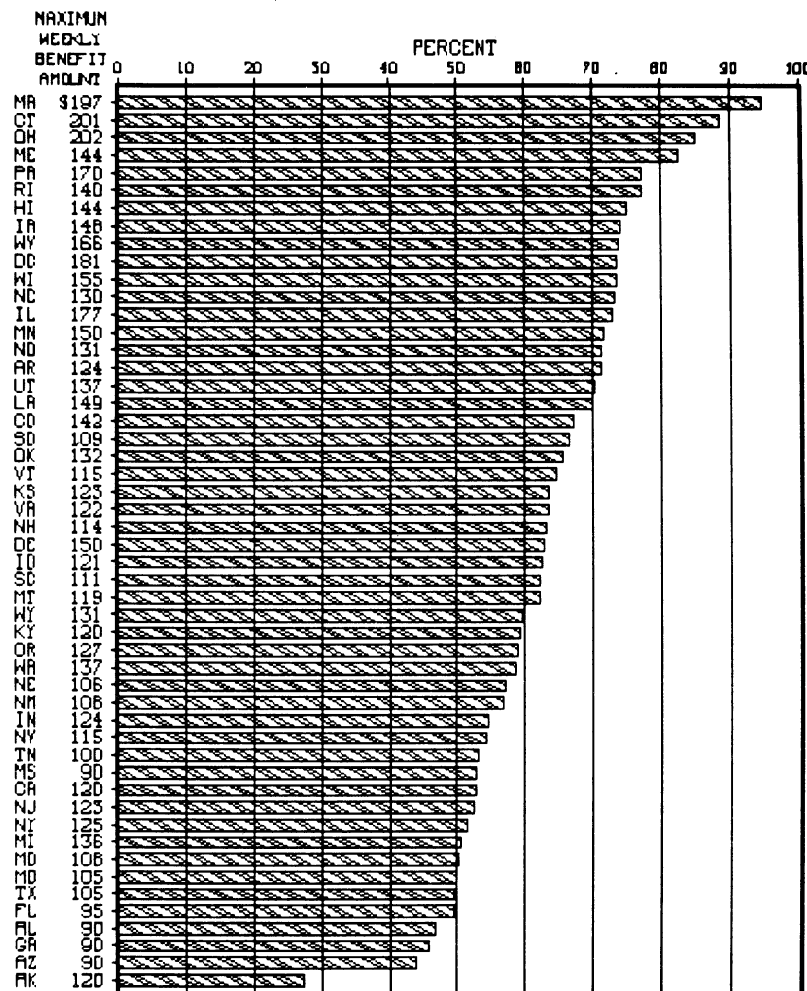
SOURCE: DOL/ETA/UIS/DAS NCUC 08/80

MAXIMUM NUMBER OF WEEKS DURATION OF BENEFITS
1980



SOURCE: DOL/ETA/UIS/DAS NCUC 08/80

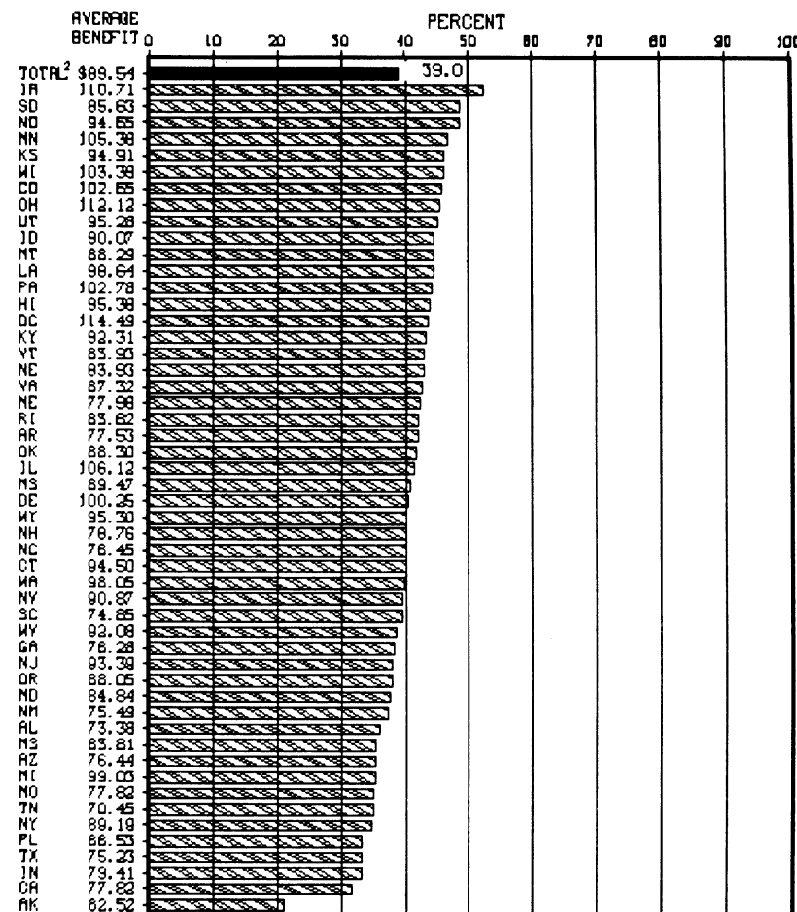
Maximum Weekly Benefit Amount as a
Percent of Average Weekly Earnings¹
in Covered Employment, January 1980¹



¹ MAXIMUM WEEKLY BENEFIT AMOUNT, INCLUDING DEPENDENTS' ALLOWANCE, AS OF JANUARY 1980, DIVIDED BY AVERAGE WEEKLY EARNINGS IN COVERED EMPLOYMENT IN 1978. (PRELIMINARY)

SOURCES:
USDOL / ETA / UIS
OHIO BUREAU OF EMPLOYMENT SERVICES
NCUC - 09/80

Average Weekly Benefit for Total Unemployment as Percent of
Average Weekly Earnings in Covered Employment¹

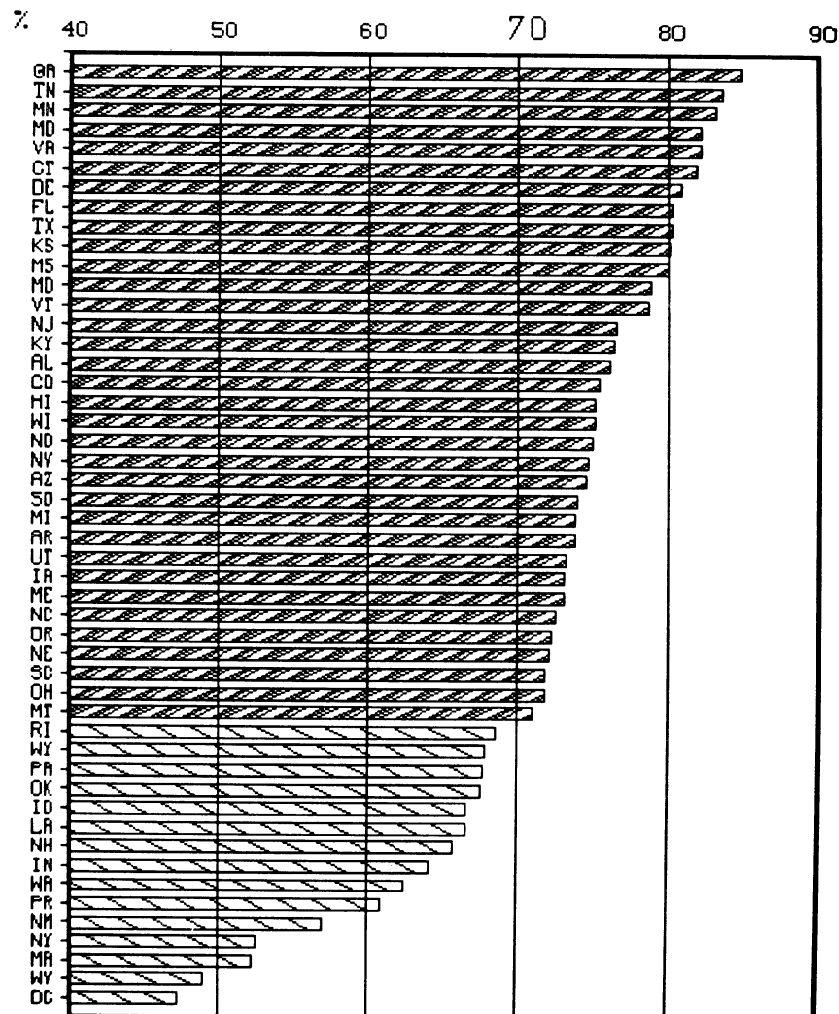


¹ AVERAGE WEEKLY BENEFIT IN 1979 RELATED TO AVERAGE WEEKLY EARNINGS IN 1978 (PRELIMINARY).

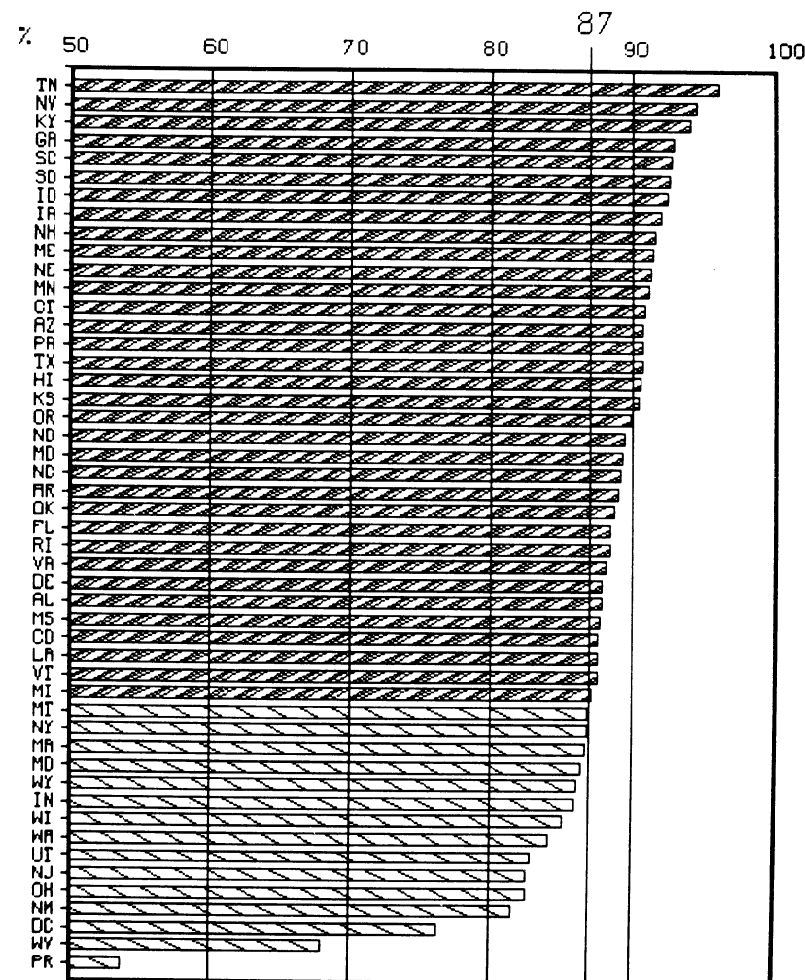
² PRELIMINARY.

SOURCES:
USDOL / ETA / UIS
OHIO BUREAU OF EMPLOYMENT SERVICES
NCUC - 09/80

Interstate First Payment Promptness
70 Percent Paid within 14*/21 Days
12 Months Ending March 31, 1980



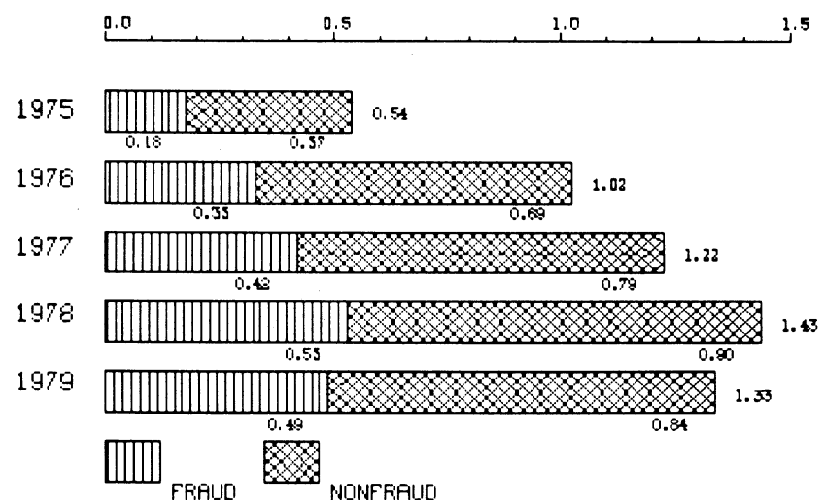
Intrastate First Payment Promptness
87 Percent Paid within 14*/21 Days
12 Months Ending March 31, 1980



*FOR WAITING WEEK STATES ONLY
DATA NOT AVAILABLE FOR AK, OR, OR IL.

SOURCE DOL / ETA / UIC
NCUC - DS/80

BENEFIT PAYMENTS CONTROL
OVERPAYMENTS (FRAUD AND NONFRAUD) AS A PERCENT OF BENEFITS PAID
CALENDAR YEARS 1975-1979

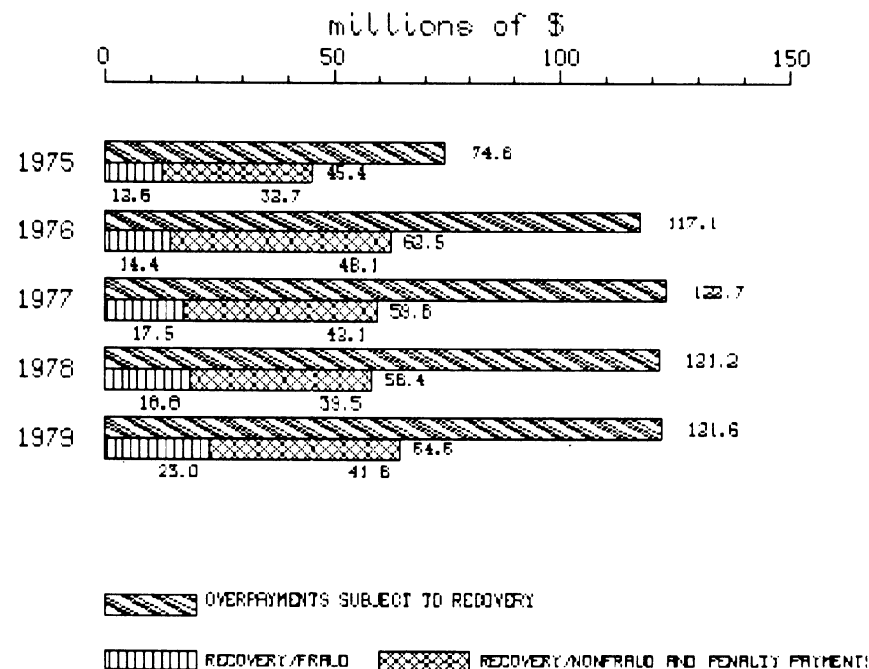


SUMMATION MAY NOT EQUAL TOTAL DUE TO ROUNDING.

SOURCE: DOL / ETA / UIS

NCUC
05/80

BENEFIT PAYMENTS CONTROL
AMOUNT OF OVERPAYMENTS SUBJECT TO RECOVERY AND RECOVERIES
CALENDAR YEARS 1975-1979

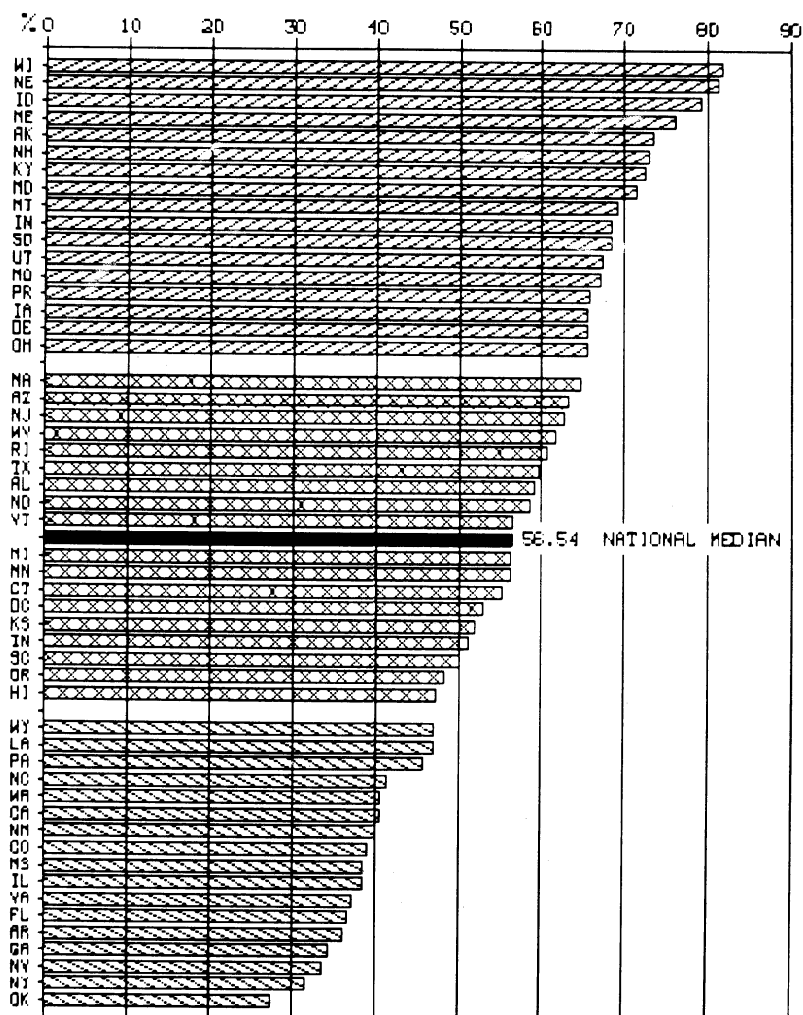


SUMMATION MAY NOT EQUAL TOTAL DUE TO ROUNDING.

SOURCE: DOL / ETA / UIS

NCUC
05/80

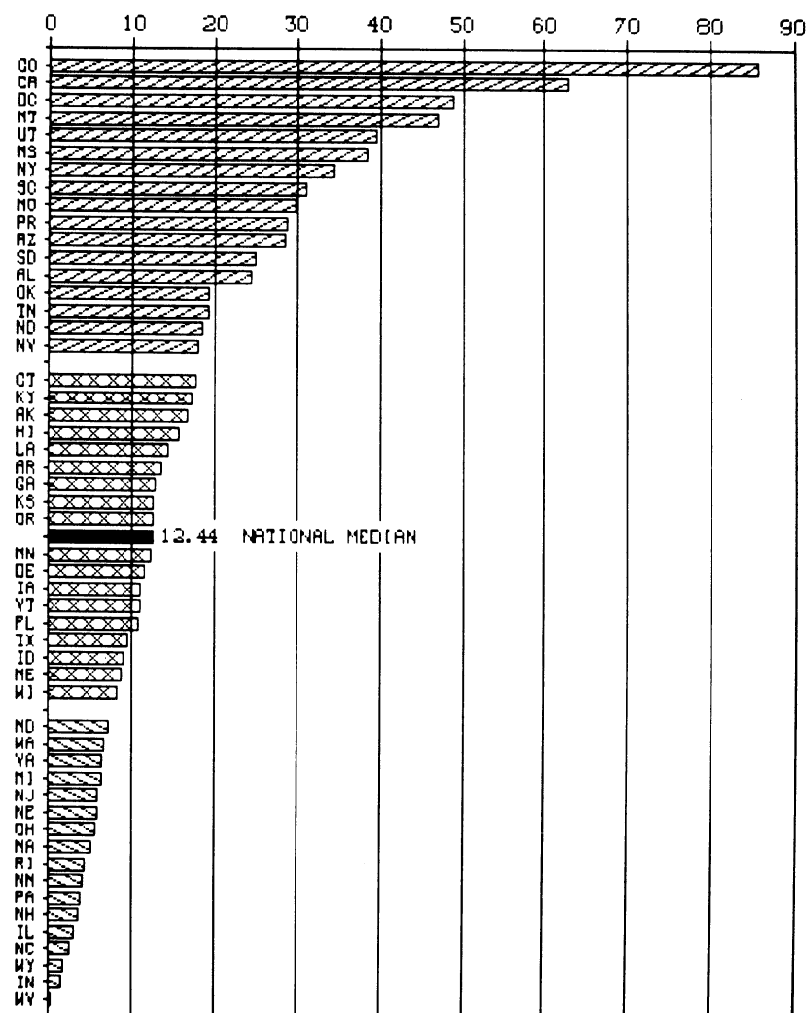
Benefit Payments Control
Restitution as a Percent of All Overpayments
Calendar Year 1979



SOURCE DOL / ETA / UIS

NCUC
06/80

Benefit Payments Control
Fraud Cases Per 1,000 First Payments
Calendar Year 1979



SOURCE DOL / ETA / UIS

NCUC
06/80

Disqualifications of Claimants per
Thousand Claimant Contacts Under
State Unemployment Compensation Laws, 1979

