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In the Supreme Court of the State of California

UNITED EDUCATORS OF SAN FRANCISCO AFT/CFT, AFL-CIO, NEA/CTA, Plaintiff and Appellant, **v.** **CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,** Defendant, Cross-Defendant, and Appellant; **SAN FRANCISCO UNIFIED SCHOOL DISTRICT,** Real Party in Interest and Respondent.
SAN FRANCISCO UNIFIED SCHOOL DISTRICT, Plaintiff and Respondent, **v.** **CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,** Defendant and Appellant.

Case No. S235903

First Appellate District, Division One, Case Nos. A142858 & A143428
San Francisco County Superior Court, Case No. CPF 12-512437
The Honorable Richard B. Ulmer, Jr., Judge

MOTION FOR JUDICIAL NOTICE

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MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rules 8.252(a) and 8.520(g), the California Unemployment Insurance Appeals Board hereby moves the Court to take judicial notice of the following documents:

1. The Employment Security Amendments of 1970, Public Law No. 91-373 (Aug. 10, 1970) 84 Stat. 695. A true and correct copy of this Public Law is attached hereto as **Exhibit A**.

2. Excerpts from Senate Report No. 91-752, 2d Sess. (1970). A true and correct copy of these excerpts is attached hereto as **Exhibit B**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/empsca> [as of Dec. 2, 2016].

3. Excerpts from the Hearings Before the Senate Committee on Finance on H.R. No. 14705, 91st Cong., 2d Sess. (1970). A true and correct copy of these excerpts is attached hereto as **Exhibit C**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/empsca> [as of Dec. 2, 2016].

4. The Unemployment Compensation Amendments of 1976, Public Law No. 94-566 (Oct. 20, 1976) 90 Stat. 2667. A true and correct copy of this Public Law is attached hereto as **Exhibit D**.

5. Excerpts from Senate Report No. 94-1265, 2d Sess. (1976). A true and correct copy of these excerpts is attached hereto as **Exhibit E**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/leguncomp> [as of Dec. 2, 2016].

6. Excerpts from the Joint Report of the Senate Committee on Finance and House Committee on Ways and Means on H.R. No. 10210, 94th Cong., 2d Sess. (1976). A true and correct copy of these excerpts is attached hereto as **Exhibit F**. The full report is available at: <http://

heinonline.org/HOL/Index?collection=leghis&index=leghis/leguncomp> [as of Dec. 2, 2016].

7. Excerpts from the House Debate on H.R. 10210, 94th Cong., 2d Sess., 122 Cong. Rec. H7404 (daily ed. July 20, 1976). A true and correct copy of these excerpts is attached hereto as **Exhibit G**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/leguncomp> [as of Dec. 2, 2016].

8. Excerpts from the Senate Debate on H.R. 10210, 94th Cong., 2d Sess., 122 Cong. Rec. 33284 (daily ed. Sept. 29, 1976). A true and correct copy of these excerpts is attached hereto as **Exhibit H**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/leguncomp> [as of Dec. 2, 2016].

9. The Emergency Unemployment Compensation Act of 1977, Public Law No. 95-19 (Apr. 12, 1977) 91 Stat. 39. A true and correct copy of this Public Law is attached hereto as **Exhibit I**.

10. Excerpts from House of Representatives Report No. 95-82, 1st Sess. (1977). A true and correct copy of these excerpts is attached hereto as **Exhibit J**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/legemuncp> [as of Dec. 2, 2016].

11. Excerpts from the Collective Bargaining Agreement between San Francisco Unified School District and United Educators of San Francisco (July 1, 2014 – June 30, 2017). A true and correct copy of these excerpts is attached hereto as **Exhibit K**. The full agreement is available at: <http://www.sfusd.edu/en/assets/sfusd-staff/contract%20and%20salary%20schedules/Certificated%20Collective%20Bargaining%20Agreement%207-1-14%20thru%206-30-17150106_20020.pdf> [as of Dec. 2, 2016].

12. The San Francisco Unified School District TK-12 Instructional Calendar 2016-2017. A true and correct copy of this calendar is attached hereto as **Exhibit L**. The calendar is available at: <http://www.sfusd.edu/

en/assets/sfusd-staff/news-and-calendars/files/instructional-calendar/2016-17-calendar-ENG.pdf> [as of Dec. 2, 2016].

13. Excerpts from the Collective Bargaining Agreement between United Administrators of San Francisco American Federation of School Administrators, AFL/CIO, Local 3 and San Francisco Unified School District (July 1, 2013 – June 30, 2016, Extended to June 30, 2018). A true and correct copy of these excerpts is attached hereto as **Exhibit M**. The full agreement is available at: <http://www.sfusd.edu/en/assets/sfusd-staff/contract%20and%20salary%20schedules/UASF%20Collective%20Bargaining%20Agreement%20July%201,%202013%20-%20June%2030,%202016%20extended%20to%20June%2030,%202017150202_20446.pdf> [as of Dec. 2, 2016].

14. Excerpts from the Collective Bargaining Contract between Elk Grove Unified School District and Elk Grove Education Association (2015-2016). A true and correct copy of these excerpts is attached hereto as **Exhibit N**. The full agreement is available at: <https://drive.google.com/file/d/0BzRd4zc79mR5RVdUTFFyZEtjMWc/view> [as of Dec. 2, 2016].

15. The Elk Grove Unified School District 2016-2017 School Year Calendar. A true and correct copy of this calendar is attached hereto as **Exhibit O**. The calendar is available at: <http://www.egusd.net/wp-content/uploads/2015/12/16-17_YR_Calendar_FINAL.pdf> [as of Dec. 2, 2016].

MEMORANDUM OF POINTS AND AUTHORITIES

The Court should take judicial notice of the above-listed matters pursuant to Evidence Code sections 452 and 459.

The legislative history (Exhibits A – J) is judicially noticeable because it constitutes "resolutions and private acts of the Congress of the United States" (Evid. Code, § 452, subd. (a)), as well as "[o]fficial acts of

the legislative ... department[] of the United States" (*id.*, § 452, subd. (c)). Further, this legislative history is also judicially noticeable because it constitutes "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (*Id.*, § 452, subd. (h).) This legislative history is relevant to material issues in this case concerning the interpretation of Unemployment Insurance Code section 1253.3, which implements federal requirements under 26 U.S.C. § 3304(a)(6)(A). (See California Unemployment Insurance Appeals Board's Opening Brief on the Merits (Opening Brief) at pp. 16-18; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135 fn. 1 [granting request for judicial notice of legislative history "relevant to a material issue in this case"].)

The collective bargaining agreements and school calendars (Exhibits K – O) are judicially noticeable because they are "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h).) These agreements and calendars are relevant to the interpretation of Unemployment Insurance Code section 1253.3 because they demonstrate some of the practical realities that this statute is intended to address. (See Opening Brief at pp. 28-31.)

The matters to be judicially noticed were not presented to the trial court or Court of Appeal, nor do they relate to proceedings occurring after the judgment that is the subject of this appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

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For these reasons, the Court should grant the Board's motion for judicial notice.

Dated: December 5, 2016 Respectfully submitted,

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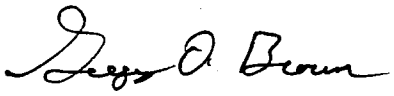

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EXHIBIT A

Public Law 91-373
91st Congress, H. R. 14705
August 10, 1970

An Act

To extend and improve the Federal-State unemployment compensation program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Employment Security Amendments of 1970". Employment Security Amendments of 1970.

TITLE I—UNEMPLOYMENT COMPENSATION AMENDMENTS

PART A—COVERAGE

84 STAT. 695
84 STAT. 696

SEC. 101. DEFINITION OF EMPLOYER.

(a) Section 3306(a) of the Internal Revenue Code of 1954 is amended to read as follows: 83 Stat. 91. 26 USC 3306.

"(a) EMPLOYER.—For purposes of this chapter, the term 'employer' means, with respect to any calendar year, any person who—

"(1) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

"(2) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day."

(b)(1) Section 6157(a)(1) of such Code (relating to payment of Federal unemployment tax on quarterly or other time period basis) is amended to read as follows:

"(1) if the person—

"(A) during any calendar quarter in the preceding calendar year paid wages of $1,500 or more, or

"(B) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment,

compute the tax imposed by section 3301 for each of the first three calendar quarters in the calendar year, and". 68A Stat. 439; 77 Stat. 51.

(2) Section 6157(b) of such Code is amended by striking out "the number of percentage points (including fractional points) by which the rate of tax specified in section 3301 exceeds 2.7 percent" and inserting in lieu thereof "0.5 percent".

(c)(1) The amendments made by subsections (a) and (b)(1) shall apply with respect to calendar years beginning after December 31, 1971. Effective dates.

(2) The amendment made by subsection (b)(2) shall apply with respect to calendar years beginning after December 31, 1969.

SEC. 102. DEFINITION OF EMPLOYEE.

(a) Section 3306(i) of the Internal Revenue Code of 1954 is amended to read as follows: 68A Stat. 452.

"(i) EMPLOYEE.—For purposes of this chapter, the term 'employee' has the meaning assigned to such term by section 3121(d), except that subparagraphs (B) and (C) of paragraph (3) shall not apply."

(b) Section 1563(f)(1) of such Code (relating to surtax exemption in case of certain controlled corporations) is amended by striking out "in section 3306(i)" and inserting in lieu thereof "by paragraphs (1) and (2) of section 3121(d)". 78 Stat. 124.

(c) The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date. Effective date.

84 STAT. 697

SEC. 103. DEFINITION OF AGRICULTURAL LABOR.

68A Stat. 453. 26 USC 3306.

(a) Section 3306(k) of the Internal Revenue Code of 1954 is amended to read as follows:

"(k) AGRICULTURAL LABOR.—For purposes of this chapter, the term 'agricultural labor' has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

"'(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;'".

Effective date.

(b) The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.

SEC. 104. STATE LAW COVERAGE OF CERTAIN EMPLOYEES OF NONPROFIT ORGANIZATIONS AND OF STATE HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATION.

68A Stat. 443.

(a) Section 3304(a) of the Internal Revenue Code of 1954 is amended by redesignating paragraph (6) as paragraph (13) and by inserting after paragraph (5) the following new paragraph:

"(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that, with respect to service in an instructional, research, or principal administrative capacity for an institution of higher education to which section 3309(a)(1) applies, compensation shall not be payable based on such service for any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such period) to any individual who has a contract to perform services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms, and

Infra.

"(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1)(A) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);".

(b)(1) Chapter 23 of the Internal Revenue Code of 1954 is amended by redesignating section 3309 as section 3311, and by inserting after section 3308 the following new section:

68A Stat. 454; 74 Stat. 983.

"SEC. 3309. STATE LAW COVERAGE OF CERTAIN SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS AND FOR STATE HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATION.

"(a) STATE LAW REQUIREMENTS.—For purposes of section 3304(a)(6)—

Supra.

"(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

"(A) service excluded from the term 'employment' solely by reason of paragraph (8) of section 3306(c), and

74 Stat. 984.

"(B) service performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education

located in the State, if such service is excluded from the term 'employment' solely by reason of paragraph (7) of section 3306(c); and

68A Stat. 449.
26 USC 3306.

"(2) the State law shall provide that an organization (or group of organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1)(A) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that organizations so electing will make the payments required under such elections.

"(b) SECTION NOT TO APPLY TO CERTAIN SERVICE.—This section shall not apply to service performed—

"(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

"(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

"(3) in the employ of a school which is not an institution of higher education;

"(4) in a facility conducted for the purpose of carrying out a program of—

"(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

"(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

"(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof, by an individual receiving such work relief or work training; and

"(6) for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution.

"(c) NONPROFIT ORGANIZATIONS MUST EMPLOY 4 OR MORE.—This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

74 Stat. 984.

"(d) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—For purposes of this section, the term 'institution of higher education' means an educational institution in any State which—

"(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

"(2) is legally authorized within such State to provide a program of education beyond high school;

"(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

"(4) is a public or other nonprofit institution."

(2) The table of sections for such chapter 23 is amended by redesignating the last item as section 3311 and by inserting after the item for section 3308 the following new item:

"Sec. 3309. State law coverage of certain services performed for nonprofit organizations and for State hospitals and institutions of higher education."

68A Stat. 440; 68 Stat. 1130. 26 USC 3303.

(c) Section 3303 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsections:

"(e) PAYMENTS BY CERTAIN NONPROFIT ORGANIZATIONS.—A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).

"(f) TRANSITION.—To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before January 1, 1969, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to service performed in its employ, until the total of such compensation equals the amount—

Ante, p. 697.

"(1) by which the contributions paid by such organization (or group) with respect to a period before the election provided by section 3309(a)(2), exceed

"(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of wages paid by it or service performed in its employ, whichever is appropriate."

Effective date.

(d)(1) Subject to the provisions of paragraph (2), the amendments made by subsections (a) and (b) shall apply with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after December 31, 1971. The amendment made by subsection (c) shall take effect January 1, 1970.

(2) Section 3304(a)(6) of the Internal Revenue Code of 1954 (as added by subsection (a) of this section) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971.

SEC. 105. COVERAGE OF CERTAIN SERVICES PERFORMED OUTSIDE THE UNITED STATES.

68A Stat. 449; 74 Stat. 984.

(a) That portion of section 3306(c) of the Internal Revenue Code of 1954 which precedes paragraph (1) thereof is amended to read as follows:

"(c) EMPLOYMENT.—For purposes of this chapter, the term 'employment' means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation or in the Virgin Islands) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—". 53 Stat. 183. Infra.

(b) Section 3306(j) of the Internal Revenue Code of 1954 is amended by inserting after paragraph (2) the following new paragraph: 74 Stat. 986. 26 USC 3306.

"(3) AMERICAN EMPLOYER.—The term 'American employer' means a person who is—

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State."

(c) The amendments made by this section shall apply with respect to service performed after December 31, 1971. Effective date.

SEC. 106. STUDENTS AND THEIR SPOUSES ENGAGED IN CERTAIN PROGRAMS; HOSPITAL PATIENTS.

(a) Paragraph (10) of section 3306(c) of the Internal Revenue Code of 1954 is amended by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraphs: 74 Stat. 985.

"(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

"(C) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to

the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

"(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;".

Effective date.

(b) Subsection (a) shall apply with respect to remuneration paid after December 31, 1969.

SEC. 107. EX-SERVICEMEN ACCRUED LEAVE TO BE TREATED IN ACCORDANCE WITH STATE LAWS.

Repeal. 80 Stat. 591.

Effective with respect to benefit years which begin more than 30 days after the date of the enactment of this Act, section 8524 of title 5 of the United States Code is repealed.

SEC. 108. COVERAGE OF EMPLOYEES OF HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATION OPERATED BY POLITICAL SUBDIVISIONS OF STATES.

(a) Section 3304(a) of the Internal Revenue Code of 1954 (as amended by sections 104, 121(a), and 206 of this Act) is further amended by adding after paragraph (11) (as added by section 206 of this Act) the following new paragraph:

"(12) each political subdivision of the State shall have the right to elect to have compensation payable to employees thereof (whose services are not otherwise subject to such law) based on service performed by such employees in the hospitals and institutions of higher education (as defined in section 3309(d)) operated by such political subdivision; and, if any such political subdivision does elect to have compensation payable to such employees thereof (A) the political subdivision shall pay into the State unemployment fund, with respect to the service of such employees, payments (in lieu of contributions), and (B) such employees will be entitled to receive, on the basis of such service, compensation payable on the same basis, in the same amount, on the same terms, and subject to the same conditions as compensation which is payable on the basis of similar service for the State which is subject to such law;".

Ante, p. 698.

Effective date.

(b) The amendment made by subsection (a) shall apply with respect to certification of State laws for 1972 and subsequent years; except that section 3304(a)(12) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971, or prior to January 1, 1975, if compliance with such requirement would necessitate a change in the constitution of such State.

PART B—PROVISIONS OF STATE LAW

SEC. 121. PROVISIONS REQUIRED TO BE INCLUDED IN STATE LAWS.

(a) Section 3304(a) of the Internal Revenue Code of 1954 is amended by inserting after paragraph (6) (added by section 104(a) of this Act) the following new paragraphs:

"(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

"(8) compensation shall not be denied to an individual for any week because he 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);

"(9)(A) compensation shall not be denied or reduced to an individual 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 a contiguous country) at the time he files a claim for unemployment compensation;

"(B) 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 State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

"(10) 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;".

(b)(1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) shall take effect January 1, 1972, and shall apply to the taxable year 1972 and taxable years thereafter. Effective date.

(2) Paragraphs (7) through (10) of section 3304(a) of the Internal Revenue Code of 1954 (as added by subsection (a) of this section) shall not be requirements for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971.

SEC. 122. ADDITIONAL CREDIT BASED ON REDUCED RATE FOR NEW EMPLOYERS.

(a) Section 3303(a) of the Internal Revenue Code of 1954 is amended by striking out "on a 3-year basis," in the sentence following paragraph (3) and inserting in lieu thereof "on a 3-year basis (i)" and by striking out the period at the end of such sentence and inserting in lieu thereof ", or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), or (3)." 68A Stat. 440; 68 Stat. 1130. 26 USC 3303.

(b) The amendments made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1971. Effective date.

SEC. 123. CREDITS ALLOWABLE TO CERTAIN EMPLOYERS.

Section 3305 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection: 68A Stat. 445.

"(j) DENIAL OF CREDITS IN CERTAIN CASES.—Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year after December 31, 1971, if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with Ante, p. 697.

respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c)."

Post, p. 704.

PART C—JUDICIAL REVIEW

SEC. 131. (a) Title III of the Social Security Act is amended by adding at the end thereof the following new section:

49 Stat. 626; 74 Stat. 982. 42 USC 501.

"JUDICIAL REVIEW

"SEC. 304. (a) Whenever the Secretary of Labor—

"(1) finds that a State law does not include any provision specified in section 303(a), or

49 Stat. 626; 68 Stat. 673. 42 USC 503.

"(2) makes a finding with respect to a State under subsection (b) or (c) of section 303,

64 Stat. 560; 52 Stat. 1112.

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28, United States Code.

72 Stat. 941; 80 Stat. 1323.

"(b) The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

62 Stat. 928.

"(d)(1) The Secretary of Labor shall not withhold any certification for payment to any State under section 302 until the expiration of 60 days after the Governor of the State has been notified of the action referred to in paragraph (1) or (2) of subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

49 Stat. 626. 42 USC 502.

"(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

"(e) Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary or the State, shall receive a preference and shall be heard and determined as expeditiously as possible."

(b)(1) Chapter 23 of the Internal Revenue Code of 1954 is amended by inserting after section 3309 (added by section 104(b)(1) of this Act) the following new section:

"SEC. 3310. JUDICIAL REVIEW.

"(a) IN GENERAL.—Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code. 68A Stat. 441. 26 USC 3303. Infra. 72 Stat. 941;

"(b) FINDINGS OF FACT.—The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. 80 Stat. 1323.

"(c) JURISDICTION OF COURT; REVIEW.—The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. 62 Stat. 928.

"(d) STAY OF SECRETARY OF LABOR'S ACTION.—

"(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

"(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

"(e) PREFERENCE.—Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary or the State, shall receive a preference and shall be heard and determined as expeditiously as possible."

(2) Section 3304(c) of the Internal Revenue Code of 1954 is amended to read as follows: 68A Stat. 444.

"(c) CERTIFICATION.—On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the taxable year failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending."

(3) The table of sections for such chapter 23 is amended by adding after the item relating to section 3309 (added by section 104(b)(2) of this Act) the following:

"Sec. 3310. Judicial review."

PART D—ADMINISTRATION

SEC. 141. RESEARCH PROGRAM, TRAINING GRANTS AND FEDERAL ADVISORY COUNCIL.

74 Stat. 970; 75 Stat. 14. 42 USC 1101-1105.

Title IX of the Social Security Act is amended by adding at the end thereof the following new sections:

"UNEMPLOYMENT COMPENSATION RESEARCH PROGRAM

"SEC. 906. (a) The Secretary of Labor shall—

"(1) establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research shall include, but not be limited to, a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, the personal characteristics, family situations, employment background and experience of claimants, with the results of such studies to be made public; and

"(2) establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups with first attention to agricultural labor.

Appropriation.

"(b) To assist in the establishment and provide for the continuation of the comprehensive research program relating to the unemployment compensation system, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums, not to exceed $8,000,000, as may be necessary to carry out the purposes of this section. From the sums authorized to be appropriated by this subsection the Secretary may provide for the conduct of such research through grants or contracts.

Contract authority.

"PERSONNEL TRAINING

"SEC. 907. (a) In order to assist in increasing the effectiveness and efficiency of administration of the unemployment compensation program by increasing the number of adequately trained personnel, the Secretary of Labor shall—

"(1) provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;

"(2) develop training materials for and provide technical assistance to the State agencies in the operation of their training programs;

Regulations.

"(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve

their qualifications for service in the administration of the unemployment compensation program.

"(b) The Secretary may, to the extent that he finds such action to be necessary, prescribe requirements to assure that any person receiving a fellowship, traineeship, stipend or allowance shall repay the costs thereof to the extent that such person fails to serve in the Federal-State employment security program for the period prescribed by the Secretary. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the programs established by this section. Repayment of costs.

"(c) The Secretary, with the concurrence of the State, may detail Federal employees to State unemployment compensation administration and the Secretary may concur in the detailing of State employees to the United States Department of Labor for temporary periods for training or for purposes of unemployment compensation administration, and the provisions of section 507 of the Elementary and Secondary Education Act of 1965 (79 Stat. 27) or any more general program of interchange enacted by a law amending, supplementing, or replacing section 507 shall apply to any such assignment. Federal and State employees, detail. 79 Stat. 51; Ante, p. 142. 20 USC 867.

"(d) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $5,000,000, as may be necessary to carry out the purposes of this section. Appropriation.

"FEDERAL ADVISORY COUNCIL

"SEC. 908. (a) The Secretary of Labor shall establish a Federal Advisory Council, of not to exceed 16 members including the chairman, for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations to him for improvement of the system. Members.

"(b) The Council shall be appointed by the Secretary without regard to the civil service laws and shall consist of men and women who shall be representatives of employers and employees in equal numbers, and the public. Appointment.

"(c) The Secretary may make available to the Council an Executive Secretary and secretarial, clerical, and other assistance, and such pertinent data prepared by the Department of Labor, as it may require to carry out its functions.

"(d) Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703(b) for persons in government service employed intermittently. Compensation. 80 Stat. 499; 83 Stat. 190.

"(e) The Secretary shall encourage the organization of similar State advisory councils.

"(f) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $100,000, as may be necessary to carry out the purposes of this section." Appropriation.

SEC. 142. CHANGE IN CERTIFICATION DATE.

68A Stat. 439. 26 USC 3302.

(a) Section 3302(a)(1) of the Internal Revenue Code of 1954 is amended by—

(1) striking out "for the taxable year" after "certified"; and

(2) inserting before the period at the end thereof the following: "for the 12-month period ending on October 31 of such year (10-month period in the case of October 31, 1972)".

(b) Section 3302(b) of such Code is amended by—

(1) striking out "for the taxable year" after "certified";

(2) striking out "(or with respect to any provisions thereof so certified)," and inserting in lieu thereof the following: "for the 12-month period ending on October 31 of such year (10-month period in the case of October 31, 1972), or with respect to any provisions thereof so certified,"; and

(3) striking out "the taxable year" the last place it appears and inserting in lieu thereof "such 12 or 10-month period, as the case may be,".

(c) Section 3303(b)(1) of such Code is amended to read as follows:

"(1) On October 31 of each calendar year, the Secretary of Labor shall certify to the Secretary the law of each State (certified by the Secretary of Labor as provided in section 3304 for the 12-month period ending on such October 31 (10-month period in the case of October 31, 1972)), with respect to which he finds that reduced rates of contributions were allowable with respect to such 12- or 10-month period, as the case may be, only in accordance with the provisions of subsection (a)."

Ante, p. 704; Infra.

(d) Section 3303(b)(2) of such Code is amended by—

(1) striking out "taxable year" where it first appears and inserting in lieu thereof "12-month period ending on October 31 (10-month period in the case of October 31, 1972)";

(2) striking out "on December 31 of such taxable year" following the words "the Secretary of Labor shall" and inserting in lieu thereof "on such October 31"; and

(3) striking out "taxable year" after "contributions were allowable with respect to such" and inserting in lieu thereof "12- or 10-month period, as the case may be,".

(e) Section 3303(b)(3) of such Code is amended by—

(1) striking out "taxable year" where it first appears and inserting in lieu thereof "12-month period ending on October 31 (10-month period in the case of October 31, 1972)";

(2) striking out "taxable year," where it next appears and inserting in lieu thereof "12 or 10-month period, as the case may be,".

(f) Section 3304(c) of such Code, as amended by section 131(b)(2) of this Act, is further amended to read as follows:

"(c) CERTIFICATION.—On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year after 1971, the

Secretary shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Employment Security Amendments of 1970 to be included therein, or has with respect to the 12-month period (10-month period in the case of October 31, 1972) ending on such October 31, failed to comply substantially with any such provision."

(g) Section 3304(d) of such Code is amended by striking out "If, at any time during the taxable year," and inserting in lieu thereof "If at any time". 68A Stat. 445. 26 USC 3304.

(h) Section 3304 of such Code is amended by adding at the end thereof the following new subsection:

"(e) CHANGE OF LAW DURING 12-MONTH PERIOD.—Whenever—

"(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

"(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,

then such provision shall be applied by taking into account for each such portion the law applicable to such portion."

(i) The amendments made by this section shall apply with respect to the taxable year 1972 and taxable years thereafter. Effective date.

TITLE II—FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM

SHORT TITLE

SEC. 201. This title may be cited as the "Federal-State Extended Unemployment Compensation Act of 1970". Citation of title.

PAYMENT OF EXTENDED COMPENSATION

State Law Requirements

SEC. 202. (a) (1) For purposes of section 3304(a) (11) of the Internal Revenue Code of 1954, a State law shall provide that payment of extended compensation shall be made, for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of the Virgin Islands or Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed. Post, p. 712.

(2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

Individuals' Compensation Accounts

(b) (1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall be not less than whichever of the following is the least:

(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

(B) thirteen times his average weekly benefit amount, or

(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

EXTENDED BENEFIT PERIOD

Beginning and Ending

SEC. 203. (a) For purposes of this title, in the case of any State, an extended benefit period—

(1) shall begin with the third week after whichever of the following weeks first occurs:

(A) a week for which there is a national "on" indicator, or

(B) a week for which there is a State "on" indicator; and

(2) shall end with the third week after the first week for which there is both a national "off" indicator and a State "off" indicator.

Special Rules

(b) (1) In the case of any State—

(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

(B) no extended benefit period may begin by reason of a State "on" indicator before the fourteenth week after the close of a prior extended benefit period with respect to such State.

Publication in Federal Register.

(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State (or all the States), the Secretary shall cause notice of such determination to be published in the Federal Register.

Eligibility Period

(c) For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

National "On" and "Off" Indicators

(d) For purposes of this section—

(1) There is a national "on" indicator for a week if for each of the three most recent calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all States equaled or exceeded 4.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the month in question).

(2) There is a national "off" indicator for a week if for each of the three most recent calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all States was less than 4.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the month in question).

State "On" and "Off" Indicators

(e) For purposes of this section—

(1) There is a State "on" indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) equaled or exceeded 4 per centum.

(2) There is a State "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) was not satisfied.

For purposes of this subsection, the rate of insured unemployment for any 13-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

Rate of Insured Unemployment; Covered Employment

(f)(1) For purposes of subsections (d) and (e), the term "rate of insured unemployment" means the percentage arrived at by dividing—

(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all State agencies (or, in the case of subsection (e), by the State agency) to the Secretary, by

(B) the average monthly covered employment for the specified period.

(2) Determinations under subsection (d) shall be made by the Secretary in accordance with regulations prescribed by him.

(3) Determinations under subsection (e) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

PAYMENTS TO STATES

Amount Payable

SEC. 204. (a) (1) There shall be paid to each State an amount equal to one-half of the sum of—

(A) the sharable extended compensation, and

(B) the sharable regular compensation,

paid to individuals under the State law.

(2) No payment shall be made to any State under this subsection in respect of compensation for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act.

Sharable Extended Compensation

(b) For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual's eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

Sharable Regular Compensation

(c) For purposes of subsection (a)(1)(B), regular compensation paid to an individual for a week of unemployment is sharable regular compensation—

(1) if such week is in such individual's eligibility period (determined under section 203(c)), and

(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

Payment on Calendar Month Basis

(d) There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

Certification

(e) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

DEFINITIONS

SEC. 205. For purposes of this title—

(1) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(2) The term "regular compensation" means compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation. 80 Stat. 585; 81 Stat. 218.

(3) The term "extended compensation" means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation. 5 USC 8501-8525.

(4) The term "additional compensation" means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(5) The term "benefit year" means the benefit year as defined in the applicable State law.

(6) The term "base period" means the base period as determined under applicable State law for the benefit year.

(7) The term "Secretary" means the Secretary of Labor of the United States.

(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(9) The term "State agency" means the agency of the State which administers its State law.

(10) The term "State law" means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1954. 26 USC 3304.

(11) The term "week" means a week as defined in the applicable State law.

APPROVAL OF STATE LAWS

SEC. 206. Section 3304(a) of the Internal Revenue Code of 1954 is amended by inserting after paragraph (10) (added by section 121(a) of this Act) the following new paragraph:

"(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;".

EFFECTIVE DATES

SEC. 207. (a) Except as provided in subsection (b)—

(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972; and

(2) section 204 shall apply only with respect to weeks of unemployment beginning after December 31, 1971.

(b)(1) In the case of a State law approved under section 3304(a)(11) of the Internal Revenue Code of 1954, such State law may also provide that an extended benefit period may begin with a week established pursuant to such law which begins earlier than January 1, 1972, but not earlier than 60 days after the date of the enactment of this Act.

(2) For purposes of paragraph (1) with respect to weeks beginning before January 1, 1972, the extended benefit period for the State shall be determined under section 203(a) solely by reference to the State "on" indicator and the State "off" indicator.

(3) In the case of a State law containing a provision described in paragraph (1), section 204 shall also apply with respect to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

(c) Section 3304(a)(11) of the Internal Revenue Code of 1954 (as added by section 206) shall not be a requirement for the State law of any State—

(1) in the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1971, with respect to any week of unemployment which begins prior to July 1, 1972; or

(2) in the case of any other State, with respect to any week of unemployment which begins prior to January 1, 1972.

TITLE III—FINANCING PROVISIONS

SEC. 301. RATE OF TAX.

(a) Effective with respect to remuneration paid after December 31, 1969, section 3301 of the Internal Revenue Code of 1954 is amended to read as follows:

68A Stat. 439; 77 Stat. 51. 26 USC 3301.

"SEC. 3301. RATE OF TAX.

"There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1970 and each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3.2 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c))."

Ante, p. 696.

68A Stat. 447; 81 Stat. 935. Ante, p. 699.

(b) For purposes of section 6157 of the Internal Revenue Code of 1954 (relating to payment of Federal unemployment tax on quarterly or other time period basis), in computing tax as required by subsections (a) (1) and (2) of such section, the percentage contained in subsection (b) of such section applicable with respect to wages paid in any calendar quarter in 1970 ending before the date of the enactment of this Act shall be treated as being 0.4 percent.

83 Stat. 91; 26 USC 6157. Ante, p. 696.

SEC. 302. INCREASE IN WAGE BASE.

Effective date.

Effective with respect to remuneration paid after December 31, 1971, section 3306(b)(1) of the Internal Revenue Code of 1954 is amended by striking out "$3,000" each place it appears and inserting in lieu thereof "$4,200".

SEC. 303. CHANGES IN EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT.

(a) Section 901(c) of the Social Security Act is amended, effective with respect to fiscal years after June 30, 1970, by—

77 Stat. 51; 83 Stat. 93. 42 USC 1101.

(1) changing paragraph (1) to read as follows:

"(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter—

"(A) such amounts (not in excess of the applicable limit provided by paragraph (3) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of—

"(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law),

49 Stat. 626; 74 Stat. 982. 42 USC 501-503.

"(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49–49n), and 48 Stat. 113.

"(iii) carrying into effect section 2003 of title 38 of the United States Code; 72 Stat. 1221; 76 Stat. 558.

"(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

"(i) this title and titles III and XII of this Act, 49 Stat. 626;

"(ii) the Federal Unemployment Tax Act, 74 Stat. 978, 982.

"(iii) the provisions of the Act of June 6, 1933, as amended, 42 USC 501-503, and 1321-1324.

"(iv) chapter 41 (except section 2003) of title 38 of the United States Code, and 68A Stat. 439; 74 Stat. 983;

"(v) any Federal unemployment compensation law. 83 Stat. 91.

The term 'necessary expenses' as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government." 26 USC 3301-3309. 48 Stat. 113. 29 USC 49–49n and notes. 72 Stat. 221; 76 Stat. 558. 28 USC 2001-2005.

(2) deleting the sentence commencing with the words "In determining" in paragraph (2);

(3) amending paragraph (3) to read as follows:

"(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is, except as provided in subparagraph (B) and in the second sentence of section 901(f)(3)(A), an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by which the net receipts during such year under the Federal Unemployment Tax Act will exceed the amount transferred under section 905(b) during such year to the extended unemployment compensation account. Post, p. 715. Post, p. 716.

"(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security administration account in accordance with section 901(f)(2)(B). 74 Stat. 974; 83 Stat. 93.

"(C) Each estimate of net receipts under this paragraph shall be based upon a tax rate of 0.5 percent." 42 USC 1101.

(4) adding a new paragraph (4) as follows:

"(4) For purposes of paragraph (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933, as amended, and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination, after consultation with the Secretary, 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."

74 Stat. 972.
42 USC 1101.

(b) Section 901(d) of the Social Security Act is amended by—

(1) deleting the reference to "section 3302(c)(2) or (3)" in subparagraph (A)(i) and inserting in place thereof "section 3302(c)(3)";

(2) deleting the final sentence in paragraph (1);

(3) deleting paragraph (2) and redesignating paragraph (3) as paragraph (2).

(c) Section 901(e)(2) of the Social Security Act is amended effective July 1, 1972, by deleting "is $250,000,000" and inserting in lieu thereof "equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year".

(d) Effective with respect to fiscal years after June 30, 1972, section
74 Stat. 973. 901(f) of the Social Security Act is amended—

(1) by inserting "and section 901(f)(3)(C)" after "section
83 Stat. 93. 902(b)" in paragraph (2)(A); and

(2) by revising paragraph (3) to read as follows:

"(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) for additional costs of administration due to an increase in the rate of insured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding fiscal year.

"(B) If the entire amount of the excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is required to increase the amount in the extended unemployment
75 Stat. 15; 77 Stat. 51. compensation account to the limit provided in section 905(b)(2).
42 USC 1105.

"(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 905(b)(2), such excess shall be transferred to the employment security administration account as of the close of such fiscal year."

SEC. 304. TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT AND REPORT TO CONGRESS.

74 Stat. 974.
42 USC 1102.

(a) So much of section 902 of the Social Security Act as precedes subsection (b) is amended to read as follows:

"TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT AND REPORT TO CONGRESS

"TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT

"SEC. 902. (a) Whenever the Secretary of the Treasury determines pursuant to section 901(f) that there is an excess in the employment security administration account as of the close of any fiscal year and the entire amount of such excess is not retained in the employment security administration account or transferred to the extended unemployment compensation account as provided in section 901(f)(3), there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the balance of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater: 74 Stat. 973. 42 USC 1101. Ante, p. 715.

"(1) $550 million, or

"(2) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined."

(b) Such section 902 is further amended by adding at the end thereof the following: 74 Stat. 974. 42 USC 1102.

"REPORT TO THE CONGRESS

"(c) Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 901(f)(3)(A), and the Federal unemployment account will reach the limit provided for such account in section 902(a), and the extended unemployment compensation account will reach the limit provided for such account in section 905(b)(2), he shall, after consultation with the Secretary of the Treasury, so report to the Congress with a recommendation for appropriate action by the Congress." Supra. Post, p. 717.

(c) Section 1203 of the Social Security Act is amended by striking out "section 901(f)(3)" and inserting in lieu thereof "sections 901(f)(3) and 902(a)". 74 Stat. 979. 42 USC 1323.

SEC. 305. EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) Title IX of the Social Security Act is amended by striking out section 905 and inserting in lieu thereof the following new section: 74 Stat. 970; 75 Stat. 14. 42 USC 1101-1105.

"EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT

"ESTABLISHMENT OF ACCOUNT

"SEC. 905. (a) There is hereby established in the Unemployment Trust Fund an extended unemployment compensation account. For the purposes provided for in section 904(e), such account shall be maintained as a separate book account.

"TRANSFERS TO ACCOUNT

"(b)(1) Except as provided by paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount determined by him to be equal, in

the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

"(A) transfers to the employment security administration account pursuant to section 901(b)(2) during such month, exceed

74 Stat. 970. 42 USC 1101.

"(B) payments during such month from the employment security administration account pursuant to section 901 (b)(3) and (d).

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.

"(2) Whenever the Secretary of the Treasury determines pursuant to section 901(f) that there is an excess in the employment security administration account as of the close of any fiscal year beginning after June 30, 1972, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the total amount of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to whichever of the following is the greater:

Ante, p. 715.

"(A) $750,000,000, or

"(B) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

"(3) The Secretary of the Treasury shall make no transfer pursuant to paragraph (1) as of the close of any month if he determines that the amount in the extended unemployment compensation account is equal to (or in excess of) the limitation provided in paragraph (2).

"TRANSFERS TO STATE ACCOUNTS

"(c) Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970.

Ante, p. 711.

"ADVANCES TO EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT AND REPAYMENT

Appropriation.

"(d) There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of the Federal-State Extended Unemployment Compensation Act of 1970. Amounts appropriated as repayable advances shall be repaid, without interest, by transfers from the extended unemployment compensation account to the general fund of the Treasury, at such times as the amount in the extended unemployment compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this subsection shall be credited against, and shall operate to reduce, any balance of advances repayable under this subsection."

74 Stat. 974. 42 USC 1103.

(b) Section 903(a)(1) of the Social Security Act is amended to read as follows: "(1) If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in the extended unemployment compensation account has reached the limit provided in section 905 (b)(2) and the amount in the Federal unemployment account has reached the limit provided in section 902(a) and all advances pursuant to section 905(d) and section 1203 have been repaid, and there remains

Supra.

74 Stat. 979. 42 USC 1323.

in the employment security administration account any amount over the amount provided in section 901(f)(3)(A), such excess amount, except as provided in subsection (b), shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund." Ante, p. 715.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EXEMPTION OF CERTAIN INDUSTRIAL DEVELOPMENT BONDS FROM REGISTRATION, ETC., REQUIREMENTS.

(a) Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c) (relating to exempted securities) is amended by adding at the end of paragraph (2) the following: "or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security;". 48 Stat. 906. 82 Stat. 266. 26 USC 103.

(b) Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c) (relating to exempted securities) is amended by inserting after "any municipal corporate instrumentality of one or more States;" in paragraph (12) the following: "or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security;". 48 Stat. 882; 78 Stat. 565.

(c) The amendments made by this section shall apply with respect to securities sold after January 1, 1970. Effective date.

Approved August 10, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-612 (Comm. on Ways and Means) and
No. 91-1037 (Comm. of Conference).
SENATE REPORT No. 91-752 (Comm. on Finance).
CONGRESSIONAL RECORD:
Vol. 115 (1969): Nov. 13, considered and passed House.
Vol. 116 (1970): Apr. 7, considered and passed Senate, amended.
July 23, House agreed to conference report.
Aug. 4, Senate agreed to conference report.

EXHIBIT B

Calendar No. 755

91st Congress, 2d Session - - - - Senate Report No. 91-752

EMPLOYMENT SECURITY AMENDMENTS OF 1970

REPORT

OF THE

COMMITTEE ON FINANCE

U.S. SENATE

TO ACCOMPANY

H.R. 14705

A BILL TO EXTEND AND IMPROVE THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

MARCH 26, 1970.—Ordered to be printed

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Calendar No. 755

91ST CONGRESS
2d Session

SENATE

REPORT
No. 91-752

UNEMPLOYMENT COMPENSATION

MARCH 26, 1970.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 14705]

The Committee on Finance, to which was referred the bill (H.R. 14705) a bill to extend and improve the Federal-State unemployment compensation program, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

I. SCOPE OF THE BILL

The provisions contained in H.R. 14705 as reported by the committee represent the most significant legislation to amend the unemployment compensation program since it was enacted in 1935 as part of the Social Security Act.

A similar measure (H.R. 15119, 89th Congress) was approved by both the House and Senate in 1966 but was not enacted into law because of the inability of both Houses to resolve their differences in conference. A number of 1966 Senate amendments are included in the House-passed version of H.R. 14705.

Over the years, the unemployment compensation program has provided a continuing income to millions of men and women in periods of unemployment. The program has also added a stability to the national economy that has moderated, and on occasion perhaps even averted, economic recession.

The bill would extend the coverage of the unemployment compensation program to additional jobs, establish a permanent program of extended benefits for people who exhaust their regular State benefits during periods of high unemployment, provide the States with a procedure for obtaining judicial review of certain adverse determinations by the Secretary of Labor, improve the financing of the program, provide certain limited requirements for State unemployment com-

pensation programs which are designed to protect the integrity of the program, and make other changes to strengthen the Federal-State unemployment compensation system.

II. SUMMARY OF COMMITTEE AMENDMENTS

The Committee on Finance amended the House bill chiefly in the area of extension of coverage. The major committee amendments are outlined below:

1. Farm workers.—The committee bill would extend unemployment compensation coverage to employees of large farms. Under the committee amendment, farm employers who have eight or more employees in each of 26 different weeks during the year would be brought under the program, and all their employees could become eligible for unemployment compensation benefits. However, agricultural crew leaders and their employees would not be included in this extension of coverage. Under the committee amendment, 21,000 new employers—2 percent of all farm employers—and 233,000 farm employees—almost one-fifth of all farm employees—would for the first time be provided protection under the unemployment compensation program.

2. Small firms.—The committee bill would delete the provision in the House bill which would have extended coverage to employees in small firms—those which employ one or more employees in each of 20 weeks, or which pay wages of $800 or more in a quarter. The present-law test of four employees in 20 weeks would be retained by this committee amendment.

3. Hospitals and institutions of higher education.—The committee bill includes the provisions of the House bill which extend coverage to certain employees of nonprofit organizations and State hospitals and institutions of higher learning. However, the committee bill would also extend coverage to faculty, research and administrative employees of institutions of higher education, and would indicate in the statute that these additional employees are not to be considered unemployed if they have a contract to resume work after the summer vacation.

The committee bill in addition would require States to permit employees of a county or municipal hospital or institution of higher education to be covered at the option of the governmental unit, under an agreement to make payments in lieu of taxes.

4. Clients of sheltered workshops.—The committee bill would extend coverage under the nonprofit provision of the House bill to include the "clients" of a sheltered workshop—the blind or other handicapped persons for whom employment is provided in the sheltered workshop. The amendment would affect an estimated 100,000 handicapped persons employed in about 1,500 sheltered workshops.

5. Effective date.—The House bill generally allows States until January 1, 1972, to meet the new requirements of Federal law. In cases where States must change State law in order to meet the new requirements of the bill, the committee modified the bill so that a State whose legislature does not meet in regular session in 1971 would have until July 1, 1972, to approve the changes in State law necessary to implement the new Federal requirements.

III. SUMMARY OF THE PRINCIPAL FEATURES OF THE BILL

A. Changes in Coverage

Approximately 58.0 million jobs are now protected by the unemployment compensation system, including those covered under State laws and those covered under Federal programs (i.e., Federal employees, members of the Armed Forces, and railroad workers). In addition, there are 16.6 million jobs which remain unprotected. Of these uncovered jobs, the committee bill would extend coverage to up to 4.4 million.

The workers affected by the proposed changes in the unemployment compensation program are:

1. Workers affected by changed definition of "employee."—The definition of "employee" which is now used for old-age, survivors, disability, and health insurance purposes would be adopted with a modification. Those who would be affected by this change are individuals who are not employees under common law rules, such as agent-drivers and outside salesmen. The concept of "employee" as adopted by this bill differs from that used for the old-age, survivors, disability, and health insurance program in that it does not apply to full-time life insurance salesmen and individuals who work in their homes on materials furnished by another (if they are not employees under common-law rules). Approximately 200,000 additional jobs would be covered under this provision, effective January 1, 1972.

2. Agricultural labor.—In general, agricultural jobs are now excluded from the Federal unemployment tax law. The committee bill would extend coverage under Federal law to farm employers who have eight or more employees in each of 26 different weeks during the year. If a farm is covered, all of its employees would be covered, and should they become unemployed, they might become eligible for unemployment compensation benefits, depending on State eligibility requirements. However, agricultural crew leaders (as defined under social security law) and their employees would be excluded from the extension of Federal coverage. An estimated 233,000 on-the-farm jobs (almost one-fifth of all farm jobs) would be covered for the first time under this provision effective January 1, 1972.

The committee bill would also adopt, with modification, the definition of "agricultural labor" that now applies to the old age, survivors, disability, and health insurance system. Included among the newly covered workers would be those working in processing plants where one-half or more of the commodities handled were not produced by the plant operator. Under the bill, processing activities of a cooperative organization in processing raw materials still would be excluded as "agricultural labor" if more than one-half of such commodities were produced by its farm operator members. About 200,000 additional jobs would be covered under this provision, effective January 1, 1972.

3. Employees of nonprofit organizations and State hospitals and institutions of higher education.—Employees of nonprofit organizations and State hospitals and State institutions of higher education would be brought under the unemployment compensation program. Coverage would not be extended, however, to the employees of a church or

association of churches, to duly ordained or licensed clergymen or members of religious orders, to employees of schools other than institutions of higher education, to individuals receiving rehabilitation in facilities conducted for the purpose of carrying out programs of rehabilitation for the physically or mentally handicapped, to individuals in Government-sponsored work-relief or work-training programs, or to inmates of correctional institutions employed in a hospital connected with the institution. Approximately 3.2 million additional jobs would be covered by this provision, effective January 1, 1972. (States whose legislatures do not meet in regular session in 1971 would have until July 1, 1972 to conform to this requirement of Federal law.)

Nonprofit organizations would be required to be covered only if they employed four or more persons in 20 weeks in the current or preceding calendar year. State programs would be required to permit nonprofit organizations the option of reimbursing the State for unemployment compensation payments attributable to service for them rather than paying regular State unemployment compensation taxes. They would not pay the Federal unemployment tax. States would be allowed to put the reimbursement option into effect at any time after December 31, 1969. For nonprofit organizations covered by State laws on a contributory basis prior to January 1, 1969, States would be permitted to provide a transitional provision under which an organization which elects at its first opportunity to change from a contributions basis to a reimbursement basis would receive credit for the amount by which past contributions exceeded benefit payments attributable to service for them.

Under the bill, faculty, research, and administrative employees of institutions of higher education would not be considered unemployed during the summer vacation if they have a contract to resume work after the summer vacation.

4. Citizens of the United States employed outside the United States by an American employer.—U.S. citizens, employed outside the United States by American employers, would be covered by adopting the definition of employment, with a modification, that now applies to such service under the old-age, survivors, disability, and health insurance program. An exception would be made for service performed in Canada and in the Virgin Islands. Approximately 160,000 additional jobs would be covered by this provision, effective January 1, 1972.

5. Exclusions of certain students, students' spouses, and hospital patients.—Three new exclusions from coverage would be provided by the bill: Services by (1) spouses of students employed by a school, college or university under a program of assistance to the student, (2) students under 22 employed pursuant to specified work-study programs and (3) individuals employed in hospitals in which they are also patients. The exclusions would be effective January 1, 1970.

6. Accrued leave of ex-servicemen.—The bill would repeal section 8524 of title 5 of the United States Code, effective with respect to benefit years which begin more than 30 days after enactment. Section 8524 precludes the payment of unemployment compensation to ex-servicemen during periods to which terminal leave is allocated. Repeal of section 8524 would have the effect of insuring that the accrued leave of ex-servicemen would be treated, in each State, in the same way as

the accrued leave of all other unemployed workers, including former Federal civilian employees.

7. County and municipal hospitals and higher educational institutions.—The committee bill would require States to extend to each political subdivision of the State the right to cover employees of their hospitals and institutions of higher education. A governmental unit taking advantage of this option to extend coverage would enter into an agreement with the State to make payments in lieu of taxes. A total of 436,000 county and municipal employees could become eligible for coverage under this provision. The provision becomes effective in 1972; if compliance with this requirement would necessitate a change in the constitution of a State, the provision would not have to be effective in that State until January 1, 1975.

B. Provisions Required To Be Included in State Laws

In order to be certified by the Secretary of Labor for the purpose of qualifying employers for Federal unemployment tax credits, State laws would be required to meet four new requirements, not later than January 1, 1972. (States whose legislatures do not meet in regular session in 1971 would have until July 1, 1972, to conform to these requirements of Federal law.)

1. Work requirement.—A beneficiary would be required to have had work after the beginning of his benefit year in order to obtain unemployment compensation in his next benefit year (prohibiting the so-called "double dip" which allows a worker to draw benefits in two successive benefit years following a single separation from work).

2. Worker training.—Compensation could not be denied to workers who are undergoing training with the approval of the State agency.

3. Interstate and combined wage claims.—Compensation could not be denied or reduced because a claimant lives or files his claim in another State or in a continguous country with which the United States has an agreement with respect to unemployment compensation. States would also be required to participate in arrangements, approved by the Secretary of Labor in consultation with the State unemployment compensation agencies, for combining an individual's wages and employment covered under more than one State law for the purpose of assuring the prompt and full payment of compensation in such situations. Such arrangements would include provision for applying a single base period, which it is expected would be the base period of the paying State, and for avoiding the duplicate use of such wages and employment.

4. Cancellation of wage credits.—The wage credits of a worker could not be canceled or his benefit rights totally reduced by reason of a disqualifying act, other than discharge for misconduct connected with his work, or fraud in connection with a claim for benefits, or receipt of disqualifying income such as pension payments. A State could, however, disqualify a worker for the duration of a period of unemployment following a disqualifying act, such as a voluntary quit, if the worker's benefit rights are preserved for a future period of involuntary employment during his benefit year. The provision would apply to a single disqualification and would not affect the cumulative effect of multiple disqualifications for separate and distinct acts.

C. Judicial Review

Under existing law, there is no specific provision allowing a State to appeal to a court a determination of the Secretary of Labor adverse to the State. The bill would provide for judicial review of such a determination. The State could appeal to a U.S. Court of Appeals within 60 days after the Governor of the State had been notified of an adverse decision by the Secretary. No action could be taken by the Secretary pursuant to his determination until after the expiration of the 60-day period in which an appeal would be possible, or until the State had filed a petition for court review, whichever is earlier.

The Secretary of Labor's findings of fact would be conclusive if supported by substantial evidence on the whole record. The reviewing court, of course, would have complete jurisdiction to review questions of law.

The filing of a petition by a State for judicial review of a finding of the Secretary of Labor and the commencement of judicial proceedings would stay the Secretary's action for a period of 30 days. The court could thereafter grant interim relief, if warranted, including a further stay of the Secretary's action and including such other relief as would be necessary to preserve status or rights.

D. Clarification of Section 3304(c)

The last sentence of section 3304(c) of the Internal Revenue Code of 1954, the so-called "Knowland amendment," relates to the Secretary's authority to make a finding that a State has failed to comply substantially with the so-called labor standards provision in section 3304(a)(5). The labor standards provision requires a State law to provide that compensation may not be denied to a claimant if he refuses to accept new work if the position offered is vacant due directly to a strike, lockout, or other labor dispute; if the wages, hours, or other conditions of the work offered are substantially less favorable to the claimant than those prevailing for similar work in the locality; or if, as a condition of being employed, he would be required to join a company union or resign from or refrain from joining a bona fide labor organization. The bill would provide that no such finding of the Secretary may be based on an application or interpretation of State law until all administrative review afforded by the State law has been exhausted, or the time allowed by State law for appeal to a State court has expired, or judicial review pending in a State court has been completed.

E. Federal-State Extended Unemployment Compensation Program

The bill would establish a new permanent program to pay extended benefits during periods of high unemployment to workers who exhaust their basic entitlement to regular State unemployment compensation (including benefits to Federal civilian workers and ex-servicemen). As a condition of the Secretary of Labor's approval of the State's unemployment insurance program, a State would be required to establish the new program by January 1, 1972. (States whose legislatures do not meet in regular session in 1971 would have until July 1, 1972, before they would have to have an extended benefit program.)

The Federal Government would pay 50 percent of the costs of the new program in each State and each State would pay the other 50 percent of the cost of its program.

These extended benefits would be paid to workers only during an "extended benefit" period. Such a period could exist, beginning after December 31, 1971, either on a national or State basis by the triggering of either the national or the State "on" indicator. However, a State legislature could make the program operative earlier in its State on the basis of the State "on" and "off" indicators alone, and if it did, the Federal Government would share in the costs of the compensation paid for the period prior to January 1, 1972.

National "on" and "off" indicators.—There would be a national "on" indicator when the seasonally adjusted rate of insured unemployment for the whole Nation equaled or exceeded 4.5 percent in each of the 3 most recent calendar months. There would be a national "off" indicator when the seasonally adjusted rate of insured unemployment for the whole Nation was below 4.5 percent in each of the 3 most recent calendar months.

State "on" and "off" indicators.—There would be a State "on" indicator when the rate of insured unemployment for the State equaled or exceeded, during a moving 13-week period, 120 percent of the average rate for the corresponding 13-week period in the preceding 2 calendar years, provided such rate also equaled or exceeded 4 percent. There would be a State "off" indicator when either of these two conditions was not satisfied.

Extended benefit period.—An extended benefit period would begin with the third week after a week for which there was a national "on" indicator or a State "on" indicator, whichever first occurs. The period would end with the third week after the first week for which there was both a national and a State "off" indicator. However, an extended benefit period would have to last for a period of not less than 13 consecutive weeks.

Benefits.—During any extended benefit period, the State would be required to provide each eligible claimant with extended compensation, at the individual's regular weekly benefit amount (including dependents' allowances), up to one-half of his entitlement to regular compensation but not more than 13 times his regular weekly benefit amount or the difference between his regular entitlement and 39 times his weekly benefit amount, whichever is less. A State would be reimbursed by the Federal Government for one-half of the cost of these payments. A State which provided more benefits than those required under the bill would not be reimbursed by the Federal Government for any part of the cost of the additional benefits.

F. Financing Provisions

The *net Federal tax*, which is presently 0.4 percent of covered payroll, would be increased by one-tenth of 1 percent to 0.5 percent, beginning January 1, 1970 (an increase in the Federal tax rate from 3.1 to 3.2). The taxable wage base of the Federal Unemployment Tax Act would be increased from $3,000 to $4,200 for calendar years 1972 and thereafter.

G. Other Provisions

1. Reduced tax rates for new employers.—The committee bill would modify the Federal experience-rating standard to permit States to assign reduced unemployment tax rates (not less than 1 percent) to new and newly covered employers on a reasonable basis, other than experience with unemployment, until they have the period of experience needed under the experience-rating provisions of the State law.

2. Tax credits allowable to certain employers.—The bill would provide for the enforcement of prohibitions in the existing Federal unemployment tax laws against unequal treatment of maritime and other employment with respect to which the Federal Government has a special jurisdictional interest.

3. Research, training, and Federal advisory council.—The bill contains provisions establishing a Federal unemployment compensation research program, a Federal program to train unemployment compensation personnel, both Federal and State, and a Federal Advisory Council on Unemployment Compensation to review the operation of the Federal-State program and make recommendations for its improvement.

4. Change in certification date.—The bill would change the date with respect to which the Secretary of Labor certifies to the Secretary of the Treasury that the State unemployment compensation laws and administration meet the requirements of the Federal Unemployment Tax Act. The date would be moved from December 31 to October 31 of each year beginning in 1972.

5. Changes in ceilings, transfers, and the flow of funds among accounts in the Unemployment Trust Fund.—The bill would establish a third account—the extended unemployment compensation account—in the Unemployment Trust Fund, and would specify the order of crediting amounts to each of the three accounts, the order of transferring of funds among the three accounts, and the maximum amounts, or ceilings, which may be accumulated in each of the accounts. When all three accounts have reached their statutory limits, and advances (if any) from Treasury general funds have been repaid, any excess would be transferred to the State accounts in the Unemployment Trust Fund, thus becoming available for the payment of benefits or other purposes as provided by section 903 of the Social Security Act.

6. Employment service financing.—The bill would provide that the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, is to reflect the proportion of the total cost of administering the system of public employment offices as the President determines is an appropriate charge to the employment security administration account. The President's determination (after consultation with the Secretary of Labor), would take into account such factors as the relationship between employment subject to State unemployment compensation laws and the total labor force, the number of unemployment compensation claimants and the number of job applicants, and such other factors as he deems relevant. The purpose of this provision is to limit the use of revenues derived from the Federal unemployment tax to employment service costs related to unemployment compensation administration.

4. State law coverage of employees of nonprofit organizations and of State hospitals and institutions of higher education

Present law.—Under existing Federal law, services performed for nonprofit religious, charitable, educational and humane organizations and for a State and its political subdivisions are exempt from the tax provisions of the Federal Unemployment Tax Act. There has not, therefore, been a tax-credit incentive for covering employees of these organizations and governments for unemployment compensation purposes. While employment in these organizations and governments is not subject to fluctuations to the same degree as in commerce and industry, unemployment affects a substantial number of their employees, particularly people working in nonprofessional occupations.

The committee does not want to change the present tax status of nonprofit organizations, but is concerned about the need of their employees for protection against wage loss resulting from unemployment.

House bill.—Under the House-passed bill, unemployment insurance protection for employees of nonprofit organizations, and State hospitals and State institutions of higher education would be achieved by making State law coverage of services excluded solely by reason of paragraphs (7) and (8) of section 3306(c) of the Internal Revenue Code of 1954 a condition for providing all other employers in the State with the existing credit against the Federal unemployment tax. The States would be required also to provide nonprofit organizations with the option of reimbursing the State for unemployment compensation payments attributable to service with the organization in lieu of paying contributions under the normal tax provisions of the State law. In effect, the nonprofit organizations would be allowed to adopt a form of self-insurance. Under the reimbursement method of financing, a nonprofit organization whose workers experience no compensated unemployment in a year would have no unemployment insurance costs for that year. The committee considers it appropriate that these organizations, which are often dependent upon charitable contributions, should not be required to share in the costs of providing benefits to workers in profit-making enterprises.

The reimbursement method is now permitted for coverage of State and local government employees. States have not, however, been able to extend it to nonprofit organizations because of the experience-rating standards contained in section 3303 of the Federal Unemployment Tax Act. Under these standards, the additional tax credit of all employers in a State would be lost if the State permitted a reduced rate to any "person" on a basis other than his experience with unemployment; a government is not a "person" for this purpose, but a nonprofit organization is.

Both the House bill and the bill as reported by the committee include a transition rule under which States may permit nonprofit organizations, electing to reimburse the State fund for benefits paid to their unemployed workers, to take into account contributions paid into the State fund with respect to services performed by its employees before January 1, 1969. Thus, the accumulated reserves of these nonprofit organizations may be used, if the State law so provides, to offset future payments of unemployment compensation. The committee

agrees with the House that it is equitable and just to allow States to permit these reserves to be taken into account in this manner, and it hopes that States will authorize this use of accumulated reserves.

States would not be required to cover services for all nonprofit organizations. They could continue to exclude nonprofit organizations employing fewer than four employees in at least 20 weeks in a year, and certain other exclusions (discussed below) would be permitted.

Existing Federal Unemployment Tax Act exclusions of services performed by student nurses, interns, students employed by the school in which they are enrolled and attending classes, and services for remuneration of less than $50 in a calendar quarter would not be changed and would remain in effect.

The House bill also extends coverage to State hospitals and institutions of higher education.

States would be free to go beyond the Federal coverage provisions and bring under the State law any additional groups which the State legislature considers appropriate. The reimbursement method of financing could be applied to any organization exempt from Federal tax by reason of section 3306(c)(8) of the Internal Revenue Code of 1954, and to any State or local government.

Finance Committee amendments.—The House bill would require extension of coverage to employees of non-profit institutions and State hospitals and institutions of higher education, with specified exceptions. The Finance Committee eliminated two exceptions contained in the House bill which would have omitted coverage of (1) individuals employed in an instructional, research, or principal administrative capacity in an institution of higher education; and (2) clients of a sheltered workshop.

EXCLUSIONS FROM COVERAGE

HOUSE BILL	FINANCE COMMITTEE BILL
1. Service for a church, a convention, or association of churches, or for an organization operated primarily for religious purposes and supported by a church or churches.	1. Same.
2. Service by ministers and members of religious orders if the services are performed in the course of an individual's religious duties.	2. Same.
3. Service in the employ of a school which is not an institution of higher education.	3. Same.
4. Service for an institution of higher education by individuals employed in an instructional, research or principal administrative capacity.	(No exclusion.)

EXCLUSIONS FROM COVERAGE—Continued

HOUSE BILL	FINANCE COMMITTEE BILL
5. Service in a facility conducted for the purposes of carrying out a program of rehabilitation or of providing remunerative work, by a client.	4. Service in a rehabilitation facility but not in a sheltered workshop providing remunerative work.
6. Service performed as part of a government-sponsored work-relief or work-training program by individuals receiving such work relief or work training.	5. Same.
7. Service for a hospital of a State penal institution by an inmate of the institution.	6. Same.

The committee bill deletes the exemption from coverage for instructional, research, and principal administrative personnel employed by institutions of higher education. The effect of this committee amendment would be to extend coverage to an additional 215,000 individuals employed in State higher educational institutions and 172,000 individuals employed in nonprofit institutions of higher education. Under the committee bill, these professional persons would enjoy the same kind of unemployment insurance protection provided management personnel in private industry. Since unemployment is low among the groups to whom coverage is extended by the committee amendment, the cost of the amendment is expected to be nominal.

There is, however, one distinctive characteristic of the contractual employment relationship between the instructor, researcher 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 at 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. The committee bill would, therefore, provide a mandatory limitation on the payment of compensation based on service in an instructional, research or principal administrative capacity for an institution of higher education. The committee bill would specifically prohibit the payment of compensation based on service in any such capacity during the summer semester break, sabbatical period, or a similar nonwork period during which the employment relationship continues.

The committee also deleted the exclusion of handicapped clients employed in sheltered workshops. The committee notes that many States consider an unemployed individual eligible to receive benefits only if he "is physically and mentally able to work and available for work." Many State laws in addition to this requirement also require that the individual "actively seek work in the regular labor market"

and "be willing to accept any suitable work." In removing the bar to coverage in Federal law, the committee is concerned lest these provisions of State law themselves prevent unemployed sheltered workshop clients from receiving benefits. Changes in unemployment compensation statutes in some States or in administrative rules and procedures may be necessary to assure that disabled individuals unemployed after working in sheltered workshop be considered "able and available" for employment.

The estimated increase in coverage under the committee bill is shown in table 2 below:

TABLE 2.—*Coverage of Nonprofit Organizations and State Hospitals and Institutions of Higher Education Under Finance Committee Bill*

	Nonprofit organizations	State institutions	Total
Jobs covered:			
Hospitals	1, 377, 000	360, 000	1, 737, 000
Institutions of higher education	431, 000	580, 000	1, 011, 000
Instructional, research, and administrative personnel	(172, 000)	(215, 000)	(387, 000)
Other jobs	(259, 000)	(365, 000)	(624, 000)
Sheltered workshops	100, 000	----------	100, 000
Other nonprofit organizations	313, 000	----------	313, 000
Total	2, 221, 000	940, 000	3, 161, 000

5. Coverage of certain services performed outside the United States

Present law.—The Federal Unemployment Tax Act does not now extend the tax imposed by section 3301 of the Internal Revenue Code of 1954 to services performed outside the United States by citizens of the United States for American employers. The tax imposed for old-age, survivors, disability, and health insurance purposes does, however, apply to such services.

In recent years, the number of U.S. citizens working for American employers abroad has greatly increased, due primarily to the large number of construction personnel employed overseas by American contractors engaged in overseas construction work for the armed services. While the total number of individuals involved—approximately 160,000—is a very small proportion of the total work force, it is a substantial number. When these individuals, after completing their work overseas, seek work in the United States, they are not eligible to receive unemployment benefits. Some States have become increasingly concerned over the problem. A State, however, may be reluctant to cover overseas contractors based in that State, because by doing so it may place the contractors operating out of that State at a competitive disadvantage in relation to contractors operating out of States which do not cover employment outside the United States.

The Federal unemployment tax has in the past been an effective device for removing interstate competition as an impediment to coverage by State laws. Because the credits against the Federal tax results in a combined net Federal and State tax lower, in most cases,

EXHIBIT C

UNEMPLOYMENT COMPENSATION

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 14705

TO EXTEND AND IMPROVE THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

FEBRUARY 5, 17, AND 18, 1970

Printed for the use of the Committee on Finance

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41-184 O WASHINGTON : 1970

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UNEMPLOYMENT COMPENSATION

THURSDAY, FEBRUARY 5, 1970

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:02 a.m., in room 2221 New Senate Office Building, Hon. Russell B. Long (chairman presiding.

Present: Senators Long, Anderson, McCarthy, Hartke, Ribicoff Byrd, Jr., of Virginia, Williams of Delaware, and Fannin.

The CHAIRMAN. Today the Committee on Finance will hear th Honorable George P. Shultz, Secretary of Labor, present the ad ministration's case for extending the Federal-State unemploymen compensation program and for raising employer taxes under thi program.

I might observe at this point that in the 89th Congress the Hous and the Senate both passed a bill which represented the broadest re vision of the Federal-State unemployment compensation progran since the program was first written into law. Most features of the bil before us today are substantially identical to provisions which had beei in the 1966 measure. Unfortunately, other amendments caused a dead lock in conference and prevented it from being enacted before the 89tl Congress finally adjourned.

The major provisions of the bill would extend unemployment in surance coverage to an additional 4.5 million jobs, establish a nev permanent extended unemployment compensation program, the cost of which would be shared equally by the Federal and State govern ments, and provide additional financing for the administrative cost of the program through an increase in unemployment taxes.

Beginning on Tuesday, February 17th, the committee will begin th second phase of hearings on this bill during which other persons wh wish to testify on the bill will present their views.

Without objection, we will place in the record at this point the tex of the bill and other materials concerning the bill. (Testimony be gins on page 75.)

(The committee's press release announcing hearings, H.R. 14705, and other related documents follow:)

(Press release—For immediate release)

COMMITTEE ON FINANCE,
U. S. SENATE,
2227 New Senate Office Bldg.

FINANCE COMMITTEE HEARINGS ON UNEMPLOYMENT COMPENSATION

Senator Russell B. Long (D., La.), Chairman of the Senate Committee on Finance, announced today that on Thursday, February 5, 1970, the Committee would receive testimony from the Honorable George P. Shultz, Secretary of the Department of Labor, in a public hearing on H.R. 14705, a bill to extend and improve the Federal-State unemployment compensation program. Following the Secretary's statement, Mr. Murray L. Weidenbaum, Assistant Secretary of the Treasury for Economic Policy, will testify to the tax aspects of the bill. The hearing will be held in the Finance Committee Hearing Room, 2221 New Senate Office Building, beginning at 9:00 a.m.*

He indicated that by hearing Secretary Shultz and Assistant Secretary Weidenbaum at this time, persons and organizations who might want to testify with respect to their suggestions would have an opportunity during the Lincoln Birthday recess to study the statements and prepare their own testimony. The Chairman reported that public witnesses would be heard on the bill beginning Tuesday, February 17, 1970, at 10:00 a.m.

Principal features of H.R. 14705.—The Chairman noted that the principal features of the unemployment compensation bill as passed by the House would:

1. Extend Federal unemployment insurance coverage to an additional 4.5 million jobs (mostly in non-profit organizations, State hospitals and higher educational institutions, and small firms);
2. Establish a new permanent extended unemployment compensation program with costs borne equally by the Federal government and the States; and
3. Increase the net Federal tax from 0.4 percent to 0.5 percent of covered payroll, beginning January 1, 1970; and increase the taxable wage base for the Federal tax from $3,000 to $4,200 beginning in 1972.

Requests to be heard.—Senator Long stated that those organizations and individuals who desire to testify on February 17 should make their request to Tom Vail, Chief Counsel, Committee on Finance, 2227 New Senate Office Building, no later than Friday, February 6, 1970. Persons scheduled to appear on February 17 must submit 25 copies of their statement to the Committee not later than the close of business on Friday, February 13, 1970. Statements should be on double-spaced, letter-size pages (not legal size), and each statement must be preceded by a summary of the principal points presented by the witness. The Chairman emphasized that pursuant to the requirements of the Legislative Reorganization Act of 1946, witnesses will be expected to limit their oral presentation to brief summaries of their argument. He urged those with similar views to coordinate their oral statements in order to prevent duplicative and repetitive testimony. Senator Long said that the Committee would welcome written comments on H.R. 14705; five copies of these comments should be sent to Mr. Vail by the close of business on Friday, February 20, 1970.

*Chairman Russell B. Long subsequently announced a change in the hearing time from 9 a.m. to 10 a.m.

91ST CONGRESS
1ST SESSION

H. R. 14705

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 1969

Read twice and referred to the Committee on Finance

AN ACT

To extend and improve the Federal-State unemployment compensation program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Employment Security Amendments of 1969".

TITLE I—UNEMPLOYMENT COMPENSATION AMENDMENTS

PART A—COVERAGE

SEC. 101. DEFINITION OF EMPLOYER.

(a) Section 3306(a) of the Internal Revenue Code of 1954 is amended to read as follows:

If a program in North Dakota where most farm employment is comparatively stable, covering essentially permanent workers only, and at an exceedingly high tax rate—will not balance out—it is obvious that the enactment of farm labor coverage as proposed would involve a heavy drain on state funds.

Senator BYRD. The next witness is Dr. Arthur M. Ross, vice president, University of Michigan. Dr. Ross is accompanied by Milton C. Denbo, counsel, American Council on Education.

STATEMENT OF DR. ARTHUR M. ROSS, VICE PRESIDENT, UNIVERSITY OF MICHIGAN; ACCOMPANIED BY MILTON C. DENBO, COUNSEL, AMERICAN COUNCIL ON EDUCATION

Dr. Ross. Mr. Chairman, members of the committee, I am Arthur M. Ross, vice president for State Relations and Planning at the University of Michigan, and I am appearing today on behalf of the American Council on Education; a voluntary, nongovernmental body which is the principal coordinating agency for 1,538 colleges and universities and associations of higher education. Other organizations of higher education, a list of which is appended hereto, as appendix B, join in the support of the position I shall express. I wish to add that I am not apppearing on behalf of the University of Michigan itself.

We support the provisions of the House bill, basically because we recognize the responsibilities of educational institutions to provide protection for their employees against bona fide unemployment. The bill provides that each educational organization will be given the right to choose either to pay contributions under the normal contribution procedure or to reimburse the State for benefits attributable to service in the organization's employ—the so-called self-insurance provisions. This contrasts sharply with the bill of several years ago which would have imposed a higher burden on institutions of higher education because it related cost to the experience of industry generally rather than to the experience of the academic community itself. Under the current bill, there will be unemployment insurance costs only if the employee becomes unemployed, files a claim for unemployment insurance, is found to meet all the conditions of eligibility, and does, in fact, receive compensation.

The American Council on Education in 1965 and again this past year in a statement presented to the House Ways and Means Committee, requested an exemption from coverage for faculty and other professional research and administrative personnel employed by institutions of higher education. The bill as passed by the House in 1969 does contain this exemption. We presently recognize, however, that changing employment conditions in the academic world call for a reevaluation of our former position. I might say parenthetically that this reevaluation has been made in great depth by the Commission on Federal Relations of the American Council, which includes a good many long experienced and distinguished presidents of universities, such as Father Hesburgh of Notre Dame, Dr. Brewster of Yale, President Arthur Flemming of Macalester, and other highly experienced and noted individuals.

I wish to state, therefore, that we believe it appropriate to delete from H.R. 14705 the provision which exempts individuals employed in an

instructional, research or principal administrative capacity from the requirement of coverage for employees of State and nonprofit institutions of higher education. Since the extent of unemployment is low among such personnel, deletion of the exemption need not add significantly to the costs of the organization.

By covering those who are genuinely unemployed the bill is equitable in that it would place unemployed workers in the enumerated categories in nonprofit educational institutions within a protected category available to most employees in the American economy. We agree that in terms of simple equity, occupational exclusion is undesirable because it would deny to those in the excluded categories the unemployment insurance protection enjoyed by their counterparts in private industry. We recognize that an instructional, research or administrative employee, whose contract has not been renewed at the end of the contractual period, is in no different position than any other individual whose job has been terminated, and that he should receive the benefits that accrue to individuals of his status.

However, there is one distinctive characteristic of the contractual employment relationship between the instructor, researcher or administrative employee and the institution, which in our judgment requires a special statutory provision not now in the bill. Frequently the employee is employed pursuant to an annual contract at an annual salary, but for an active work period of 9 rather than 12 months. It is also common for an institution, as a matter of convenience, to pay employees during the time that the college is actually in session, dividing the full year's salary, for example, into 9ths or 10ths and paying them in the months from September through May or June, inclusive. These annual salaries are intended to cover periods such as the summer when the employees may be relieved of formal assignments. During these periods the employment relationship continues and the employee has been compensated for a full year. We believe that in this typical situation the employee should not be considered unemployed during the summer periods, a semester break, a sabbatical period or similar periods during which the employment relationship continues.

H.R. 14705 contains a provision which deals with the summer period by allowing State laws to provide the extent to which benefits based on services to an institution of higher education shall not be payable during the summer vacation period. The provision, however, is permissive in nature only and not mandatory on the States and does not aid in solving the ultimate problem, as separate battles over this very issue would have to be fought in the legislatures of the 50 States.

If, as we advocate, unemployment insurance coverage is to be extended to teaching and associated research and administrative personnel, explicit language should be inserted into the act to make it plain that such personnel are not regarded as unemployed during those periods of academic recess when they, paid on an annual basis, remain on the rolls of a college or university, but are not necessarily required to perform services on the employer's premises.

Appended hereto as appendix A is suggested statutory language which we believe would aid in solving the problem of extending protection to those instructional, research and administrative employees who may become genuinely unemployed. It is my understanding, Mr.

Chairman, that Secretary of Labor Shultz concurs in the desirability and appropriatenes of this clarifying proviso.

We would also like to request that the student exclusion contained in the House bill be retained. An additional group of "employees"—student spouses—should also continue to be excluded from coverage. Both the institution and the student spouse recognize that the spouse's employment is in no sense permanent employment. Often the student's spouse is only temporarily in the labor market. When the student graduates, both he and his spouse move elsewhere and undertake to pursue a conventional existence there. A failure to exclude the spouse from coverage could lead to many unjustified, although technically valid claims for compensation. We, therefore, respectfully request that section 106 of H.R. 14705 be retained.

Mr. Chairman, as our appendix shows, the other educational organizations, apart from the American Council on Education, which join in this testimony, include the American Association of Junior Colleges, the American Association of University Professors (as to faculty), the Association of American Universities, the National Association of State Universities and Land Grant Colleges, and the National Catholic Educational Association.

Thank you. I shall be glad to answer any questions.

Senator ANDERSON (now presiding). Any questions?

Thank you, very much.

(Appendixes to Dr. Ross' statement follow:)

APPENDIX A

1. Delete Section 3309(b)(4).

2. Insert a new paragraph 6(A) in section 3304(a) of the Internal Revenue Code as amended which would read as follows:

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that, with respect to service in an instructional, research, or principal administrative capacity in an institution of higher education to which section 3309(a)(1) applies, compensation shall not be payable based on such service for any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such period) to any individual who has a contract to perform services in any such capacity for any institution of higher education for both such academic years or both such terms.

APPENDIX B

The following Organizations join in the foregoing testimony of the American Council on Education:

American Association of Junior Colleges
American Association of University Professors (as to faculty)
Association of American Universities
National Association of State Universities and Land-Grant Colleges
National Catholic Educational Association

Senator ANDERSON. We will meet at 10 o'clock tomorrow morning here.

(Whereupon, at 11:40 a.m., the hearing was recessed, to reconvene at 10 a.m., Wednesday, February 18, 1970.)

EXHIBIT D

Public Law 94-566
94th Congress

An Act

To require States to extend unemployment compensation coverage to certain previously uncovered workers; to increase the amount of the wages subject to the Federal unemployment tax; to increase the rate of such tax; and for other purposes.

Oct. 20, 1976
[H.R. 10210]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

Unemployment Compensation Amendments of 1976.
26 USC 3304 note.

This Act may be cited as the "Unemployment Compensation Amendments of 1976".

TITLE I—EXTENSION OF COVERAGE PROVISIONS

PART I—GENERAL PROVISIONS

SEC. 111. COVERAGE OF CERTAIN AGRICULTURAL EMPLOYMENT

(a) NONCASH REMUNERATION.—Section 3306(b) of the Internal Revenue Code of 1954 (defining wages) is amended by striking out "or" at the end of paragraph (9), by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; or", and by adding at the end thereof the following new paragraph: 26 USC 3306.

"(11) remuneration for agricultural labor paid in any medium other than cash.".

(b) COVERAGE OF AGRICULTURAL LABOR.—Paragraph (1) of section 3306(c) of such Code (defining employment) is amended to read as follows:

"(1) agricultural labor (as defined in subsection (k)) unless—

"(A) such labor is performed for a person who—

"(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (not taking into account labor performed before January 1, 1980, by an alien referred to in subparagraph (B)), or

"(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (not taking into account labor performed before January 1, 1980, by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

"(B) such labor is not agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;". 8 USC 1184, 1101.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date. 26 USC 3306 note.

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SEC. 112. TREATMENT OF CERTAIN FARMWORKERS.

26 USC 3306.

(a) GENERAL RULE.—Section 3306 of the Internal Revenue Code of 1954 (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(o) SPECIAL RULE IN CASE OF CERTAIN AGRICULTURAL WORKERS.—

"(1) CREW LEADERS WHO ARE REGISTERED OR PROVIDE SPECIALIZED AGRICULTURAL LABOR.—For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of such crew leader—

"(A) if—

"(i) such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or

7 USC 2041 note.

"(ii) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

"(B) if such individual is not an employee of such other person within the meaning of subsection (i).

"(2) OTHER CREW LEADERS.—For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (1)—

"(A) such other person and not the crew leader shall be treated as the employer of such individual; and

"(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

"(3) CREW LEADER.—For purposes of this subsection, the term 'crew leader' means an individual who—

"(A) furnishes individuals to perform agricultural labor for any other person,

"(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

"(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.".

26 USC 3306 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.

SEC. 113. COVERAGE OF DOMESTIC SERVICE.

(a) GENERAL RULE.—Paragraph (2) of section 3306(c) of the Internal Revenue Code of 1954 (defining employment) is amended to read as follows:

"(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date. 26 USC 3306 note.

SEC. 114. DEFINITION OF EMPLOYER.

(a) GENERAL RULE.—Subsection (a) of section 3306 of the Internal Revenue Code of 1954 (defining employer) is amended to read as follows: 26 USC 3306.

"(a) EMPLOYER.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'employer' means, with respect to any calendar year, any person who— "Employer."

"(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

"(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

"(2) AGRICULTURAL LABOR.—In the case of agricultural labor, the term 'employer' means, with respect to any calendar year, any person who—

"(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $20,000 or more for agricultural labor, or

"(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

"(3) DOMESTIC SERVICE.—In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term 'employer' means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of $1,000 or more for such service.

"(4) SPECIAL RULE.—A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service."

(b) TECHNICAL AMENDMENT.—Subsection (a) of section 6157 of such Code (relating to payment of Federal unemployment tax on quarterly or other time period basis) is amended to read as follows: 26 USC 6157.

"(a) GENERAL RULE.—Every person who for the calendar year is an employer (as defined in section 3306(a)) shall—

"(1) if the person is such an employer for the preceding calendar year (determined by only taking into account wages paid and employment during such preceding calendar year), compute the tax imposed by section 3301 for each of the first 3 calendar quarters in the calendar year on wages paid for services with respect to which the person is such an employer for such preceding calendar year (as so determined), and 26 USC 3301.

"(2) if the person is not such an employer for the preceding calendar year with respect to any services (as so determined), compute the tax imposed by section 3301 on wages paid for serv-

ices with respect to which the person is not such an employer for the preceding calendar year (as so determined)—

"(A) for the period beginning with the first day of the calendar year and ending with the last day of the calendar quarter (excluding the last calendar quarter) in which such person becomes such an employer with respect to such services, and

"(B) for the third calendar quarter of such year, if the period specified in subparagraph (A) includes only the first two calendar quarters of the calendar year.

Regulations. The tax for any calendar quarter or other period shall be computed as provided in subsection (b) and the tax as so computed shall, except as otherwise provided in subsections (c) and (d), be paid in such manner and at such time as may be provided in regulations prescribed by the Secretary."

26 USC 3306 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.

SEC. 115. COVERAGE OF CERTAIN SERVICE PERFORMED FOR NONPROFIT ORGANIZATIONS AND FOR STATE AND LOCAL GOVERNMENTS.

26 USC 3309. (a) GENERAL RULE.—Subparagraph (B) of section 3309(a)(1) of the Internal Revenue Code of 1954 (relating to State law requirements) is amended to read as follows:

"(B) service excluded from the term 'employment' solely by reason of paragraph (7) of section 3306(c); and".

26 USC 3306.

(b) EXCLUSION OF CERTAIN GOVERNMENT EMPLOYEES.—

(1) CERTAIN EMPLOYEES.—Paragraph (3) of section 3309(b) of such Code (relating to certain services to which section 3309 does not apply) is amended to read as follows:

"(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such service is performed by an individual in the exercise of his duties—

"(A) as an elected official;

"(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof;

"(C) as a member of the State National Guard or Air National Guard;

"(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

"(E) in a position which, under or pursuant to the State law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week;".

(2) INMATES.—Paragraph (6) of such section 3309(b) is amended to read as follows:

"(6) by an inmate of a custodial or penal institution.".

(c) TECHNICAL ADJUSTMENTS.—

26 USC 3304. (1) Subparagraph (A) of section 3304(a)(6) of such Code is amended by striking out "except that" and all that follows down through ", and" at the end thereof and inserting in lieu thereof the following: "except that—

"(i) with respect to services in an instructional research, or principal administrative capacity for an educational insti-

tution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and 26 USC 3309.

"(ii) with respect to services in any other capacity for an educational institution (other than an institution of higher education) to which section 3309(a)(1) applies, compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, and".

(2) Subsection (d) of section 3309 of such Code is hereby repealed. Repeal. 26 USC 3309.

(3) The section heading of section 3309 of such Code is amended to read as follows:

"SEC. 3309. STATE LAW COVERAGE OF SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS OR GOVERNMENTAL ENTITIES.".

(4) The table of sections for chapter 23 of such Code is amended by striking out the item relating to section 3309 and inserting in lieu thereof the following:

"Sec. 3309. State law coverage of services performed for nonprofit organizations or governmental entities.".

(5) Section 3304 of such Code is amended by adding at the end thereof the following new subsection: 26 USC 3304.

"(f) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—For purposes of subsection (a)(6), the term 'institution of higher education' means an educational institution in any State which— "Institution of higher education."

"(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

"(2) is legally authorized within such State to provide a program of education beyond high school;

"(3) provides an educational program for it which awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

"(4) is a public or other nonprofit institution."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to certifications of States for 1978 and subsequent years, but only with respect to services performed after December 31, 1977. 26 USC 3304 note.

SEC. 116. EXTENSION OF FEDERAL UNEMPLOYMENT COMPENSATION LAW TO THE VIRGIN ISLANDS.

(a) AMENDMENT OF THE SOCIAL SECURITY ACT.—Paragraph (1) of section 1101(a) of the Social Security Act is amended by inserting after the first sentence the following new sentence: "Such term when used in titles III, IX, and XII also includes the Virgin Islands.".

42 USC 1301

42 USC 501, 1101, 1321.

(b) AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954.—

26 USC 3306.

(1) Section 3306(c) of the Internal Revenue Code of 1954 (defining employment) is amended by striking out "or in the Virgin Islands" in the portion of such section which precedes paragraph (1) thereof.

(2) Section 3306(j) of such Code is amended to read as follows:

Definitions.

"(j) STATE, UNITED STATES, AND AMERICAN EMPLOYER.—For purposes of this chapter—

"(1) STATE.—The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

"(2) UNITED STATES.—The term 'United States' when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

"(3) AMERICAN EMPLOYER.—The term 'American employer' means a person who is—

"(A) an individual who is a resident of the United States,

"(B) a partnership, if two-thirds or more of the partners are residents of the United States,

"(C) a trust, if all of the trustees are residents of the United States, or

"(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.".

(c) AMENDMENT RELATING TO THE FEDERAL EMPLOYMENT SERVICE.—Section 5(b) of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States for the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49d(b)), is amended by striking out "Guam and the Virgin Islands" and inserting in lieu thereof "Guam".

(d) AMENDMENTS RELATING TO EXTENDED AND EMERGENCY BENEFITS.—

26 USC 3304 note.

(1) Section 202(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by striking out "the Virgin Islands or".

26 USC 3304 note.

(2) Paragraph (8) of section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended to read as follows:

"(8) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.".

26 USC 3304 note.

(3) Section 102(b)(1)(C) of the Emergency Unemployment Compensation Act of 1974 is amended by striking out "the Virgin Islands or".

(e) AMENDMENTS RELATING TO FEDERAL UNEMPLOYMENT COMPENSATION.—

(1) Paragraph (6) of section 8501 of title 5, United States Code, is amended to read as follows:

"(6) 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands; and".

(2) Section 8503 of title 5, United States Code is amended—

(A) by striking out subsections (b) and (d);

(B) by redesignating subsection (c) as subsection (b); and

(C) by striking out "subsection (a) or (b)" in subsection (b) (as so redesignated) and inserting in lieu thereof "subsection (a)".

(3) Section 8504 of title 5, United States Code, is amended—

(A) by adding "and" at the end of paragraph (1);

(B) by striking out "; and" at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) by striking out paragraph (3).

(4) Paragraph (3) of section 8521 of title 5 United States Code, is amended to read as follows:

"(3) 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands."

(5) Section 8522 of title 5, United States Code, is amended by striking out "or to the Virgin Islands, as the case may be,".

(f) EFFECTIVE DATES.—

(1) SUBSECTIONS (a), (c), AND (d).—The amendments made by subsections (a), (c), and (d) shall take effect on the later of October 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted to him by the Virgin Islands for approval. 26 USC 3304 note. 26 USC 3304.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply with respect to remuneration paid after December 31 of the year in which the Secretary of Labor approves for the first time an unemployment compensation law submitted to him by the Virgin Islands for approval, for services performed after such December 31.

(3) SUBSECTION (e).—The amendments made by subsection (e) shall apply with respect to benefit years beginning on or after the later of October 1, 1976, or the first day of the first week for which compensation becomes payable under an unemployment compensation law of the Virgin Islands which is approved by the Secretary of Labor under section 3304(a) of the Internal Revenue Code of 1954.

(g) TRANSFER OF FUNDS.—The Secretary of Labor shall not approve an unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1954 until the Governor of the Virgin Islands has approved the transfer to the Federal Unemployment Trust Fund established by section 904 of the Social Security Act of an amount equal to the dollar balance credited to the unemployment subfund of the Virgin Islands established under section 310 of title 24 of the Virgin Islands Code. 26 USC 3304 note. 42 USC 1104.

PART II—TRANSITIONAL PROVISIONS

SEC. 121. FEDERAL REIMBURSEMENT FOR BENEFITS PAID TO NEWLY COVERED WORKERS DURING TRANSITION PERIOD. 26 USC 3304 note.

(a) GENERAL RULE.—If any State, the unemployment compensation law of which is approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1954, provides for the payment of compensation for any week of unemployment beginning on or after January 1, 1978, on the basis of previously uncovered services, the

Secretary shall pay to the unemployment fund of such State an amount equal to the Federal reimbursement for any compensation paid for a week of unemployment beginning on or after January 1, 1978, to any individual whose base period wages include wages for previously uncovered services.

"Previously uncovered services."

(b) PREVIOUSLY UNCOVERED SERVICES.—For purposes of this section, the term "previously uncovered services" means, with respect to any State, services—

(1) which were not covered by the State unemployment compensation law, at any time, during the 1-year period ending December 31, 1975; and

(2) which—

26 USC 3306.

(A) are agricultural labor (as defined in section 3306(k) of the Internal Revenue Code of 1954) or domestic services referred to in section 3306(c)(2) of such Code (as in effect on the day before the date of the enactment of this Act) and are treated as employment (as defined in section 3306 (c) of such Code) by reason of the amendments made by this Act, or

26 USC 3309.

(B) are services to which section 3309(a)(1) of such Code applies by reason of the amendments made by this Act.

(c) FEDERAL REIMBURSEMENT.—

(1) IN GENERAL.—For purposes of this section, the Federal reimbursement for compensation paid to any individual for any week of unemployment shall be an amount which bears the same ratio to the amount of such compensation as the amount of the individual's base period wages which are attributable to previously uncovered services which are reimbursable bears to the total amount of the individual's base period wages.

(2) REIMBURSABLE SERVICES.—For purposes of determining the amount of the Federal reimbursement for compensation paid to any individual for any week of unemployment, previously uncovered services shall be treated as being reimbursable—

(A) if such services were performed—

(i) before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978; or

(ii) before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978; and

26 USC 3304 note.

(B) to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was not paid to such individual on the basis of such services.

(3) DENIAL OF PAYMENT.—No payment may be made under subsection (a) to any State in respect of any compensation for which the State is entitled to any reimbursement under the provisions of any Federal law other than this Act or the Federal-State Extended Unemployment Compensation Act of 1970.

26 USC 3304 notes.

(d) EXPERIENCE RATING OF CERTAIN EMPLOYERS.—The unemployment compensation law of any State may, without being deemed to violate the standards set forth in section 3303(a) of the Internal

26 USC 3303.

Revenue Code of 1954, provide that the experience-rating account of any employer shall not be charged for the compensation paid to any individual whose base period wages includes wages for previously uncovered services which are reimbursable under subsection (c)(2) to the extent that such individual would not have been eligible to receive such compensation had the State law not provided for the pay-

ment of compensation on the basis of such previously uncovered services.

(e) CERTAIN NONPROFIT EMPLOYERS.—The unemployment compensation law of any State may provide that any organization which elects to make payments (in lieu of contributions) into the State unemployment compensation fund as provided in section 3309(a)(2) of the Internal Revenue Code of 1954 shall not be liable to make such payments with respect to the compensation paid to any individual whose base period wages includes wages for previously uncovered services which are reimbursable under subsection (c)(2) to the extent that such individual would not have been eligible to receive such compensation had the State not provided for the payment of compensation on the basis of such previously uncovered services. 26 USC 3309.

(f) PAYMENTS MADE MONTHLY.—Payments under subsection (a) shall be made monthly, prior to audit or settlement by the General Accounting Office, on the basis of estimates by the Secretary of the amount payable to such State for such month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior month were greater or less than the amounts which should have been paid to such State. Such estimates may be made on the basis of such statistical, sampling, or other methods as may be agreed upon by the Secretary and the State.

(g) DEFINITIONS.—For purposes of this section—

(1) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(3) BENEFIT YEAR.—The term "benefit year" means the benefit year as defined in the applicable State unemployment compensation law.

(4) BASE PERIOD.—The term "base period" means the base period as defined by the applicable State unemployment compensation law for the benefit year.

(5) UNEMPLOYMENT FUND.—The term "unemployment fund" has the meaning given to such term by section 3306(f) of the Internal Revenue Code of 1954. 26 USC 3306.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the general fund of the Treasury such sums as may be necessary to carry out the purposes of this section.

SEC. 122. TRANSITIONAL RULES IN CASE OF NONPROFIT ORGANIZATIONS.

(a) CREDIT FOR PRIOR CONTRIBUTIONS.—Section 3303 of the Internal Revenue Code of 1954 (relating to conditions of additional credit allowance) is amended by adding at the end thereof the following new subsection: 26 USC 3303.

"(g) TRANSITIONAL RULE FOR UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976.—To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies by reason of the enactment of the Unemployment Compensation Amendments of 1976, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law with respect to such service, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before the date of the enactment of this subsection, is not *Ante*, p. 2667.

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required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to such service performed in its employ, until the total of such compensation equals the amount—

"(1) by which the contributions paid by such organization (or group) on the basis of wages for such service with respect to a period before the election provided by section 3309(a)(2), exceed

26 USC 3309.

"(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of such service performed in its employ or wages paid for such service, whichever is appropriate.".

26 USC 3303.

(b) TECHNICAL AMENDMENT.—Section 3303(f) of such Code (relating to transition to coverage of certain services) is amended by striking out "which elects, when such election first becomes available under the State law," and inserting in lieu thereof "which elects before April 1, 1972,".

26 USC 3303 note.

(c) EFFECTIVE DATES.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act. The amendment made by subsection (b) shall take effect on January 1, 1970.

TITLE II—FINANCING PROVISIONS

SEC. 211. INCREASE IN FEDERAL UNEMPLOYMENT TAX WAGE BASE AND RATE.

(a) INCREASE IN WAGE BASE.—Paragraph (1) of section 3306(b) of the Internal Revenue Code of 1954 (defining wages) is amended by striking out "$4,200" each place it appears and inserting in lieu thereof "$6,000".

26 USC 3306.

26 USC 3301.

(b) INCREASE IN TAX RATE.—Section 3301 of such Code (relating to rate of Federal unemployment tax) is amended to read as follows:

"SEC. 3301. RATE OF TAX.

"There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

"(1) 3.4 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployed compensation account (established by section 905(a) of the Social Security Act); or

42 USC 1105.

"(2) 3.2 percent, in the case of such first calendar year and each calendar year thereafter;

of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).".

(e) TECHNICAL AMENDMENTS.—

(1) Subparagraph (C) of section 901(c)(3) of the Social Security Act is amended to read as follows:

42 USC 1101.

"(C) Each estimate of net receipts under this paragraph shall be based upon (i) a tax rate of 0.5 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 3.2 percent, and (ii) a tax rate of 0.7 percent in the case of any calendar year for which the rate of tax under such section 3301 is 3.4 percent.".

26 USC 3301.

(2) The last sentence of section 905(b)(1) of such Act is amended to read as follows: "In the case of any month after March 1977 and before April of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting 'five-fourteenths' for 'one-tenth'.". 42 USC 1105. 26 USC 3301.

(3) The last sentence of section 6157(b) of the Internal Revenue Code of 1954 is amended to read as follows: "In the case of wages paid in any calendar quarter or other period during a calendar year to which paragraph (1) of section 3301 applies, the amount of such wages shall be multiplied by 0.7 percent in lieu of 0.5 percent.". 26 USC 6157.

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1977. 26 USC 3306 note.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to remuneration paid after December 31, 1976. 26 USC 3301 note.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on the date of the enactment of this Act. 42 USC 1101 note.

SEC. 212. DENIAL OF CERTAIN PAYMENTS UNDER THE EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM.

(a) IN GENERAL.—Subsection (a) of section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new paragraph: 26 USC 3304 note.

"(4) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which section 3306(c)(7) of the Internal Revenue Code of 1954 applies shall be reduced by an amount which bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.". 26 USC 3306.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to compensation paid for weeks of unemployment beginning on or after January 1, 1979.

SEC. 213. ADVANCES TO STATE UNEMPLOYMENT FUNDS.

(a) ADVANCES TO BE MADE FOR 3-MONTH PERIODS.—Paragraph (1) of section 1201(a) of the Social Security Act is amended— 42 USC 1321.

(1) by striking out "any month" and inserting in lieu thereof "any 3-month period";

(2) by striking out "the preceding month" and inserting in lieu thereof "the month preceding the first month of such 3-month period"; and

(3) by striking out "such month" and inserting in lieu thereof "each month of such 3-month period".

(b) APPLICATIONS.—Paragraph (2) of such section 1201(a) is amended—

(1) by striking out "any month" each place it appears and inserting in lieu thereof "any 3-month period", and

(2) by striking out "such month" each place it appears and inserting in lieu thereof "each month of such 3-month period".

(c) Section 1201(b) of such Act is amended—

(1) by inserting "in monthly installments" immediately after "transfer" where it first appears therein, and

(2) by adding at the end thereof the following new sentence: "The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.".

42 USC 1321 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 214. PRORATION OF COSTS OF CLAIMS FILED JOINTLY UNDER STATE LAW AND SECTION 8505 OF TITLE 5, UNITED STATES CODE.

(a) GENERAL RULE.—Section 8505(a) of title 5, United States Code, is amended to read as follows:

"(a) Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages in his base period bears to the total amount of his base period wages."

(b) TECHNICAL AMENDMENT.—Section 8501 of title 5, United States Code, is amended by striking out "and" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(8) 'base period' means the base period as defined by the applicable State unemployment compensation law for the benefit year."

5 USC 8501 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with regard to compensation paid on the basis of claims for compensation filed on or after July 1, 1977.

TITLE III—BENEFIT PROVISIONS

SEC. 311. AMENDMENTS TO THE TRIGGER PROVISIONS OF THE EXTENDED PROGRAM.

(a) NATIONAL "ON" AND "OFF" INDICATORS.—Subsection (d) of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended to read as follows:

26 USC 3304 note.

"(d) For purposes of this section—

"(1) There is a national 'on' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States equaled or exceeded 4.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period).

"(2) There is a national 'off' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States was less than 4.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period).".

(b) STATE "ON" AND "OFF" INDICATORS.—Subsection (e) of section 203 of such Act is amended to read as follows:

"(e) For purposes of this section—

"(1) There is a State 'on' indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

"(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

"(B) equaled or exceeded 4 per centum.

"(2) There is a State 'off' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied.

Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law), the State may by law provide that the determination of whether there has been a State 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the figure '4' contained in subparagraph (B) thereof were '5'; except that, notwithstanding any such provision of State law, any week for which there would otherwise be a State 'on' indicator shall continue to be such a week and shall not be determined to be a week for which there is a State 'off' indicator. For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall apply to weeks beginning after December 31, 1976, and the amendments made by subsection (b) of this section shall apply to weeks beginning after March 30, 1977.

SEC. 312. PREGNANCY DISQUALIFICATIONS.

(a) GENERAL RULE.—Paragraph (12) of section 3304(a) of the Internal Revenue Code of 1954 (relating to requirements for approval of State unemployment compensation laws) is amended to read as follows: 26 USC 3304.

"(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;".

(b) TECHNICAL AMENDMENT.—Subsection (c) of section 3304 of such Code (relating to certification of State unemployment compensation laws) is amended by adding at the end thereof the following new sentence: "On October 31 of any taxable year after 1977, the Secretary shall not certify any State which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Unemployment Compensation Amendments of 1976 to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to certifications of States for 1978 and subsequent years. 26 USC 3304 note.

SEC. 313. REPEAL OF FINALITY PROVISION.

(a) GENERAL RULE.—Section 8506(a) of title 5, United States Code, is amended by striking out the fifth sentence.

5 USC 8506 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to findings made after the date of the enactment of this Act.

SEC. 314. DENIAL OF UNEMPLOYMENT COMPENSATION TO ATHLETES, ILLEGAL ALIENS, AND RECIPIENTS OF RETIREMENT BENEFITS.

26 USC 3304.

(a) GENERAL RULE.—Subsection (a) of section 3304 of the Internal Revenue Code of 1954 (relating to requirements for approval of State unemployment compensation laws) is amended by redesignating paragraph (13) as paragraph (16) and by inserting after paragraph (12) the following new paragraphs:

"(13) 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 which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

"(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is 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),

8 USC 1153, 1182.

"(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, and

"(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 his alien status shall be made except upon a preponderance of the evidence;

"(15) the amount of compensation payable to an individual for any week which begins after September 30, 1979, 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 pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week;".

26 USC 3304 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to certifications of States for 1978 and subsequent years, or for 1979 and subsequent years in the case of States the legislatures of which do not meet in a regular session which closes in the calendar year 1977.

TITLE IV—NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

SEC. 411. NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION. 26 USC 3304 note.

(a) ESTABLISHMENT OF COMMISSION.—There is established a National Commission on Unemployment Compensation (hereinafter in this section referred to as the "Commission") which shall consist of thirteen members who shall be appointed as follows:

(1) Three members appointed by the President pro tempore of the Senate.

(2) Three members appointed by the Speaker of the House of Representatives.

(3) Seven members appointed by the President.

In making appointments under the preceding sentence, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the President shall consult with each other to insure that there will be a balanced representation of interested parties on the Commission. The Commission shall consist of at least one representative of labor, industry, the Federal Government, State government, local government, and small business. The President shall designate one of the members to serve as Chairman of the Commission. Seven members shall constitute a quorum. Any vacancies in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(b) DUTIES OF THE COMMISSION.—The Commission shall study and evaluate the present unemployment compensation programs in order to assess the long-range needs of the programs, to develop alternatives, and to recommend changes in the programs. Such study and evaluation shall include, without being limited to—

(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 programs; including railroad unemployment insurance;

(3) examination of issues and alternatives concerning the relationship of unemployment compensation 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 unemployment compensation 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 unemployment compensation programs and manpower training and employment programs;

(7) examination of the appropriate role of unemployment compensation in income maintenance and its relationship to other social insurance and income maintenance programs;

(8) conduct of such surveys, hearings, research, and other activities as it deems necessary to enable it to formulate 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 problem which results 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 unemployment insurance program.

(c) POWERS OF THE COMMISSION.—

(1) HEARINGS.—The Commission, or, on the authorization of the Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this section, hold such hearing, take such testimony, receive such evidence, take such oaths and sit and act at such times and places as the Commission may deem appropriate and may administer oaths or affirmations to witnesses appearing before the Commission or any subcommittee or members thereof.

(2) STAFF.—Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(A) appoint and fix the compensation of an executive director, and such additional personnel as he deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the executive director may not receive pay in excess of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of such title and any additional personnel may not receive pay in excess of the maximum annual rate of basic pay in effect for grade GS-15 of such General Schedule, and

5 USC 5101, 5332 note.

(B) obtain temporary and intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

(3) CONTRACTS.—The Commission is authorized to negotiate and enter into contracts with organizations, institutions, and individuals to carry out such studies, surveys, or research and prepare such reports as the Commission determines are necessary in order to carry out its duties.

(d) COOPERATION OF OTHER FEDERAL AGENCIES.—

(1) INFORMATION.—Each department, agency, and instrumentality of the Federal Government is authorized and directed to

furnish to the Commission, upon request made by the Chairman, and to the extent permitted by law, such data, reports, and other information as the Commission deems necessary to carry out its functions under this section.

(2) SERVICES.—The head of each department or agency of the Federal Government is authorized to provide to the Commission such services as the Commission requests on such basis, reimbursable and otherwise, as may be agreed between the department or agency and the Chairman of the Commission. All such requests shall be made by the Chairman of the Commission.

(3) DEPARTMENT OF LABOR.—The Department of Labor shall provide support for the Commission and shall perform such other functions with respect to the Commission as may be required by the provisions of the Federal Advisory Committee Act.

(e) PAY AND TRAVEL EXPENSES.—

(1) MEMBERS SERVE WITHOUT PAY.—Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(f) INTERIM REPORT.—The Commission shall transmit to the Congress not later than March 31, 1978, an interim report.

(g) FINAL REPORT.—The Commission shall transmit to the President and the Congress not later than January 1, 1979, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

(h) TERMINATION.—On the ninetieth day after the date of submission of its final report to the President, the Commission shall cease to exist.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. REFERRAL OF BLIND AND DISABLED INDIVIDUALS UNDER AGE 16, WHO ARE RECEIVING BENEFITS UNDER THE SUPPLEMENTAL SECURITY INCOME PROGRAM, FOR APPROPRIATE REHABILITATION SERVICES.

(a) IN GENERAL.—Section 1615 of the Social Security Act is amended to read as follows: 42 USC 1382d.

"REHABILITATION SERVICES FOR BLIND AND DISABLED INDIVIDUALS

"SEC. 1615. (a) In the case of any blind or disabled individual who—

"(1) has not attained age 65, and

"(2) is receiving benefits (or with respect to whom benefits are paid) under this title,

the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for voca-

29 USC 31 note.

tional rehabilitation services approved under the Vocational Rehabilitation Act, or, in the case of any such individual who has not attained age 16, to the appropriate State agency administering the State plan under subsection (b) of this section, and (except in such cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.

Criteria by regulation.

"(b)(1) The Secretary shall by regulation prescribe criteria for approval of State plans for—

"(A) assuring appropriate counseling for disabled children referred pursuant to subsection (a) and their families,

"(B) establishment of individual service plans for such disabled children, and prompt referral to appropriate medical, educational, and social services,

"(C) monitoring to assure adherence to such service plans, and

"(D) provision for such disabled children who are 6 years of age and under, or who have never attended public school and require preparation to take advantage of public educational services, of medical, social, developmental, and rehabilitative services, in cases where such services reasonably promise to enhance the child's ability to benefit from subsequent education or training, or otherwise to enhance his opportunities for self-sufficiency or self-support as an adult.

"(2) Such criteria shall include—

"(A) administration—

"(i) by the agency administering the State plan for crippled children's services under title V of this Act, or

"(ii) by another agency which administers programs providing services to disabled children and which the Governor of the State concerned has determined is capable of administering the State plan described in the first sentence of this subsection in a more efficient and effective manner than the agency described in clause (i) (with the reasons for such determination being set forth in the State plan described in the first sentence of this subsection);

"(B) coordination with other agencies serving disabled children; and

"(C) establishment of an identifiable unit within such agency which shall be responsible for carrying out the plan.

"(c) Every individual age 16 or over with respect to whom the Secretary is required to make provision for referral under subsection (a) shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under the Vocational Rehabilitation Act; and no such individual shall be an eligible individual or eligible spouse for purposes of this title if he refuses without good cause to accept services for which he is referred under subsection (a).

"(d) The Secretary is authorized to pay to the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act the costs incurred under such plan in the provision of rehabilitation services to individuals referred for such services pursuant to subsection (a).

"(e)(1) The Secretary shall, subject to the limitations imposed by paragraphs (2) and (3), pay to the State agency administering a State plan of a State under subsection (b) of this section, the costs incurred

each fiscal year which begins after September 30, 1976, and ends prior to October 1, 1979, in carrying out the State plan approved pursuant to such subsection (b).

"(2) (A) Of the funds paid by the Secretary with respect to costs, incurred in any State, to which paragraph (1) applies, not more than 10 per centum thereof shall be paid with respect to costs incurred with respect to activities described in subsection (b) (1) (A), (B), and (C).

"(B) Whenever there are provided pursuant to this section to any child services of a type which is appropriate for children who are not blind or disabled, there shall be disregarded for purposes of computing any payment with respect thereto under this subsection, so much of the costs of such services as would have been incurred if the child involved had not been blind or disabled.

"(C) The total amount payable under this subsection for any fiscal year, with respect to services provided in any State, shall be reduced by the amount by which the sum of the public funds expended (as determined by the Secretary) from non-Federal sources for services of the type involved for such fiscal year is less than the sum of such funds expended from such sources for services of such type for the fiscal year ending June 30, 1976.

"(3) No payment under this subsection with respect to costs incurred in providing services in any State for any fiscal year shall exceed an amount which bears the same ratio to $30,000,000 as the under age 7 population of such State (and for purposes of this section the District of Columbia shall be regarded as a State) bears to the under age 7 population of the fifty States and the District of Columbia. The Secretary shall promulgate the limitation applicable to each State for each fiscal year under this paragraph on the basis of the most recent satisfactory data available from the Department of Commerce not later than 90 nor earlier than 270 days before the beginning of such year."

(b) PUBLICATION OF CRITERIA.—The Secretary shall, within 120 days after the enactment of this subsection, publish criteria to be employed to determine disability (as defined in section 1614(a)(3) of the Social Security Act) in the case of persons who have not attained the age of 18. 42 USC 1382d note. 42 USC 1382c.

SEC. 502. INCOME OF EACH MEMBER OF MARRIED COUPLE TO BE APPLIED SEPARATELY IN DETERMINING SSI BENEFIT PAYMENTS WHEN ONE OF THEM IS IN AN INSTITUTION.

Section 1611(e)(1)(B)(ii) of the Social Security Act is amended to read as follows: 42 USC 1382.

"(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home or facility throughout such month, at a rate not in excess of the sum of—

"(I) the rate of $300 per year (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the one who is in such hospital, home, or facility), and 42 USC 1382a.

"(II) the applicable rate specified in subsection (b)(1) (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the other); and".

SEC. 503. PRESERVATION OF MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO CEASE TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS ON ACCOUNT OF COST-OF-LIVING INCREASES IN SOCIAL SECURITY BENEFITS. 42 USC 1396a note.

In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social

42 USC 1396. Security Act, there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under title II of such Act but is not eligible for benefits under title XVI of such Act, in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act which have occurred pursuant to section 215(i) of such Act, in the case of such individual, since the last month after April 1977 for which such individual was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II, and, in the case of such individual's spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act or of the type described in section 212(a) of Public Law 93-66 shall be deemed to be benefits under title XVI of the Social Security Act.

42 USC 401.
42 USC 1381.
42 USC 1382e.
87 Stat. 155.

SEC. 504. STATE SUPPLEMENTATION OF BENEFITS UNDER SUPPLEMENTAL SECURITY INCOME PROGRAM.

(a) LIMITATION ON STATE COSTS.—Section 401(a)(2) of the Social Security Amendments of 1972 is amended—

42 USC 1382e note.

(1) by inserting "(subject to the second sentence of this paragraph)" immediately after "Act" where it first appears in subparagraph (B), and

(2) by adding at the end thereof the following new sentence: "In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977, and before July 1, 1979.".

(b) EFFECTIVE DATE.—The provisions of this section shall be effective with respect to benefits payable for months after June 1977.

SEC. 505. ELIGIBILITY OF INDIVIDUALS IN CERTAIN INSTITUTIONS.

42 USC 1382. (a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act is amended by striking out "subparagraph (B)" in subparagraph (A) and inserting in lieu thereof "subparagraph (B) and (C)"; and by adding at the end thereof the following new subparagraph:

"Public institution." "(C) As used in subparagraph (A), the term 'public institution' does not include a publicly operated community residence which serves no more than 16 residents.".

42 USC 1382a. (b) CONFORMING AMENDMENT.—Section 1612(b)(6) of such Act is amended by striking out "assistance described in section 1616(a) which" and inserting in lieu thereof "assistance, furnished to or on behalf of such individual (and spouse), which".

(c) REPEAL OF LIMITATION ON PAYMENT.—Section 1616(e) of such Act is repealed. Repeal. 42 USC 1382e.

(d) STATES TO ESTABLISH STANDARDS.—Effective October 1, 1977, section 1616(e) of such Act is amended to read as follows: State standards.

"(e)(1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. Such standards shall be appropriate to the needs of such recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.

"(2) Each State shall annually make available for public review, as a part of the services program planning procedures established pursuant to section 2004 of this Act, a summary of the standards established pursuant to paragraph (1), and shall make available to any interested individual a copy of such standards, along with the procedures available in the State to insure the enforcement of such standards and a list of any waivers of such standards and any violations of such standards which have come to the attention of the authority responsible for their enforcement. Annual public review. 42 USC 1397c.

"(3) Each State shall certify annually to the Secretary that it is in compliance with the requirements of this subsection. Annual certification.

"(4) Payments made under this title with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a)) or other payment made by a State (or political subdivision thereof) which is made for or on account of any medical or any other type of remedial care provided by an institution of the type described in paragraph (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards described in such paragraph by the appropriate State or local authorities.". Payments to individuals.

(e) EFFECTIVE DATE.—The amendments and repeals made by this section, unless otherwise specified therein, shall take effect on October 1, 1976. 42 USC 1382 note.

SEC. 506. ELECTION OF LOCAL GOVERNMENTS TO USE REIMBURSEMENT METHOD.

(a) IN GENERAL.—Paragraph (2) of section 3309(a) of the Internal Revenue Code of 1954 (relating to State law requirements) is amended— 26 USC 3309.

(1) by striking out "an organization" and inserting in lieu thereof "a governmental entity or any other organization",

(2) by striking out "paragraph (1)(A)" and inserting in lieu thereof "paragraph (1)", and

(3) by striking out "that organizations" and inserting in lieu thereof "that governmental entities or other organizations".

(b) TECHNICAL AMENDMENT.—Subparagraph (B) of section 3304(a)(6) of such Code is amended by striking out "section 3309(a)(1)(A)" and inserting in lieu thereof "section 3309(a)(1)". 26 USC 3304.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to certifications of States for 1978 and subsequent years, but only with respect to services performed after December 31, 1977. 26 USC 3304 note.

SEC. 507. AFDC BENEFITS WHERE UNEMPLOYED FATHER RECEIVES UNEMPLOYMENT COMPENSATION.

42 USC 607.

(a) IN GENERAL.—Section 407(b)(2) of the Social Security Act is amended—

(1) by striking out "and" at the end of subparagraph (B); and

(2) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a)—

"(i) if and for so long as such child's father, unless exempt under section 402(a)(19)(A), is not registered pursuant to such section for the work incentive program established under part C of this title, or, if he is exempt under such section by reason of clause (iii) thereof or no such program in which he can effectively participate has been established or provided under section 432(a), is not registered with the public employment offices in the State, and

"(ii) with respect to any week for which such child's father qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States, but refuses to apply for or accept such unemployment compensation; and

"(D) for the reduction of the aid to families with dependent children otherwise payable to any child or relative specified in subsection (a) by the amount of any unemployment compensation that such child's father receives under an unemployment compensation law of a State or of the United States.".

(b) CONFORMING PROVISION.—Section 407(d)(3) of such Act is amended by inserting ", for purposes of section 407(b)(1)(C)," before "be deemed".

42 USC 607 note.

(c) EFFECTIVE DATE.—The amendments made by the preceding provisions of this section shall be effective with respect to months after (and weeks beginning in months after) the date of the enactment of this Act.

(d) SIMPLIFICATION OF PROCEDURES.—Section 407 of the Social Security Act is further amended by adding at the end thereof the following new subsection:

"(e) The Secretary of Health, Education, and Welfare and the Secretary of Labor shall jointly enter into an agreement with each State which is able and willing to do so for the purpose of (1) simplifying the procedures to be followed by unemployed fathers and other unemployed persons in such State in registering pursuant to section 402(a)(19) for the work incentive program established by part C of this title and in registering with public employment offices (under this section and otherwise) or in connection with applications for unemployment compensation, by reducing the number of locations or agencies where such persons must go in order to register for such programs and in connection with such applications, and (2) providing where possible for a single registration satisfying this section and the requirements of both the work incentive program and the applicable unemployment compensation laws.".

42 USC 602.
42 USC 630 *et seq.*

SEC. 508. STATE EMPLOYMENT OFFICES TO SUPPLY DATA IN AID OF ADMINISTRATION OF AFDC AND CHILD SUPPORT PROGRAMS.

(a) IN GENERAL.—Section 3(a) of the Act entitled "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 (29 U.S.C. 49b(a)), is amended by adding at the end thereof the following new sentence: "It shall be the further duty of the bureau to assure that such employment offices in each State, upon request of a public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act or of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act, shall (and, notwithstanding any other provision of law, is hereby authorized to) furnish to such agency making the request, from any data contained in the files of any such employment office, information with respect to any individual specified in the request as to (A) whether such individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, (B) the current (or most recent) home address of such individual, and (C) whether such individual has refused an offer of employment and, if so, a description of the employment so offered and terms, conditions, and rate of pay therefor.". 42 USC 601 *et seq.* 42 USC 651 *et seq.*

(b) PROVISION FOR REIMBURSEMENT OF EXPENSES.—For purposes of section 403 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 3(a) of the Act entitled "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 (29 U.S.C. 49b(a), by a State or local agency administering a State plan approved under part A of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 455 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan. 42 USC 603a 42 USC 655.

TITLE VI—SPECIAL UNEMPLOYMENT ASSISTANCE AMENDMENTS

SEC. 601. EXTENSION OF SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAM.

(a) Section 208 of the Emergency Jobs and Unemployment Assistance Act of 1974 is amended to read as follows: 26 USC 3304 note.

"TERMINATION DATE

"SEC. 208. Notwithstanding any other provision of this part, no payment of assistance under this part shall be made to any individual with respect to any week of unemployment ending after June 30,

1978; and no individual shall be entitled to any assistance under this part with respect to any initial claim for assistance or waiting period credit which is effective in a week beginining after December 31, 1977.".

SEC. 602. ELIMINATION OF SPECIAL BASE PERIOD FOR PAYMENTS OF SPECIAL UNEMPLOYMENT ASSISTANCE.

26 USC 3304 note.

(a) Paragraph (1) of section 203(a) of the Emergency Jobs and Unemployment Assistance Act of 1974 is amended by striking out "*Provided*, That" and all that follows down through "; and" at the end thereof and inserting in lieu thereof the following: "*Provided*, That the individual meets the qualifying employment and wage requirements of the applicable State unemployment compensation law in the base period; and, for purposes of this proviso, employment and wages which are not covered by the State law shall be treated as though they were covered, except that employment and wages covered by any State or Federal unemployment compensation law, including the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.), shall be excluded to the extent that the individual is or was entitled to compensation for unemployment thereunder on the basis of such employment and wages; and".

(b) Subsection (a) of section 205 of such Act is amended by striking out "law: *Provided*, That" and all that follows down through the period at the end thereof and inserting in lieu thereof the following: "law. For purposes of the preceding sentence, employment and wages which are not covered by the applicable State unemployment compensation law shall be treated as though they were covered, except that employment and wages covered by any State or Federal unemployment compensation law, including the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.), shall be excluded to the extent that the individual is or was entitled to compensation for unemployment thereunder on the basis of such employment and wages.".

(c) Subsection (a) of section 206 of such Act is amended by striking out "section 205: *Provided*, That" and all that follows down through the period at the end thereof and inserting in lieu thereof the following: "section 205. For purposes of the preceding sentence, employment and wages which are not covered by the applicable State unemployment compensation law shall be treated as though they were covered, except that employment and wages covered by any State or Federal unemployment compensation law, including the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.), shall be excluded to the extent that the individual is or was entitled to compensation for unemployment thereunder on the basis of such employment and wages.".

(d) Subsection (a) of section 210 of such Act is amended—

(1) by striking out "and" at the end of paragraph (5); and

(2) by striking out paragraph (6) and inserting in lieu thereof the following:

"(6) 'special unemployment assistance benefit year' means the benefit year as defined by the applicable State unemployment compensation law; and

"(7) 'base period' means the base period as determined under the applicable State unemployment compensation law.".

Applicability

(e) The amendments made by this section shall apply with respect to benefit years beginning after December 31, 1976. In the case of any benefit year of an individual which begins after December 31, 1976, for purposes of sections 203(a)(1), 205(a), and 206(a) of the Emergency Jobs and Unemployment Assistance Act of 1974, there shall not

be taken into account any employment and wages to the extent that such individual was entitled on the basis of such employment and wages to assistance under such Act during a benefit year beginning before January 1, 1977.

SEC. 603. DENIAL OF SPECIAL UNEMPLOYMENT ASSISTANCE TO NON-PROFESSIONAL EMPLOYEES OF EDUCATIONAL INSTITUTIONS DURING PERIODS BETWEEN ACADEMIC TERMS.

(a) Section 203 of the Emergency Jobs and Unemployment Assistance Act of 1974 is amended by adding at the end thereof the following new subsection: 26 USC 3304 note.

"(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if—

"(1) such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

"(2) there is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or terms."

(b) The amendment made by subsection (a) shall apply to weeks of unemployment beginning after the date of the enactment of this Act. Applicability

SEC. 604. MODIFICATION OF AGREEMENTS.

The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 a modification of such agreement designed to provide for the payment of special unemployment assistance under such Act in accordance with the amendments made by sections 601, 602, and 603 of this title. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such three-week period. *Ante*, p. 2689.

Approved October 20, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-755 (Comm. on Ways and Means) and No. 94-1745 (Comm. of Conference).
SENATE REPORT No. 94-1265 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 122 (1976):
July 19, 20, considered and passed House.
Sept. 29, considered and passed Senate, amended.
Oct. 1, House and Senate agreed to conference report; House receded and concurred in certain Senate amendments and to others with amendments; Senate agreed to House amendments.

EXHIBIT E

Calendar No. 1200

94TH CONGRESS } SENATE { REPORT
2d Session } { No. 94-1265

UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

SEPTEMBER 20, 1976.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 10210]

The Committee on Finance, to which was referred the bill (H.R 10210) to require States to extend unemployment compensation coverage to certain previously uncovered workers; to increase the amount of the wages subject to the Federal unemployment tax; to increase the rate of such tax; and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY OF THE BILL

The bill as passed by the House of Representatives would require States to extend unemployment compensation protection to certain categories of individuals now covered only at State option and increase the Federal unemployment tax rate and increase the annual amount of wages subject to Federal and State unemployment taxes from $4,200 to $6,000 per employee. The bill would also modify the requirements for triggering the Federal-State extended benefit program into and out of operation in the States, establish a national study commission on unemployment compensation, and make a number of other changes. The committee amendments make significant revisions in the House-passed bill and add several provisions which would affect the Supplemental Security Income (SSI) program for needy aged, blind, and disabled people.

A. COVERAGE

Employees of State and local governments.—Like the House bill, the committee bill would require the States to provide unemployment compensation coverage to all employees of State and local governments.

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The committee bill would make clarifying changes in the exceptions to coverage provided by the House passed bill. States would not be required to provide coverage for:

(1) Elected officials;
(2) Major non-tenured policymaking or advisory positions;
(3) Policymaking and advisory positions requiring not more than one day's employment per week;
(4) Judges;
(5) Members of a legislative body;
(6) Members of the State National Guard or Air National Guard;
(7) Emergency employees hired in case of disaster; and
(8) Inmates of custodial or penal institutions.

Under the House bill, State unemployment compensation laws would be required to contain a provision prohibiting the payment of benefits to teachers and other professional employees of schools during vacation periods who have contracts for employment in the post-vacation term, and until 1980 each State would be allowed to provide a similar prohibition for nonprofessional employees of schools who have reasonable assurance of employment in the post-vacation term.

The committee bill would modify these provisions so that vacation time unemployment benefits would not be paid to teachers and other professional employees who have reasonable assurance of post-vacation employment even though they do not have a formal contract. In addition, the provision permitting States to prohibit vacation time unemployment benefit payments to nonprofessional school employees would be made permanent rather than be limited to a two-year period.

Each State would determine for itself how to finance the benefits which would be payable; an employing agency could be required to make periodic payments similar to the taxes paid by private employers or it could pay the actual cost of the benefits paid to its former employees. The Federal unemployment tax, though, would not be levied.

The States would not be required to provide unemployment compensation for employment prior to January 1978. However, if a State should provide the new benefits on the basis of earlier service, the cost of the resulting benefits (after January 1, 1978), would be paid with Federal funds from general revenues.

The Department of Labor estimates that $0.2 billion per year in additional unemployment compensation would be paid in fiscal 1978 and 1979 under this provision.

Employees of nonprofit elementary and secondary schools.—The bill would require the States to extend the coverage of their unemployment compensation programs to employees of nonprofit elementary and secondary schools (present law requires coverage for employees of institutions of higher education). The provisions for nonpayment of benefits during vacation periods to school employees of State and local governments would also apply to employees of nonprofit schools.

The States would not be required to provide the new coverage until January 1, 1978.

Virgin Islands.—The bill would extend the Federal unemployment compensation laws to the Virgin Islands as soon as various requirements of membership in the Federal-State system could be met.

B. Financing Provisions

Tax base.—The bill would increase the Federal unemployment taxable wage base to $6,000. This change would require, in effect, that the States tax for unemployment compensation purposes the first $6,000 (rather than $4,200) in wages paid by an employer to an employee. The provision would be effective January 1, 1978.

The Department of Labor estimates that enactment of this provision would result in $2 billion of additional State taxes and $0.5 billion of additional Federal taxes (a total of $2.5 billion) for fiscal 1979.

Tax rate.—The net Federal unemployment compensation tax would be increased from 0.5 percent to 0.7 percent starting January 1, 1977, and, under the House-passed bill, ending with the earlier of (1) December 31, 1982, or (2) the end of the year in which all of the general revenue advances to the extended unemployment compensation account have been repaid. The committee bill would modify this provision so that the additional Federal tax would continue to apply until all of the advances have been repaid. The Committee estimates that this provision will result in $0.4 billion in additional revenues for fiscal year 1977.

Advances to States.—Under present law, whenever a State finds that it will not have funds available to pay unemployment compensation for any 1 month it may borrow the necessary funds from the Federal Unemployment Trust Fund. Each request for a loan can be for 1 month only. The bill would permit a single loan request to cover a 3-month period.

The change would be effective on enactment.

C. Other Provisions Relating to Unemployment Compensation

Triggers.—The bill would modify the triggers which determine when extended unemployment compensation benefits are payable in a State.

Under the House bill, the new triggers would be:

> A seasonally adjusted national insured unemployment rate of 4.5 percent based on the most recent 13-week period (rather than 3 consecutive months); or
>
> A seasonally adjusted (rather than unadjusted) State insured unemployment rate of 4 percent for the most recent 13-week period.

The provision of present law requiring that the State insured unemployment rate also be 120 percent of the rate for the corresponding period in the 2 preceding years would be eliminated on a permanent basis. This requirement has been suspended throughout most of the period since enactment of the extended benefits program.

The committee bill retains the modification of the national trigger but does not adopt the House-passed State trigger. The committee bill would keep the provisions of present law which put the extended benefits program into effect in a State when the State's insured unemployment rate (not seasonally adjusted) averages at least 4 percent for a 13-week period and is 120 percent of the rate for the corresponding periods in the preceding 2 years. Individual States, however, could opt to put the program into effect whenever the insured unemployment rate in the State averages at least 6 percent for a 13-week period even

though the rate is not 120 percent of the rate for the corresponding periods in the preceding 2 years.

Disqualification for receipt of a pension.—The committee bill adds to the House bill a new provision under which States would be required to prohibit the payment of unemployment compensation benefits to individuals who receive any public or private pension or annuity (including social security retirement benefits and railroad retirement annuities). The new provision would be effective for years after 1977.

Disqualification for pregnancy.—The bill would prevent the States from disqualifying a women for unemployment compensation solely because she is, or recently has been, pregnant.

The new provision would be effective for years after 1977.

Professional athletes and illegal aliens.—The bill would require the States to include in their unemployment compensation laws a provision specifically precluding the payment of unemployment compensation:

(1) To a professional athlete between two playing seasons if he has reasonable assurance of reemployment in the following season; and

(2) To an alien who was not lawfully admitted to the United States.

The new requirements would be effective for years after 1977.

Commission on unemployment compensation.—The bill would establish a commission to study the unemployment compensation program and to issue a report not later than January 1, 1979. The members of the Commission would be appointed by the President (7 members, including the chairman), the President *pro tempore* of the Senate (3 Members) and the Speaker of the House of Representatives (3 Members).

The bill would authorize appropriations from general revenues to meet the cost of the Commission.

D. Provisions Relating to Supplemental Security Income

Disabled children.—Although the Supplemental Security Income program has been in effect since January 1, 1974, the Department of Health, Education, and Welfare has not yet issued detailed guidelines for determining who is disabled under the disability definition provided in the law as it applies to children. The committee bill would require the Secretary of HEW to issue guidelines within 120 days after the enactment of the provision.

The bill also would require the Social Security Administration to refer blind and disabled children under age 16 who are receiving SSI benefits to the crippled children's or other appropriate State agency. This agency would be responsible for administering a State plan which would have to include provision for counseling of disabled children and their families; the establishment of individual service plans for children under 16; monitoring to assure adherence to the plans; and provision of services to children under age 7, and to children who have never been in school and require preparation to take advantage of public educational services.

A total of $30 million would be provided for the operation of State plans for each of three fiscal years, beginning with fiscal year 1977; there would be no non-Federal matching requirements. The amount

would be allocated to the States on the basis of the number of children age 6 and under in each State. Up to 10 percent of the State's funds could be used for counseling, referral and monitoring provided under the State plan for children up to age 16. The remainder of the funding would be available for services to disabled children under age 7 and those who have never been in school. The bill would require that the funds authorized under the provision could not be used to replace State and local funds now being used for these purposes. The funds could be used in the case of any program or service only to pay that portion of the cost which is related to the additional requirements of serving disabled children over and above what would be required to serve nondisabled children.

Change in SSI savings clause.—The Supplemental Security Income (SSI) program provides Federal income maintenance benefits to needy aged, blind, and disabled persons. These benefits in many States are augmented by State-funded supplemental payments. When Federal benefits increase, States can continue to provide the same level of State supplementation at no increase in State costs thus passing through the net impact of the Federal benefit increase to the recipient. Three States, however, do incur a State cost if they elect to pass through the Federal increase in this way because part of the Federal increase automatically results in a reduction in payments to these States under a 1972 savings clause provision. This provision now affects only Hawaii, Massachusetts, and Wisconsin. The committee bill contains a provision under which payments under that savings clause to those States will no longer be reduced when Federal SSI benefits rise. This will enable those States to pass through the Federal increases without added State costs.

Institutionalization of a spouse.—The committee bill would amend present law to provide that if a spouse is institutionalized, the two persons involved would be treated as individuals rather than as a couple for purposes of applying their separate incomes in computing any required reduction of the SSI benefit amount.

Protection of medicaid eligibility.—Under present law, there are some cases in which a cost-of-living increase in social security benefits may result in the loss of SSI eligibility. Although the amount of SSI cash benefits in such cases is very small, the denial of medicaid benefits represents a serious loss to the individual affected. The committee bill would provide that no recipient of SSI would lose eligibility for medicaid as the result of the operation of the cost-of-living benefit increase provision under title II of the Social Security Act. The committee provision would protect the individual only against the loss of medicaid, and would be effective only in the case of future social security benefit increases.

SSI payment to persons in institutions.—The committee bill would exclude publicly operated community residences, which serve no more than 16 residents, from being deemed public institutions in which individuals are ineligible for Supplemental Security Income benefits. The provision would also provide that State or local government subsidies to a home, public or private, would not result in SSI benefits being reduced, and would require States to establish, maintain, and insure the enforcement of standards for any category of institutions,

foster homes, or group living arrangements in which a significant number of SSI recipients reside.

Social Security Act assistance programs in the Northern Marianas Commonwealth.—The recently approved covenant establishing a Commonwealth of the Northern Marianas Islands contained general provisions making Federal assistance programs applicable there in the same way that they apply to other territories. However, the covenant also specifically extended to that jurisdiction two programs under the Social Security Act which Congress has, up to the present, found appropriate to limit in applicability to the 50 States and the District of Columbia: Supplemental Security Income (SSI), and special social security benefits for the uninsured. The committee bill specifically extends to the new Northern Marianas Commonwealth the Social Security Act programs of aid to the aged, blind, and disabled, aid to families with dependent children, and medical assistance under the same conditions as these programs apply to Guam, Puerto Rico, and the Virgin Islands. The bill also deletes the authorization to extend the SSI program and the program of special social security benefits for the uninsured to the Northern Marianas.

E. Provisions of the House Bill Deleted by the Committee

Farm workers.—The House bill would have required the States to extend the coverage of their unemployment compensation programs to include agricultural work performed for an employer who has four or more employees in each of 20 weeks in a year or who pays wages of at least $10,000 in any calendar quarter. The committee bill does not contain any provision extending unemployment compensation to agricultural employment.

Household workers.—The House bill would have required the States to extend the coverage of their unemployment compensation programs to domestic workers employed by households that pay wages of at least $600 in any calendar quarter. The Committee bill does not include this provision.

Under present law, the coverage of domestic service in private households under the unemployment compensation program depends on the provisions of State law. The committee notes that only three States and the District of Columbia provide coverage. In the District and in New York, domestic workers are covered if the employer's quarterly payroll is $500 or more; coverage in Hawaii comes when the quarterly payroll is at least $225; and in Arkansas, employers of three or more or having a quarterly payroll of $500 are covered.

Federal reimbursements to the States.—The House-passed bill would have made changes in the way Federal reimbursement of certain State costs are determined. In determining the amount of reimbursable administrative costs, no longer would account be taken of amounts attributable to administering the program as it relates to employees of State and local governments.

In determining grants to States for the payment of benefits under the extended benefits program, amounts would not be included to compensate for the payment of benefits to employees of State and local governments. (Under the extended benefits program, benefits are paid for the 27th through the 39th week of unemployment; one-

half of the cost of these benefits is paid from Federal unemployment insurance funds.)

The committee bill deletes the House-passed provisions which would reduce the payments made to the States for these purposes.

CETA employees.—The House bill would have authorized reimbursement from Federal general revenues to the State for the cost of paying unemployment compensation to former participants in public service jobs under the Comprehensive Employment and Training Act (CETA). Under present law these costs are met either from direct State funds or from the Federal CETA grant.

The committee bill deletes the provision.

Finality provision.—Under the House bill a Federal employee would be permitted to use the State agency appeal process to overturn his Federal agency's determination as to earnings and reason for leaving Federal employment. Hearings on these issues are now available to employees within the Federal agency involved.

The Committee bill does not include this provision.

II. GENERAL EXPLANATION OF THE BILL

A. Unemployment Compensation

COVERAGE PROVISIONS

The committee bill would bring under the Federal-State unemployment compensation system the greater part of those jobs which are now exempt from the Federal unemployment tax and are consequently not now covered under State programs except to the extent that States have voluntarily elected to provide such coverage. Under the bill, employment for State and local governments and employment for nonprofit elementary and secondary schools would remain exempt from the Federal unemployment tax, but States would be required to provide coverage under State law for such jobs.

If a State did not comply with this requirement, private employers in the States would lose the tax credit they now enjoy by reason of participating in an approved State unemployment compensation program. (The credit would be equal to 2.7 percent out of the total Federal unemployment tax of 3.4 percent provided under the bill.) States would also lose Federal funding for the costs of administering their unemployment programs

STATE AND LOCAL GOVERNMENT EMPLOYEES

(Sec. 101 of the Bill)

Under present Federal laws, the States are required to provide unemployment insurance for employees of State operated hospitals and institutions of higher education. In addition, more than one-half of the States have gone beyond the Federal requirements and provide mandatory coverage for State employees and permit local governments to opt for coverage. Nine States, Connecticut, Florida, Hawaii, Iowa, Michigan, Minnesota, Montana, Ohio, and Oregon require coverage of both State and local government employment. The committee bill would require coverage of all State and local employees.

UNEMPLOYMENT COMPENSATION COVERAGE UNDER PRESENT LAW AND THE COMMITTEE BILL [1]

	Employment—Numbers (in thousands)
Covered under present law	72,385
Under State programs	66,700
Federal employees/military	5,093
Railroad	592
Added to coverage under H.R. 10210	7,946
State government	600
Local government	7,100
Nonprofit organizations	242
Virgin Islands	4

[1] Based on most recent data (1974) modified to reflect some modification of coverage since that time.

Provisions of committee bill.—Under the committee bill State and local government employment would continue to be exempt from the Federal unemployment payroll tax. States would, however, be required to provide State coverage for such employment as a condition of continued participation in the Federal-State unemployment compensation program. (Failure to participate would, in effect, raise the Federal unemployment tax on employers in the State from 0.7 to 3.4 percent and would deprive the State of Federal funds to meet administrative expenses and part of the benefit costs for benefits paid after the 26th week of unemployment.)

All State and local government employees would have to be covered except elected officials, major non-tenured policy-making and advisory employees, policy-making and advisory employees who do not work on more than one day each week, judges, members of the legislature, members of the National Guard, prisoners, and persons hired for temporary jobs in emergency situations. With the above exceptions, all employment after December 31, 1977 would be covered. Under the bill, the State law could permit the employing entity to pay for its coverage either through contributions equivalent to the State payroll tax or by reimbursing the fund for benefits paid to its former employees.

Constitutionality.—Generally, mandatory Federal coverage under the Federal-State unemployment compensation program exists by virtue of applying the Federal unemployment payroll tax to the employment in question. It then becomes of no advantage not to cover that employment under the State program since failure to do so would eliminate the 2.7-percent Federal tax credit which would otherwise apply. In the case of State and local government employment, however, such a procedure would raise questions of the power of the Federal Government under the Constitution to lay a tax upon a vital State function. Consequently, the bill would continue to exempt State and local employment from the Federal tax but would require coverage for such employment as a condition of approving the State program. This

type of mandatory Federal coverage was applied in the 1970 amendments to require States to provide unemployment compensation protection to employees of State hospitals and State institutions of higher education.

A recent Supreme Court decision (*National League of Cities* v. *Usery*) invalidated provisions of the 1974 Fair Labor Standards Amendments which had extended minimum wage coverage to State and local government employees. The Solicitor of the Department of Labor has issued an opinion holding that that decision is not applicable to the H.R. 10210 provisions extending unemployment compensation coverage to such employees.

Coverage of school employees during vacation periods.—Under present law, States are required to provide coverage for employees of State institutions of higher education with benefits payable under the same conditions as apply to other individuals covered under the program except that no benefits are payable during a summer vacation (or similar period between terms) to persons in academic or principal administrative positions who have contracts for the following term (whether or not at the same institution). The House bill, which extends coverage to all State and local employees, would make this provision applicable to such employees regardless of type of school. In addition, the House bill permits States to deny benefits to nonprofessional employees during vacation periods if they have reasonable assurance of continuing in that employment in the following term. Starting in 1980, however, this option would expire and State and local governments would have to provide benefits during the vacation period to nonprofessional employees who cannot find employment during that time.

The committee bill would modify these provisions so that a teacher or professional employee could not qualify for unemployment compensation during vacation periods when there is a reasonable assurance that a job will be available for the post-vacation term (even if a formal contract has not been signed). In making this change, the committee intends that the determining factor be the availability of a job to the individual—whether or not the individual wishes to accept the job. If a job is available to the individual and he does not want to accept it, he would be disqualified just as any other individual who refuses employment is disqualified.

The provision of the House bill which permits the States to deny benefits during vacation periods to nonprofessional school employees for a 2-year period would under the committee bill be a permanent option for the States.

NONPROFIT ORGANIZATIONS

(Sec. 101 of the Bill)

Elementary and secondary schools.—Prior to the 1970 amendments, nonprofit organizations, which are exempt from taxation under the Internal Revenue Code, were covered as employers for unemployment compensation purposes only at the option of the States. The 1970 amendments required States to provide coverage for nonprofit employers who have at least four employees in at least 20 weeks of the year. However, an exception in the law allows States to exclude from

coverage nonprofit elementary and secondary schools. The committee bill would repeal this exclusion, thus requiring coverage for such schools on the same basis as it is required for other nonprofit entities.

Special provision for certain nonprofit employers.—When the 1970 amendments required the extension of coverage to nonprofit employers, a provision was also added allowing such organizations to pay for their coverage by reimbursing the State unemployment fund for any benefits paid to their former employees (on the basis of such employment). If they chose this option, they would not be required to pay the State unemployment taxes otherwise applicable. The 1970 amendments also permitted any nonprofit entity which had been covered prior to those amendments to switch to this reimbursement method of paying for its coverage and to take credit for any past State unemployment taxes it had paid in excess of what it would have paid under the reimbursement method. This opportunity was available, however, only if permitted by State law and only if the nonprofit employer made an election to change to the reimbursement method at the first opportunity.

The Hoag Memorial Hospital in California had elected and later terminated unemployment compensation coverage for its employees prior to the 1970 amendments which made such coverage mandatory as of January 1972. However, since the hospital did not have unemployment coverage in effect during the period between the enactment of the 1970 amendments and January 1972 when coverage became mandatory, its election of the reimbursement method did not take place at the earliest time possible under State law, namely in 1971. As a result, the hospital was barred from claiming the credit which would otherwise have been allowed for the excess of its past contributions over the benefit payments made to its former employees. A provision in H.R. 10210 would allow that institution (and any other nonprofit organization which may be in similar circumstances) to claim the retroactive credit provided that it elected the reimbursement method by April 1, 1972.

A provision similar to that adopted in 1970 allowing nonprofit employers to take credit for past excess contributions is included in H.R. 10210 for the nonprofit schools for which coverage is mandated by the bill.

TRANSITIONAL FEDERAL FUNDING PROVISIONS

(Sec. 121 of the Bill)

Costs of State and local coverage.—The provisions of the bill which would extend coverage under the unemployment compensation program to some 588,000 State employees who are not now covered and to about 7.7 million employees of local governments. State programs would be required to pay benefits on the basis of employment taking place after December 31, 1977. If States elect to pay benefits on the basis of this previously uncovered employment prior to that date, the costs of any such benefits payable after January 1, 1978, would be reimbursed from Federal general revenues. (Federal reimbursement would also be made for benefits paid prior to July 1, 1978, on the basis of State or local employment during the first 6 months of 1978.) Because some of this earlier coverage could also include employment

which would qualify for payments under the federally funded Special Unemployment Assistance (SUA) program, the committee adopted an amendment to make clear that Federal reimbursement for regular unemployment benefits based on such employment will be available only to the extent that Federal SUA benefits were not paid on the basis of the same employment. The table below indicates the benefits which would be paid as a result of the State and local coverage provisions of H.R. 10210.

ESTIMATED UNEMPLOYMENT BENEFIT PAYMENTS BASED ON STATE AND LOCAL GOVERNMENT EMPLOYMENT COVERED BY H.R. 10210

[In millions]

Fiscal year	Total unemployment benefit payments [1]	Amount reimbursable from Federal general funds [2]
1978	$200	$190
1979	210	50
1980	230	0
1981	260	0

[1] Includes regular and extended benefits.
[2] Under special provision where States provide benefits on the basis of employment prior to July 1, 1978.

Costs of coverage for non-profit schools.—The Department of Labor estimates that the bill's provisions requiring coverage for employees of non-profit elementary and secondary schools will result in additional benefit payments of $10 million in each of the fiscal years 1978–1981. In fiscal year 1978, $8 million of this total would be paid for from Federal general revenues under the bill's special start-up provisions.

INCLUSION OF VIRGIN ISLANDS IN THE FEDERAL-STATE UNEMPLOYMENT INSURANCE SYSTEM

(Sec. 102 of the Bill)

Under existing Federal law, the Virgin Islands is excluded from the Federal-State system of unemployment insurance. The Virgin Islands has for several years had a similar unemployment insurance program, however, and the territorial government has formally requested that the Virgin Islands be included in the Federal-State system.

The inclusion of the Virgin Islands in the Federal-State unemployment system as proposed in the bill would extend to that jurisdiction the Federal unemployment tax and thus increase slightly the revenues to the Federal accounts in the unemployment trust fund. At the same

time, it would provide new or modified funding for the Virgin Islands programs as shown in the table below.

FUNDING CHANGES FOR VIRGIN ISLANDS UNEMPLOYMENT PROGRAM UNDER THE COMMITTEE BILL

Expenditure type	Current funding	Funding under H.R. 10210
Regular benefits	Territorial tax	Territorial tax.
Administrative costs:		
Compensation system.	do	Federal trust fund accounts.
Employment service.	Federal general funds.	Federal trust fund accounts and general funds.
Extended benefits	Not in effect	50 percent territorial tax, 50 percent Federal trust fund accounts.
Loans	Federal general funds.	Federal trust fund accounts.

Loans to the Virgin Islands.—Under the Federal-State unemployment compensation system, States which exhaust their own benefit funds may borrow from the Federal accounts in the trust fund to meet their benefit obligations. The Virgin Islands is unable to use this procedure since it is not now a part of the Federal-State system. In Public Law 94–45, authority was provided for loans to be made to the Virgin Islands for this purpose. Under that legislation and subsequent amendments, the Virgin Islands is authorized to borrow up to $15 million which must be repaid by January 1, 1979. The law authorizing these loans also provides that the repayment requirements of the Federal-State unemployment compensation program will come into operation if the Virgin Islands is incorporated into that system as proposed in the committee bill. As of July 1976, the Virgin Islands system has borrowed $5.6 million under the authority of Public Law 94–45.

B. Financing Provisions

INCREASES IN THE UNEMPLOYMENT TAXES

(Sec. 201 of the Bill)

Financing basis.—The Federal statute now imposes a gross tax of 3.2 percent of covered wages. The tax base or maximum amount of annual wages per employee subject to this tax is $4,200. (In 1974, the average annual wage in covered employment was about $9,200.) Although the gross Federal tax rate is 3.2 percent, the actual net Federal tax rate is 0.5 percent since employers qualify for a 2.7-percent

EXHIBIT F

94th Congress
2d Session

COMMITTEE PRINT

Unemployment Compensation Amendments of 1976

Description of the Provisions of H.R. 10210 (Public Law 94–566)

Prepared by the Staffs of the

COMMITTEE ON FINANCE

OF THE

U.S. SENATE

AND THE

COMMITTEE ON WAYS AND MEANS

OF THE

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UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976—DESCRIPTION OF THE PROVISIONS OF H.R. 10210

I. Unemployment Compensation Provisions

A. COVERAGE PROVISIONS

Farmworkers.—In the past, farm employment has been exempt from the Federal unemployment tax. As a result, protection of farmworkers under unemployment compensation programs has been a matter of State option. H.R. 10210 makes the Federal unemployment tax applicable to farm employment if the farm operator, in either the current year or the preceding year, has a payroll of at least $20,000 in any calendar quarter or has 10 or more employees in 20 weeks during the year. This extension of the Federal unemployment payroll tax has the effect of bringing farm employment meeting these criteria within the coverage of all State unemployment compensation programs. Coverage is effective as of January 1978.

In the case of farmworkers who are hired by a farm labor contractor ("crew leader") rather than by the farm operator, the bill provides that the crew leader will be considered the employer and thus be responsible for paying the unemployment tax and submitting the required reports if he provides the service of mechanized equipment—crop dusting, mechanized harvesting, et cetera—or if he is registered under the Farm Labor Contractor Registration Act. Since that act now requires registration for most crew leaders—an exception is made for those operating both within a 25-mile radius of their homes and for no more than 13 weeks per year—H.R. 10210 generally makes the crew leader the employer. The bill provides, however, that the farm operator be considered the employer in cases where the crew leader is in fact the farmer's own employee and in cases where the farmer and the crew leader have a written agreement under which the farm operator will act as employer for unemployment compensation purposes.

The bill exempts from unemployment compensation coverage aliens who are brought into the United States on a temporary basis to work during peak agricultural crop seasons under sections 101(a)(15)(H) and 214(c) of the Immigration and Nationality Act. This exemption from coverage expires January 1, 1980.

Under the provisions of H.R. 10210, an estimated 459,600 farm jobs and 17,400 farm employers will be subject to the Federal unemployment tax. This represents 40 percent of all farm employment and 2 percent of all farm operators.

State and local government employees.—State and local government employment is exempt from the Federal unemployment payroll tax. However, under legislation enacted in 1970, the States were required to provide unemployment insurance for employees of State operated hospitals and institutions of higher education. In addition, about one-half of the States have gone beyond the Federal requirements and provide mandatory coverage for State employees and permit local governments to opt for coverage.

Under H.R. 10210, State and local government employment will continue to be exempt from the Federal unemployment payroll tax. States will be required, however, to provide State coverage for such employment as a condition of continued participation in the Federal-State unemployment compensation program. (Failure to participate would, in effect, raise the Federal unemployment tax on employers in the State from 0.7 to 3.4 percent and would deprive the State of Federal funds to meet administrative expenses and part of the benefit costs for benefits paid after the 26th week of unemployment.)

All State and local government employees will be covered except elected officials, members of the legislature or judiciary, persons in policymaking or advisory positions which are designated as major, nontenured positions or as ordinarily requiring less than 8 hours work per week, members of the National Guard, prisoners, and persons hired for temporary jobs in emergency situations. With the above exceptions, all employment after December 31, 1977 will be covered. Under the bill, the State law will have to permit the employing entity to determine whether to pay for its coverage through contributions equivalent to the State payroll tax or by reimbursing the fund retroactively for benefits paid to its former employees.

The provisions of H.R. 10210 extend coverage under the unemployment compensation program to approximately 588,000 State employees who are not now covered and to about 7.7 million employees of local governments.

Payment to school employees during vacation periods.—H.R. 10210 requires that benefits be denied during vacation periods between academic terms (or years) to professional school employees who have a contract for, or reasonable assurance of, reemployment during the upcoming term (or year). The bill also permits States to deny benefits during vacation periods on the same basis to nonprofessional school employees.

Extended benefit costs.—At present, the Federal extended benefit account in the unemployment trust fund pays one-half of the costs of benefits under the Federal-State Extended Unemployment Compensation Act. That act provides in times of high unemployment for up to 13 weeks of added benefits after a worker exhausts his regular benefit eligibility. This 50 percent Federal funding is provided from the Federal unemployment payroll tax. H.R. 10210 includes a provision which eliminates this 50 percent Federal funding for the cost of extended benefits for State and local government employees, whose employment is exempt from the Federal tax. (The Federal accounts

will continue to pay the administrative costs attributable to coverage of employees of State and local governments.)

Elementary and secondary nonprofit schools.—Prior to the 1970 amendments, nonprofit organizations, which are exempt from taxation under the Internal Revenue Code, were covered as employers for unemployment compensation purposes only at the option of the States. The 1970 amendments required States to provide coverage for nonprofit employers who have at least four employees in at least 20 weeks of the year. However, an exception in the law allowed States to exclude from coverage nonprofit elementary and secondary schools. H.R. 10210 repeals this exclusion, thus requiring coverage for such schools on the same basis as it has been required for other nonprofit entities.

Domestic workers.—Domestic employment in private households has been exempt from the Federal unemployment payroll tax and such employment has been covered under State unemployment compensation programs in only three States. H.R. 10210 makes such employment subject to the unemployment tax, effective January 1978 (and, therefore, effectively requires its coverage under State programs) in the case of any employer who pays domestic wages of $1,000 or more in any calendar quarter of the current or preceding year. It is estimated that this will result in coverage for some 128,000 domestic jobs.

Transitional benefits.—The new coverage provided under H.R. 10210 for agricultural workers, domestic employees, employees of State and local governments and of certain nonprofit schools is effective as of 1978. As of January 1, 1978, newly covered workers will begin accumulating wage credits necessary to qualify for unemployment compensation should they become unemployed. In most States these workers will not have accumulated enough wage credits to qualify for benefits until the last quarter of 1978. The transition provisions in H.R. 10210 provide that, if a State agrees to pay benefits to newly covered workers as of January 1, 1978, benefits paid through June 30, 1978, based on wage credits earned prior to that date, will be reimbursed from Federal general revenues. States will also be reimbursed after June 30, 1978 in cases where they pay benefits based on newly covered wages earned prior to January 1, 1978.

Inclusion of Virgin Islands.—Under prior Federal law, the Virgin Islands was excluded from the Federal-State system of unemployment insurance. The Virgin Islands has for several years had a similar unemployment insurance program, however, and the territorial government has formally requested that the Virgin Islands be included in the Federal-State system.

The inclusion of the Virgin Islands in the Federal-State unemployment system is provided for in H.R. 10210. This extends to that jurisdiction the Federal unemployment tax and thus increases slightly the revenues to the Federal accounts in the unemployment trust fund. At the same time, H.R. 10210 provides new or modified funding for the Virgin Islands programs as shown in the table below:

FUNDING CHANGES FOR VIRGIN ISLANDS UNEMPLOYMENT PROGRAM UNDER H.R. 10210

Expenditure type	Current funding	Funding under H.R. 10210
Regular benefits	Territorial tax	Territorial tax.
Administrative costs:		
Compensation system.	do	Federal trust fund accounts.
Employment service	Federal general funds.	Federal trust fund accounts and general funds.
Extended benefits	Not in effect	50 percent territorial tax, 50 percent Federal trust fund accounts.
Loans	Federal general funds.	Federal trust fund accounts.

B. FINANCING PROVISIONS

Increase in Federal unemployment tax rate.—H.R. 10210 increases the gross Federal unemployment tax rate from 3.2 percent to 3.4 percent while leaving the tax credit at 2.7 percent. This adds 0.2 percent to the net Federal tax rate raising it from the present level of 0.5 to a new level of 0.7 percent. This increased tax rate will take effect in January 1977 and will continue in effect until all general revenue advances to the extended benefit account in the unemployment trust fund have been repaid, after which the existing 0.5 percent net tax rate will again become applicable. The increase in the net Federal tax rate will affect only the amounts collected by the Federal trust fund accounts.

Increase in taxable earnings.—H.R. 10210 also increases from $4,200 to $6,000 the amount of annual earnings subject to taxation. This increase is effective January 1978 and affects both Federal and State taxes. Since States set their own tax rates and may adjust their tax rates to take account of the new tax base, the exact impact of the increase on State revenues will depend upon subsequent action by the States.

Timing of loans to States.—When States find it necessary to borrow from the Federal accounts in the unemployment trust fund to meet their unemployment benefit obligations, prior law required that the funds borrowed for any month be applied for in the preceding month. H.R. 10210 includes a provision permitting States to apply for loans covering a 3-month period. Under this provision, States will be able to make a single application covering the 3-month period, but the advances will continue to be paid out to the States on a month-by-month basis.

Costs of benefits to former Federal employees.—When unemployment benefits are paid by a State to a former member of the armed

EXHIBIT G

did not understand that it was a 5-minute vote instead of the normal 15-minute vote.

Mr. Speaker, would it be in order for me to ask unanimous consent to reconsider that vote?

The SPEAKER. Of course the gentleman can only ask unanimous consent to vacate the proceedings whereby the bill was passed and the motion to reconsider laid on the table.

REQUEST TO VACATE PROCEEDINGS ON ROLLCALL 517

Mr. BOB WILSON. Mr. Speaker, I ask unanimous consent to vacate the proceedings on rollcall 517 which was called for by our colleague, the gentleman from California (Mr. PHILLIP BURTON), and I ask unanimous consent that the vote be reconsidered at this time.

The SPEAKER. Is there objection to the unanimous-consent request that again the proceedings be vacated on the bill H.R. 14291?

Mr. ALLEN. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

ANNOUNCEMENT OF PROGRAM FOR THE REMAINDER OF THE WEEK

Mr. O'NEILL. Mr. Speaker, I rise, and I was just talking to the gentleman from Arizona, to announce the program for the remainder of the week.

We are going to take up now the amendments on the unemployment compensation bill and we hope to finish that this evening.

Tomorrow we will ask unanimous consent to meet at 10 o'clock in the morning and we plan to take up the Outer Continental Shelf bill.

We will ask to meet at 10 o'clock on Thursday morning when we plan to take up the vetoes of the jobs bill and the military construction bill and the public land policy and management bill.

Then we would continue along with the schedule.

There is also the possibility that we will bring up the HUD appropriation bill conference report.

That would be the program for the remainder of the week.

By agreement we would conclude our business on Thursday and there would be no business on Friday.

HOUR OF MEETING ON TOMORROW

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 10 o'clock tomorrow morning.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, the gentleman said there would be no business on Friday. Are we to understand there will be no session on Friday?

Mr. O'NEILL. Mr. Speaker, if the gentleman will yield, as I understand it, there will be no session on Friday.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman from Massachusetts, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

HOUR OF MEETING ON THURSDAY, JULY 22, 1976

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that when the House adjourns tomorrow it adjourn to meet at 10 o'clock a.m. on Thursday.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. SEIBERLING. Mr. Speaker, reserving the right to object, the Committee on the Judiciary has a bill under referral which must be acted upon by Thursday. We were planning to sit on Thursday. I just wonder if the gentleman on the other side of the aisle is going to object if we ask unanimous consent to sit, notwithstanding the 5-minute rule. We must dispose of the bill by the new rule. It is the bottler's bill which we must report out.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1975

Mr. CORMAN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill—H.R. 10210—to require States to extend unemployment compensation coverage to certain previously uncovered workers; to increase the amount of the wages subject to the Federal unemployment tax; to increase the rate of such tax; and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from California (Mr. CORMAN).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 10210, with Mr. YATES in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the committee rose on Monday, July 19, 1976, the Clerk had read through line 5 on page 1.

The Clerk will read title I.

The Clerk read as follows:

TITLE I—EXTENSION OF COVERAGE PROVISIONS

PART I—GENERAL PROVISIONS

SEC. 111. COVERAGE OF CERTAIN AGRICULTURAL EMPLOYMENT.

(a) NONCASH REMUNERATION.—Section 3306(b) of the Internal Revenue Code of ing out "or" at the end of paragraph (9), by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; or", and by adding at the end thereof the following new paragraph:

"(11) remuneration for agricultural labor paid in any medium other than cash.".

(b) COVERAGE OF AGRICULTURAL LABOR.—Paragraph (1) of section 3306(c) of such Code (defining employment) is amended to read as follows:

"(1) agricultural labor (as defined in subsection (k)) unless—

"(A) such labor is performed for an employer who—

"(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $5,000 or more to individuals employed in agricultural labor (not taking into account labor performed before January 1, 1979, by an alien referred to in subparagraph (B)), or

"(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (not taking into account labor performed before January 1, 1979, by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 4 or more individuals; and

"(B) such labor is not agricultural labor performed before January 1, 1979, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1976, for services performed after such date.

SEC. 112. TREATMENT OF CERTAIN FARMWORKERS.

(a) GENERAL RULE.—Section 3306 of the Internal Revenue Code of 1954 (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(o) SPECIAL RULE IN CASE OF CERTAIN AGRICULTURAL WORKERS.—

"(1) CREW LEADERS WHO ARE REGISTERED OR PROVIDE SPECIALIZED AGRICULTURAL LABOR.—For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of such crew leader—

"(A) if—

"(i) such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or

"(ii) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

"(B) if such individual is not an employee of such other person within the meaning of subsection (i).

"(2) OTHER CREW LEADERS.—For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (1)—

"(A) such other person and not the crew leader shall be treated as the employer of such individual; and

"(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

"(3) CREW LEADER.—For purposes of this subsection, the term 'crew leader' means an individual who—

"(A) furnishes individuals to perform agricultural labor for any other person,

"(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

"(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1976, for services performed after such date.

SEC. 113. COVERAGE OF DOMESTIC SERVICE.

(a) GENERAL RULE.—Paragraph (2) of section 3306(c) of the Internal Revenue Code of 1954 (defining employment) is amended to read as follows:

"(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for an employer who paid cash remuneration of $600 or more for such domestic service in any calendar quarter in the calendar year or the preceding calendar year;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1976, for services performed after such date.

SEC. 114. DEFINITION OF EMPLOYER.

(a) GENERAL RULE.—Subsection (a) of section 3306 of the Internal Revenue Code of 1954 (defining employer) is amended to read as follows:

"(a) EMPLOYER.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'employer' means, with respect to any calendar year, any person who—

"(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

"(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

"(2) AGRICULTURAL LABOR.—In the case of agricultural labor, the term 'employer' means, with respect to any calendar year, any person who—

"(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $5,000 or more for agricultural labor, or

"(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 4 individuals in agricultural labor for some portion of the day.

"(3) DOMESTIC SERVICE.—In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term 'employer' means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of $600 or more for such service.

"(4) SPECIAL RULE.—A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1976, for services performed after such date.

SEC. 115. COVERAGE OF CERTAIN SERVICE PERFORMED FOR NONPROFIT ORGANIZATIONS AND FOR STATE AND LOCAL GOVERNMENTS.

(a) GENERAL RULE.—Subparagraphs (B) of section 3309(a)(1) of the Internal Revenue Code of 1954 (relating to State law requirements) is amended to read as follows:

"(B) service excluded from the term 'employment' solely by reason of paragraph (7) of section 3306(c); and".

(b) EXCLUSION OF CERTAIN GOVERNMENT EMPLOYEES.—

(1) CERTAIN EMPLOYEES.—Paragraph (3) of section 3309(b) of such Code (relating to certain services to which section 3309 does not apply) is amended to read as follows:

"(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such services is performed by an individual in the exercise of his duties as—

"(A) an elected official, or an appointed official, if such appointed official serves for a specific term established by law or is not required to perform services on a substantially full-time basis;

"(B) a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof;

"(C) a member of the State National Guard or Air National Guard; or

"(D) an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency,".

(2) INMATES.—Paragraph (6) of such section 3309(b) is amended to read as follows:

"(6) by an inmate of a custodial or penal institution.".

(c) TECHNICAL ADJUSTMENTS.—

(1) Paragraph (6)(A) of section 33004(a) of such Code is amended—

(A) by striking out "institution of higher education" and inserting in lieu thereof "educational institution";

(B) by striking out "institution or institutions of higher education" and inserting in lieu thereof "educational institution or institutions";

(C) by striking out "except that," and inserting in lieu thereof "except that (I)"; and

(D) by inserting before ", and" at the end thereof the following: ", and (II) with respect to service in any other capacity for an educational institution (other than an institution of higher education) to which section 3309(a)(1) applies, compensation payable on the basis of such service may be denied to any individual for any week which begins before January 1, 1979, and which commences during a period between 2 successive academic years or similar periods if such individual performs such service in the first of such academic terms (or similar periods) and there is a reasonable assurance that such individual will perform such service in the second of such academic terms (or similar periods)".

(2) Subsection (d) of section 3309 of such Code is hereby repealed.

(3) The section heading of section 3309 of such Code is amended to read as follows:

"SEC. 3309. STATE LAW COVERAGE OF SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS OR GOVERNMENTAL ENTITIES.".

(4) The table of sections for chapter 23 of such Code is amended by striking out the item relating to section 3309 and inserting in lieu thereof the following:

"Sec. 3309. State law coverage of services performed for nonprofit organizations or governmental entities.".

(5) Section 3304 of such Code is amended by adding at the end thereof the following new subsection:

"(f) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—For purposes of subsection (a)(6), the term 'institution of higher education' means an educational institution in any State which—

"(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

"(2) is legally authorized within such State to provide a program of education beyond high school;

"(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

"(4) is a public or other nonprofit institution."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to certifications of States for 1977 and subsequent years, but only with respect to services performed after December 31, 1976.

SEC. 116. EXTENSION OF FEDERAL UNEMPLOYMENT COMPENSATION LAW TO THE VIRGIN ISLANDS.

(a) AMENDMENT OF THE SOCIAL SECURITY ACT.—Paragraph (1) of section 1101(a) of the Social Security Act is amended by inserting after the first sentence the following new sentence: "Such term when used in titles III, IX, and XII also includes the Virgin Islands.".

(b) AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954.—

(1) Section 3306(c) of the Internal Revenue Code of 1954 (defining employment) is amended by striking out "or in the Virgin Islands" in the portion of such section which precedes paragraph (1) thereof.

(2) Section 3306(j) of such Code is amended to read as follows:

"(j) STATE, UNITED STATES, AND AMERICAN EMPLOYER.—For purposes of this chapter—

"(1) STATE.—The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

"(2) UNITED STATES.—The term 'United States' when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

"(3) AMERICAN EMPLOYER.—The term 'American employer' means a person who is—

"(A) an individual who is a resident of the United States,

"(B) a partnership, if two-thirds or more of the partners are residents of the United States,

"(C) a trust, if all of the trustees are residents of the United States, or

"(D) a corporation organized under the laws of the United States or any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.".

(c) AMENDMENT RELATING TO THE FEDERAL EMPLOYMENT SERVICE.—Section 5(b) of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States for the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49d(b)), is amended by striking out "Guam and the Virgin Islands" and inserting in lieu thereof "Guam".

(d) AMENDMENTS TO FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970.

(1) Section 202(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by striking out "the Virgin Islands or".

(2) Paragraph (8) of section 205 of such Act is amended to read as follows:

"(8) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.".

(e) AMENDMENTS RELATING TO FEDERAL UNEMPLOYMENT COMPENSATION.—

(1) Paragraph (6) of section 8501 of title 5, United States Code, is amended to read as follows:

"(6) 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands; and".

(2) Section 8503 of title 5, United States Code is amended—

(A) by striking out subsections (b) and (d);

(B) by redesignating subsection (c) as subsection (b); and

(C) by striking out "subsection (a) or (b)" in subsection (b) (as so redesignated) and inserting in lieu thereof "subsection (a)".

(3) Section 8504 of title 5, United States Code, is amended—

(A) by adding "and" at the end of paragraph (1);

(B) by striking out "; and" at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) by striking out paragraph (3).

(4) Paragraph (3) of section 8521 of title 5, United States Code, is amended to read as follows:

"(3) 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands."

(5) Section 8522 of title 5, United States Code, is amended by striking out "or to the Virgin Islands, as the case may be,".

(f) EFFECTIVE DATES.—

(1) SUBSECTIONS (a), (c), AND (d).—The amendments made by subsections (a), (c), and (d) shall take effect on the day after the day on which the Secretary of Labor approves under section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted to him by the Virgin Islands for approval.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply with respect to remuneration paid after December 31 of the year in which the Secretary of Labor approves for the first time an unemployment compensation law submitted to him by the Virgin Islands for approval, for services performed after such December 31.

(3) SUBSECTION (e).—The amendments made by subsection (e) shall apply with respect to benefit years beginning on or after the first day of the first week for which compensation becomes payable under an unemployment compensation law of the Virgin Islands which is approved by the Secretary of Labor under section 3304 (a) of the Internal Revenue Code of 1954.

(g) TRANSFER OF FUNDS.—The Secretary of Labor shall not approve an unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1954 until the Governor of the Virgin Islands has approved the transfer to the Federal Unemployment Trust Fund established by section 904 of the Social Security Act of an amount equal to the dollar balance credited to the unemployment subfund of the Virgin Islands established under section 310 of title 24 of the Virgin Islands Code.

PART II—TRANSITIONAL PROVISIONS

SEC. 121. FEDERAL REIMBURSEMENT FOR BENEFITS PAID TO NEWLY COVERED WORKERS DURING TRANSITION PERIOD.

(a) GENERAL RULE.—If any State, the unemployment compensation law of which is approved by the Secretary under section 3304 (a) of the Internal Revenue Code of 1954, provides for the payment of compensation for any week of unemployment beginning on or after January 1, 1977, on the basis of previously uncovered services, the Secretary shall pay to the unemployment fund of such State an amount equal to the Federal reimbursement for any compensation paid for a week of unemployment beginning on or after January 1, 1977, to any individual whose base period wages include wages for previously uncovered services.

(b) PREVIOUSLY UNCOVERED SERVICES.—For purposes of this section, the term "previously uncovered services" means, with respect to any State, services—

(1) which were not covered by the State unemployment compensation law, at any time, during the 1-year period ending December 31, 1975; and

(2) which—

(A) are agricultural labor (as defined in section 3306(k) of the Internal Revenue Code of 1954) or domestic services referred to in section 3306(c)(2) of such Code (as in effect on the day before the date of the enactment of this Act) and are treated as employment (as defined in section 3306(c) of such Code) by reason of the amendments made by this Act, or

(B) are services to which section 3309(a)(1) of such Code applies by reason of the amendments made by this Act.

(c) FEDERAL REIMBURSEMENT.—

(1) IN GENERAL.—For purposes of this section, the Federal reimbursement for compensation paid to any individual for any week of unemployment shall be an amount which bears the same ratio to the amount of such compensation as the amount of the individual's base period wages which are attributable to previously uncovered services amount of the individual's base period wages.

(2) REIMBURSABLE SERVICES.—For purposes of determining the amount of the Federal reimbursement for compensation paid to any individual for any week of unemployment, previously uncovered services shall be treated as being reimbursable—

(A) if such services were performed—

(i) before July 1, 1977, in the case of a week of unemployment beginning before July 1, 1977; or

(ii) before January 1, 1977, in the case of a week of unemployment beginning after July 1, 1977; and

(B) if assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was not paid to such individual on the basis of such services.

(3) DENIAL OF PAYMENT.—No payment may be made under subsection (a) to any State in respect of any compensation for which the State is entitled to any reimbursement under the provisions of any Federal law other than this Act or the Federal-State Extended Unemployment Compensation Act of 1970.

(d) EXPERIENCE RATING OF CERTAIN EMPLOYERS.—The unemployment compensation law of any State may, without being deemed to violate the standards set forth in section 3303(a) of the Internal Revenue Code of 1954, provide that the experience-rating account of any employer shall not be charged for the compensation paid to any individual whose base period wages include wages for previously uncovered services performed before January 1, 1977, to the extent that such individual would not have been eligible to receive such compensation had the State law not provided for the payment of compensation on the basis of such previously uncovered services.

(e) CERTAIN NONPROFIT EMPLOYERS.—The unemployment compensation law of any State may provide that any organization which elects to make payments (in lieu of contributions) into the State unemployment compensation fund as provided in section 3309(a)(2) of the Internal Revenue Code of 1954 shall not be liable to make such payments with respect to the compensation paid to any individual whose base period wages include wages for previously uncovered services performed before January 1, 1977, to the extent that such individual would not have been eligible to receive such compensation had the State not provided for the payment of compensation on the basis of such previously uncovered services.

(f) PAYMENTS MADE MONTHLY.—Payments under subsection (a) shall be made monthly, prior to audit or settlement by the General Accounting Office, on the basis of estimates by the Secretary of the amount payable to such State for such month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior month were greater or less than the amounts which should have been paid to such State. Such estimates may be made on the basis of such statistical, sampling, or other methods as may be agreed upon by the Secretary and the State.

(g) DEFINITIONS.—For purposes of this section—

(1) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(3) BENEFIT YEAR.—The term "benefit year" means the benefit year as defined in the applicable State unemployment compensation law.

(4) BASE PERIOD.—The term "base period" means the base period as defined by the applicable State unemployment compensation law for the benefit year.

(5) UNEMPLOYMENT FUND.—The term "unemployment fund" has the meaning given to such term by section 3306(f) of the Internal Revenue Code of 1954.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the general fund of the Treasury such sums as may be necessary to carry out the purposes of this section.

SEC. 122. TRANSITIONAL RULES IN CASE OF NONPROFIT ORGANIZATIONS.

(a) CREDIT FOR PRIOR CONTRIBUTIONS.—Section 3303 of the Internal Revenue Code of 1954 (relating to conditions of additional credit allowance) is amended by adding at the end thereof the following new subsection:

"(g) TRANSITIONAL RULE FOR UNEMPLOYMENT COMPENSATION AMENDMENTS ACT OF 1975.—To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies by reason of the enactment of the Unemployment Compensation Amendments of 1975, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law with respect to such service, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before the date of the enactment of this subsection, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to such service performed in its employ, until the total of such compensation equals the amount—

"(1) by which the contributions paid by such organization (or group) on the basis of wages for such service with respect to a period before the election provided by section 3309(a)(2), exceed

"(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law

on the basis of such service performed in its employ or wages paid for such service, whichever is appropriate.".

(b) TECHNICAL AMENDMENT.—Section 3303 (f) of such Code (relating to transition to coverage of certain services) is amended by striking out "which elects, when such election first becomes available under the State law," and inserting in lieu thereof "which elects before April 1, 1972,".

(c) EFFECTIVE DATES.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act. The amendment made by subsection (b) shall take effect on January 1, 1970.

Mr. CORMAN (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. CORMAN. Mr. Chairman, I ask unanimous consent that the committee amendments to H.R. 10210 that are printed in the bill and the committee amendments which I ordered printed in the CONGRESSIONAL RECORD of June 3, 1976, be considered en bloc and as read.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. STEIGER of Wisconsin. Mr. Chairman, reserving the right to object, and I shall not object, I want to make sure that the Committee understands that these are the amendments that relate to changes in the dates which are required as a result of the delay in bringing the bill to the floor. May I ask the gentleman from California, am I correct?

Mr. CORMAN. The gentleman is correct as to the amendments printed in the CONGRESSIONAL RECORD. It is because of the dates that they must move forward by the year.

Mr. STEIGER of Wisconsin. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The committee amendments are as follows:

Committee amendments: Page 1, line 5, strike out "1975" and insert "1976".

Page 3, line 1, strike out "January 1, 1979" and insert "January 1, 1980".

Page 3, beginning in line 7, strike out "January 1, 1979" and insert "January 1, 1980".

Page 3, line 13, strike out "January 1, 1979" insert "January 1, 1980".

Page 3, line 20, strike out "December 31, 1976" and insert "December 31, 1977".

Page 5, line 24, strike out "December 31, 1976" and insert "December 31, 1977".

Page 6, line 14, strike out "December 31, 1976" and insert "December 31, 1977".

Page 10, line 3, strike out "December 31, 1976" and insert "December 31, 1977".

Page 12, line 8, strike out "January 1, 1979" and insert "January 1, 1980".

Page 13, line 21, strike out "1977" and insert "1978".

Page 13, line 22, strike out "December 31, 1976" and insert "December 31, 1977".

Page 18, line 6, after "shall take effect on" insert "the later of October 1, 1976, or".

Page 18, line 20, after "beginning on or after" insert "the later of October 1, 1976, or".

Page 19, beginning in line 18, strike out "January 1, 1977" and insert "January 1, 1978".

Page 19, line 23, strike out "January 1, 1977" and insert "January 1, 1978".

Page 21, line 9, strike out "July 1, 1977" and insert "July 1, 1978".

Page 21, beginning in line 10, strike out "July 1, 1977" and insert "July 1, 1978".

Page 21, line 12, strike out "January 1, 1977" and insert "January 1, 1978".

Page 21, beginning in line 13, strike out "July 1, 1977" and insert "July 1, 1978".

Page 24, line 17, strike out "1975" and insert "1976".

Page 24, line 20, strike out "1975' and insert "1976".

Page 26, line 21, strike out "1982" and insert "1983".

Page 26, line 22, strike out "1975" and insert "1976".

Page 27, line 22, strike out "March 1976" and insert "March 1977".

Page 28, line 13, strike out "December 31, 1976" and insert "December 31, 1977".

Page 28, line 16, strike out "December 31, 1975" and insert "December 31, 1976".

Page 30, line 19, strike out "January 1, 1978" and insert "January 1, 1979".

Page 30, line 23, strike out "January 1, 1978" and insert "January 1, 1979".

Page 32, beginning in line 15, strike out "July 1, 1976" and insert "July 1, 1977".

Page 34, line 20, strike out "the date of the enactment of this Act" and insert "September 30, 1976".

Page 37, line 10, strike out "1976" and insert "1977".

Page 37, line 15, strike out "1975" and insert "1976".

Page 37, line 21, strike out "1977" and insert "1978".

Page 43, beginning in line 9, strike out "January 1, 1978" and insert "January 1, 1979".

The committee amendments were agreed to.

AMENDMENT OFFERED BY MR. ULLMAN

Mr. ULLMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ULLMAN: Page 2, line 23, strike out "$5,000" and insert in lieu thereof "$10,000".

Page 7, line 15, strike out "$5,000" and insert in lieu thereof "$10,000".

(Mr. ULLMAN asked and was given permission to revise and extend his remarks.)

Mr. ULLMAN. Mr. Chairman, I shall not take the 5 minutes.

Mr. Chairman, this amendment deals with the coverage of seasonal farm employees. The provisions in the bill extend unemployment compensation coverage to farmworkers of employers with four or more workers in 20 weeks or who pay $5,000 in quarterly wages for agricultural services.

Now, the amendment maintains the first criteria, but it simply changes the quarterly wage criteria from $5,000 to $10,000. It makes no other changes in the provisions pertaining to farmworker coverage. In covering new employee groups, and particularly seasonal workers, there are some rough edges.

This rounds out one of the rough edges. I have talked with most segments of the economy which are concerned, and find general acceptance of the amendment.

Mr. CORMAN. Mr. Chairman, I rise in opposition to the amendment. I would call the attention of the committee to the fact that this amendment is a very modest change. It reduces the number of employers covered from 7 percent to 6 percent, and the number of employees covered from 61 percent to 59 percent. The important thing is that the bill extends coverage to agricultural workers. This is a very modest amendment, and I think we might be able to vote on it quickly.

Mr. COHEN. Mr. Chairman, I move to strike the last word.

(Mr. COHEN asked and was given permission to revise and extend his remarks.)

Mr. COHEN. Mr. Chairman, I rise in support of the Ullman amendment. With each passing day, we hear of more and more small farmers abandoning their farms, driven out of business by high production costs, competition from large corporate farmers, and the uncertainties of an erratic market. The statistics are staggering. In the State of Maine alone, the number of farms has decreased by nearly 50 percent during the past decade. Yet, today, Congress proposes to place still another burden on our farmers—a burden which will not only add to the farmer's ever-growing expenses, but which promises to encumber him with paperwork. The legislation we are considering would require many farmers to remit unemployment compensation taxes on wages paid to employees.

Maine is a State whose economic well-being depends on the prosperity of her farmers. Maine leads the Nation in the cultivation of wild blueberries and is second in the production of potatoes. The annual blueberry and potato harvests provide the opportunity for seasonal employment for many local citizens who do not wish to work on a year-round basis. Many of these employees are housewives or students seeking to earn some spending money or to supplement the family income. In Maine, the majority of the workers would not earn enough in the brief harvest period to become eligible for unemployment benefits. Yet, under the provisions of this legislation, a majority of Maine's potato and blueberry farmers would be required to remit payroll taxes for these seasonal employees, who will not even be able to collect benefits. The Department of Manpower Affairs estimates that 2,400 of Maine's farmers—50 percent—would be affected by the extended coverage. How many of these farmers—many of them in already precarious financial situations—will be bankrupted by this new tax burden?

While I would have greatly preferred an amendment which excluded strictly seasonal workers from coverage, the Ullman amendment softens the blow somewhat by increasing to $10,000 the amount of quarterly wages which triggers coverage for agricultural workers. Let me make it clear that I believe that full-time, year-round agricultural employers should be covered by unemployment compensation insurance. What I object to is requiring farmers to pay contributions on the wages paid to purely seasonal workers employed only during the harvest, who probably will not earn enough to even qualify for unemployment benefits.

I urge the adoption of the Ullman amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon (Mr. ULLMAN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. KETCHUM

Mr. KETCHUM. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. KETCHUM: Page 10, strike out line 5 and all that follows down through line 22 on page 13.

Page 13, line 23, strike out "SEC. 116" and insert in lieu thereof "SEC. 115".

Page 20, strike out lines 7 through 18 and insert:

(2) which are agricultural labor (as defined in section 3306(k) of the Internal Revenue Code of 1954) or domestic services referred to in section 3306(c)(2) of such Code (as in effect on the day before the date of the enactment of this Act) and are treated as employment (as defined in section 3306(c) of such Code) by reason of the amendments made in this Act.

Page 24, strike out line 10 and all that follows down through line 3 on page 26; and insert:

SEC. 122. TECHNICAL AMENDMENT TO PRIOR TRANSITIONAL RULE FOR NONPROFIT ORGANIZATIONS.

(a) IN GENERAL.—Section 3303(f) of the Internal Revenue Code of 1954 (relating to transition to coverage of certain services) is amended by striking out "which elects, when such election first becomes available under the State law," and inserting in lieu thereof "which elects before April 1, 1972,".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on January 1, 1970.

Page 36, strike out line 25 and all that follows down through line 3 on page 37 and insert:

(a) GENERAL RULE.—Subsection (a) of section 3304 of the Internal Revenue Code of 1954 (relating to requirements for approval of State unemployment compensation laws) is amended by redesignating paragraph (13) as paragraph (14) and by inserting after paragraph (12) the following new paragraph:

"(13) no person shall be denied compensation under".

Mr. KETCHUM (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

(Mr. KETCHUM asked and was given permission to revise and extend his remarks.)

Mr. KETCHUM. Mr. Chairman, the amendment I am offering today is quite simple. It strikes the provision of H.R. 10210 relating to coverage of State and local employees, and thus continues existing law as regards these employees. I believe that most of my colleagues have received indications of support for this amendment from their local governments and States. It is an amendment with very widespread support which I hope can be speedily adopted.

It is highly ironic that the Congress, which recently was implored to bail out our largest city, should be considering legislation which will add a very considerable financial burden to our cities and States. This bill is yet another example of the Federal Government mandating a program for which State and local governments must pick up the tab, and without providing them with any financial assistance. The simple truth is that local governments can no longer afford this magnanimity on the part of Washington. There is no money in the till to pay for this legislation, either in local or the Federal Treasury, and the proponents of this section have no idea where the funds are going to come from.

There are estimates that this bill could cost local governments anywhere from $1.2 to $2 billion. I doubt that any Member of the House could argue that there are $2 billion just floating around in the coffers of local governments. Not one single city in my congressional district supports this bill, because none of them can raise the additional funds to pay for unemployment coverage without cutting back on existing programs and services. Several cities have told me that they will be required to terminate current employees in order to finance unemployment insurance coverage for the remaining. I can think of no more ridiculous spectacle than that.

Supporters of this bill will say that coverage is not actually mandated, but voluntary. This is technically true. However, failure to cover local employees will deprive a State of the tax credit of 2.7 percent, and the grant for administering the State unemployment programs. No State in its right mind can forgo these funds. There is no option, just a very persuasive threat.

As most of my colleagues know, the Supreme Court ruled last week on a case dealing with coverage of State and municipal employees under the Fair Labor Standards Act. The Court found that mandated coverage by the Federal Government was unconstitutional. Although I admit that the legal issue is not identical to this legislation, the Court's opinion made it clear that the Federal Government has no business in telling the States and cities how to cover their employees. I believe that the Court's decision was very sound, and that we should heed its warning.

Passage of my amendment does not mean that those units of local government who wish to cover their employees cannot do so. Under present law, those who opt for coverage may receive it. The decision quite properly is that of the governmental unit that is going to pay for the coverage. The danger in this bill is that we are again forcing those entities who have decided not to join in the UI system to do so. It is Big Brother government at its worst.

Even the strongest supporters of this section must acknowledge that in subcommittee and in full committee we hardly assessed its impact. We do not know how much damage we are doing here, and should not act out of substantial ignorance.

I urge my colleagues who have any understanding of the fiscal crisis facing our cities and States to accept this amendment.

Mr. FRENZEL. Mr. Chairman, I rise in opposition to the amendment.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Chairman, the additional coverage of State and local government employees, which appears in the bill and which the gentleman from California seeks to delete, is a necessary extension of unemployment compensation coverage if we are ever to escape the clutches of the SUA program, the special unemployment assistance, which now covers all State and local employees.

In fact, Mr. Chairman, this is not new coverage, since we are hoping to let SUA expire, and that means that we are simply transferring the coverage which now falls upon the general taxpayers of the United States, in most cases, individuals, and transferring that charge to the employers, in this case the units of local government. In States like my own, or Connecticut, or Ohio, the local government employing units are already paying unemployment costs for these employees. In addition, through SUA, these States are also helping to pay UE benefits for other States. If this amendment is defeated, these States will be relieved of their double burden.

The units of local government under the bill have a special privilege anyway. They pay less than regular employers. They pay a year in arrears after the experience has occurred, and they do not experience any of the overhead costs that normally accrue to employers under most of the circumstances.

So under this bill the State and local governments have a privileged position. In the meantime, we do take employees who, when they are employed in local and State governments, suffer the same kind of problems with unemployment as those in private employment, and we take them out of a temporary program and put them into a permanent one. They are just as unemployed as people laid off from private employment.

The benefits are going to be paid anyway. They should be paid under the regular system. Since there are no new costs, and since this is the best way I know of to let SUA phase out without an extension, we can apply the costs where they belong, to the employing units.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. I thank the gentleman for yielding.

Mr. Chairman, I join with the gentleman from Minnesota in opposing the amendment offered by the gentleman from California (Mr. KETCHUM).

State and local government employees should be covered under the unemployment compensation system on a permanent basis.

Presently there are approximately 10.2 million jobs in this country not covered by the permanent Federal-State system. Most of these workers, 8.3 million, are employees of State and local government. They are however covered under the federally funded special unemployment assistance program.

Special unemployment assistance was established as part of the Emergency

Jobs and Unemployment Assistance Act of 1974 and, with the use of Federal general revenues, pays benefits to those individuals not eligible for benefits under the permanent Federal-State system.

In order to be eligible for SUA an individual must meet the regular State employment and earnings requirements, but during the most recent 52-week period, rather than during the regular State base period. Weekly benefit amount and number of weeks of benefits are the same as they would have been under the applicable State law, except that no claimant may receive more than 39 weeks of benefits.

The program is administered by the State unemployment compensation agencies, under the general requirements of each State law as to eligibility and conditions of disqualification. The Federal Government pays the entire cost of benefit payments out of appropriations from general revenues.

This system has caused great inequity and significant administrative complexity. It has cost the Federal Government in excess of $670 million during calendar 1975; it will cost an additional $850 million in calendar 1976.

SUA gives a free ride to those State and local governments which have not elected to cover their employees. And it does so at the expense of the general taxpayer.

It is my view that this situation ought not to persist.

These workers should be covered. But their employers should be treated as all other employers. They should bear the financial burden of this coverage.

Nearly 40 percent of total SUA beneficiaries were former employees of State and local government. I again say—these people should be afforded unemployment compensation protection—but not at cost to the general taxpayer.

So I urge you to vote against the Ketchum amendment.

The provisions of this bill as they relate to the coverage of State and local employees are constitutional. The recent Supreme Court decision in National League of Cities against Usery is not applicable. That decision dealt with a federally imposed requirement directly on the States; here we are dealing with no such direct requirement.

There is no legislative requirement in present law, and there is none in this bill, which would require any State to establish a State Unemployment Compensation system. The Federal law simply imposes a tax on employers and then grants a credit for participating in an approved State Unemployment Compensation system.

The solicitor of the U.S. Department of Labor has prepared a written opinion which clearly explains the distinction between what is proposed in this bill and what was held unconstitutional in the National League of Cities case, and I quote:

The Federal Unemployment Tax Act and Title III of the Social Security Act, as enacted, and as proposed to be amended by . . . H.R. 10210, derive from Congress' power to lay and collect taxes and to provide for the general welfare. . . . As stated in *Steward Machine Co.*, participation in the Federal-State Unemployment Compensation program is voluntary on the part of the States and is constitutional under the taxing and general welfare clause. *Id.*, at 590 and 591. Neither regulation nor lack of consent is involved in the extension of unemployment compensation coverage to State and local government employees.

The Supreme Court itself stated that the National League of Cities has no application to statutes enacted under the taxation and general welfare clause. The Court in a footnote stated:

We express no view as whether different results might be obtained if Congress seeks to affect integral operations of state governments by exercising authority granted it under other sections of the Constitution such as the Spending Power, Art. I, § 8, cl. 1, or § 5 of the fourteenth Amendment.

The Department of Labor Solicitor's opinion continues:

The Court in *National League of Cities* stated that Congress exceeded its authority under the Commerce Clause, by forbiding choices to States and local governments in regulating relationships with their own employees . . . The Court held that the only "discretion" left to the States under the amended Fair Labor Standards Act was to raise taxes or cut services or payrolls to meet their increased costs under that Act. Unlike the Fair Labor Standards Act, the Federal Unemployment Tax Act and Title III of the Social Security Act offer the States the discretion of participating in the benefit system.

So I hope when we vote on the Ketchum amendment we will do so on its merits, and not on any misconception of the recent Supreme Court decision.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for his contribution, and I yield back the balance of my time.

Mr. WAGGONNER. Mr. Chairman, I rise in support of the amendment.

(Mr. WAGGONNER asked and was given permission to revise and extend his remarks.)

Mr. WAGGONNER. Mr. Chairman, I will point out to my colleagues in the House that the gentleman from Wisconsin (Mr. STEIGER) has just made reference to an unanswered question on the part of the Supreme Court with regard to the constitutionality of such a proposal.

I think it is worthy of our attention to take note here that in recent weeks the Supreme Court has, in the instance of the minimum wage, said very clearly that we did not have the authority to impose the provisions of a minimum wage law on State and local units of government. Now, only a newcomer or a fool ever attempts to predict what the court will do, but if the court would be logical and carry that conclusion a little bit further, it does seem to me that having now rendered that decision in the instance of minimum wage, it would likewise find that we do not have the constitutional authority to impose the provisions of unemployment compensation insurance on State and local units of government.

Mr. Chairman, I suggest, to say the very least, that a constitutionality question does exist and we should not impose this burden on State and local units of government.

Mr. STEIGER of Wisconsin. Mr. Chairman, will my colleague yield?

Mr. WAGGONNER. I would be happy to yield to my very good friend the gentleman from Wiscsonsin.

Mr. STEIGER of Wisconsin. Mr. Chairman, I do not think any of us could pretend to know with certainty what the court would do or would not do.

I will simply ask my colleagues to examine the opinion of the solicitor of the Labor Department in response to the question as to the applicability of the case of the National League of Cities. I do think there is a very different issue involved in this instance.

I will not get into that argument in detail now, but I do want to caution the Members that one can not say this legislation poses the same question; a different issue is involved.

Mr. WAGGONNER. Mr. Chairman, while we are talking about a difference, I think the gentleman will agree with me that the solicitor of the Department of Labor is a vastly different individual than the judges on the U.S. Supreme Court. He has no vote.

Mr. STEIGER of Wisconsin. That is true, without question.

Mr. WYLIE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. WYLIE asked and was given permission to revise and extend his remarks.)

Mr. WYLIE. Mr. Chairman, I have received several letters in support of the Ketchum amendment, and I have one here which rather sums up why I encourage the Members of this body to vote for the amendment. The letter comes from the Vice President of the Columbus Board of Education. It is from Mr. Paul Langdon, and it states as follows:

I would appreciate support of the Ketchum amendment in that it eliminates public unemployment payments under section 115. As you may know, we have worked hard in the Ohio Legislature in regard to the unemployment bill here and, leaving section 115 in the bill stand, would negate the efforts that we have made in the Ohio Legislature, particularly in regard to benefit payments during the summer to cooks, school secretaries, and others.

Further, section 115 really provides for Federal intrusion into State activities. It would be much better if these matters were left to the individual States. The bill could cost Ohio school boards $40.4 million annually.

If the Ketchum amendment fails, please vote against H.R. 10210.

Mr. Chairman, I am going to vote against the bill whether the Ketchum amendment passes or fails because I feel strongly that we should tighten the standards for qualification before we again increase the tax burden on employers.

Several years ago I was retained as a lawyer in an unemployment compensation case. My client had just been served with a notice that one of his employees had been awarded unemployment compensation benefits, and he wanted to protest; he wanted to appeal, he said. It seemed as if the employee had come to his restaurant seeking employment.

He worked 1 day. The next morning

my client suggested some ways in which he might increase his output on the grill. The new employee became irate, kicked my client on the shins, and walked out.

The State law had been changed a year prior to that so that this employee qualified for unemployment compensation benefits in the State of Ohio, and his check was mailed to him down in Tennessee. Under Ohio law then, nothing could be done about the matter.

I ran for the legislature that year. One of the issues which I advanced was this issue. I said if I was elected, I would attempt to change the law so that an employee would have to work for a reasonable period of time and he would then have to sign up and be available for suitable employment in order to qualify for unemployment compensation benefits.

While I was looking into this and debating the issue, I found that more than $2 million had been mailed to Florida during the previous year in unemployment compensation checks in some cases to people lounging on the beaches in HERB BURKE'S and BILL YOUNG'S districts.

Furthermore, I found that 38 recipients were living in Hawaii; and I do not think they were looking for suitable employment because we have very few pineapple pickers in the State of Ohio.

Anyhow, the law was changed the following year so that there had to be a period of employment; there had to be a signing up for suitable employment; there had to be a reporting procedure; and the quit had to be involuntary.

Now the problem has been turned around again. Under Ohio law now an unemployment compensation beneficiary needs only to earn $20 a week for 20 weeks during a 54-week period.

I know of a young man who is 18 years old whose father is a high-salaried executive with a big corporation. The young man is drawing unemployment compensation and driving a Corvette.

I know of another case in which a young lady took a vacation to get married and to go on a honeymoon. When she returned, she had been replaced. Her husband has a reasonably good job. She signed up for unemployment compensation benefits and has been drawing them for almost a year now. I do not think that she is looking for a job or wants one.

Mr. Chairman, examples like these defeat the whole purpose of providing temporary economic support for a truly unemployed person, the head of a household who needs help over a trying period.

Mr. Chairman, that is why I am going to vote against the bill today, because there has been no attempt, in my judgment, to close the loopholes which make such abuses possible. The unemployment compensation program has been a big ripoff, and under the closed rule nothing can be done about it.

Mr. CORMAN. Mr. Chairman, the gentleman has cited some cases he knows about in Ohio.

This is not federalizing unemployment compensation insurance, and if we were to federalize it, it would not solve those problems. Those problems are left to the States.

I would suggest that the gentleman from Ohio (Mr. WYLIE) not vote against this bill containing a financing provision just because he is upset with his home State.

Mr. WYLIE. I think we should close the loopholes, first.

Mr. PICKLE. Mr. Chairman, I move to strike the requisite number of words.

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Chairman, if the Ketchum amendment is not adopted, it means that this House will have extended coverage for over 8 million additional people in the unemployment compensation program. Approximately 7.7 million local employees and about 600,000 State employees, for a total of 8.3 million, will be affected if this stays in the bill.

Mr. Chairman, at that point we will be saying to the employees of every city, to the employees of every county, to the employees of every State and every school, to the employees of every water district or soil conservation district or to the employees of any political subdivision, "You are mandatorily covered."

At that point the Congress will be saying to other political subdivisions that "We will force you to cover your employees."

Mr. Chairman, the question of covering public employees is certainly debatable. It is my opinion, however, that that decision should be left to the various governmental agencies involved. We should allow the cities to decide whether they want to give their employees coverage.

Mr. Chairman, I would think that is a very proper question for the cities, counties, schools in my district to decide. They should have the right to pass upon the question whether their employees would be covered.

If the Congress forces it on them, whether we want to admit it or not, we certainly lay the groundwork for local districts to possibly have to raise their taxes, whether they be school taxes, city taxes, or county taxes.

Whether it is a school, city, or a county tax, I think the jurisdictions involved would want to decide for themselves. I think that is what the gentleman from California (Mr. KETCHUM) is asking us to do. The present law says that these political subdivisions will be covered if they wish to be. I think that 29 of the States now cover their employees. It is true that some of the States do not, but it is their choice and I think that rightfully it is their choice. Therefore, I support the amendment offered by the gentelman from California (Mr. KETCHUM) to strike this section and to make it voluntary as it is now.

Mr. WYLIE. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, I want to associate myself with the remarks of the gentleman from Texas. I would like to reiterate the point I was trying to make a little while ago when the gentleman from California (Mr. CORMAN) suggested that we ought to solve our problems by improving the Ohio standards and tighten them up. I think we ought to tighten up the standards for qualifications first rather than increasing the tax burden on the employer first. That is one of the reasons why I will support the Ketchum amendment. This language would add additionally to the cost of the program to Ohio, it seems to me, by increasing the number of people included in the program.

Mr. PICKLE. Mr. Chairman, I would say to the gentleman from Ohio that we do not get into the question of disqualifications in this bill. The gentleman raises a very pertinent problem of the unemployment compensation program, but that question is not in this bill. That would have to be considered in another measure.

Mr. WYLIE. But I think we ought to take that other measure up first before we vote on this one.

Mr. PICKLE. There will be opportunity to vote on the Federal benefit standard in one of the other amendments.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, I want to commend the gentleman upon his statement because the gentleman's interpretation of the Ketchum amendment is the way I feel about it.

The thing that bothers me is that the amendment has been offered from this side of the aisle, and so far of the four people who have talked for the amendment three have come from this side and one on that side. However, I have not heard from the chairman of the subcommittee, the gentleman from California (Mr. CORMAN). Do I gather by his silence that the gentleeman agrees with the amendment?

Mr. PICKLE. I would yield to the chairman of the subcommittee on that.

Mr. CORMAN. Mr. Chairman, if the gentleman will yield, frequently the chairmen of subcommittees are given the opportunity to close debate and I would hope that that courtesy will be extended to me. I will be pleased to give an explanation at that time.

Mr. SKUBITZ. I thank the gentleman.

Mr. CORMAN. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the amendment.

First, Mr. Chairman, as to the constitutional problem, the decision of the Supreme Court in National League of Cities against Usery in no way affects the constitutional validity of the proposed extension of the Federal unemployment compensation law to cover additional employees of the States and their subdivisions.

There are at least two major distinctions between the Fair Labor Standards Act amendments struck down by the Supreme Court in National League of Cities and the enacted and proposed provisions on unemployment compensation coverage of State and local government employees:

First. The Fair Labor Standards Act amendments were enacted under the commerce clause. The unemployment compensation provisions come under the taxation and general welfare—spending power—provisions of the Constitution. The Supreme Court specifically excluded statutes enacted under the spending power and the 14th amendment from the holding in National League of Cities.

Second. The Fair Labor Standards Act amendments were regulatory in nature, with no options afforded the States. The unemployment compensation provisions now enacted and proposed by H.R. 10210 are consistent with and fit into the historic structure of the Federal-State unemployment compensation program, which permits States the option of participation. In this manner, the unemployment compensation provisions are vitally different from the minimum wage and overtime provisions in the Fair Labor Standards Act amendments. States are not forbidden choices; choice is the essence of the Federal-State unemployment compensation program.

Accordingly, the provisions on coverage of State and local government employees, enacted in the Employment Security Amendments of 1970, are in accord with the U.S. Constitution. The amendments proposed in H.R. 10210, concerning the extension of coverage to State and local government employees generally, and provision for less than full financial support for State unemployment compensation laws, also are in accord with the U.S. Constitution.

Provision for coverage of State and local government employees under State unemployment compensation laws, as a condition of the tax credit under the Federal Unemployment Tax Act, is within the tax and general welfare powers of the Congress under article I, section 8, clause 1, of the U.S. Constitution. Provision for less than full financial support of State unemployment compensation laws is within the general welfare power of the Congress under article I, section 8, clause 1, of the U.S. Constitution. Those provisions do not infringe on State sovereignty or constitutional federalism.

Local and State employers have not said that their employees should not have unemployment compensation protection. They are covered right now under the temporary Federal SUA program, solely at the Federal general taxpayers' expense. Public employers would like us to continue to cover their employees at the Federal taxpayers' expense. We cannot do this. Unemployment compensation is an insurance system, not a welfare system.

The history of the unemployment compensation system has been to expand coverage over the years. When it started out, we only covered about 50 percent of the total workers. We now cover all but 10 million, most of whom are public employees.

Let me tell the Members of the House that it is just as difficult for a policeman who has lost his job to go home and buy food for his wife and children as it is for an autoworker, a restaurant worker, or anybody else.

Do we believe that the people who protect us on our streets are entitled to the same benefits that other employees are entitled to? That is the issue.

Let me explain the provisions in H.R. 10210 pertaining to State and local coverage.

The bill extends unemployment compensation protection to all State and local government employees with certain exceptions: Elected officials or officials appointed for a specific term or on a part-time basis; members of a legislative body or the judiciary; members of the State National Guard or Air National Guard; emergency employees hired in case of disaster; and inmates of custodial institutions.

This will extend UC protection under the permanent law to approximately 7.7 million local government jobs and 0.6 million State government jobs.

DOL estimates that extending coverage to State and local government employees will increase total UC expenditures by about $400 million in fiscal 1979.

The bill prohibits payment of UC benefits during recess periods to permanently employed teachers and other professional school employees. For 2 years after coverage becomes effective, it allows States to deny benefits during recess periods to employed nonprofessional school workers.

During this 2-year period, the experience of the States will be monitored in order to determine if this option pertaining to nonprofessional school employees should be continued.

The reimbursement financing option for State and local government agencies contained in existing law will continue under H.R. 10210. This means that the States can allow State agencies and local government jurisdictions to finance UC benefits either by paying the State UC tax, the same as private employers, or by reimbursing the State fund—on a retroactive basis—for benefits paid to their employees.

The bill eliminates private employer financing of administrative and extended benefit costs attributable to State and local government employees. Federal administrative grants to States and the Federal share of extended benefits are financed out of revenues raised by the Federal UC payroll tax imposed on all private employers. State and local governments do not pay this Federal UC tax—and will not be required to do so under this bill. Under current law, private employers are paying the tax that finances administration costs and extended benefit expenditures for their employees and public sector employees as well. Provisions in H.R. 10210 make State and local governments liable for all UC costs attributable to their employees, or for the same UC costs paid by private employers.

In voting on the Ketchum amendment the Members should consider the following:

Virtually all private sector workers have unemployment compensation protection on a mandatory basis. Exceptions include farm and domestic workers, who are covered under this bill.

All Federal civil service employees are covered on a mandatory basis.

Employees of State colleges and hospitals are required to be covered under Federal law enacted in 1970.

Eight States, at their own option, have covered all local government employees: Connecticut, Florida, Hawaii, Michigan, Minnesota, Ohio, Oregon, and Wisconsin.

Twenty-eight States, at State option, have covered all State government employees.

Coverage of State and local government employees is optional in most other States and varies from jurisdiction to jurisdiction. In other words, some public employees have UC protection and some do not:

The result of the present mixture of Federal and State actions pertaining to State and local government coverage is that out of a total of 3.4 million State government jobs, 2.8 million, 82 percent, have UC protection and 0.6 million, 18 percent, are excluded from the permanent UC law. Out of a total of 9.1 million local government jobs, 1.4 million, 14 percent, have UC protection and the remaining 7.7 million, 86 percent, are excluded.

All State and local government workers are presently covered under the limited and temporary special unemployment assistance—SUA—program which expires December 31, 1976.

Federal requirements and State actions have resulted in unequal and unfair treatment of workers that do the same kind of work, but for different employers. For example:

College teachers have UC protection under permanent program mandated by Federal law; high school and elementary school teachers do not.

University policemen and security personnel in private industry are covered by Federal mandate; city and county policemen are not covered under permanent law.

Cafeteria workers at a State college are covered by Federal requirement; cafeteria workers in private industry or employed by the Federal Government are covered by Federal requirement; but cafeteria workers in high school and elementary schools, or employed by cities and counties, are not covered under permanent law.

Maintenance and landscape personnel in private industry, in State colleges or working for a Federal Government agency, are covered by Federal requirement; individuals doing exactly the same type of work for local schools and other State and local government agencies are not.

Here are some more specific examples of existing inequities:

A cafeteria worker employed in California in private industry or by a Federal Government agency is covered by Federal mandate and could receive up to 65 weeks of benefits at the present time. A cafeteria worker at the University of California campus is covered by Federal requirement and at the persent time could receive up to 65 weeks of benefits. A cafeteria worker in an elementary school in Los Angeles is covered as a result of State action and could receive up to 65 weeks of benefits. However, a cafeteria worker employed by Los Angeles County is not covered or eligible

for any UC benefits under the permanent law. Presently, this worker is eligible for up to 39 weeks of benefits under the temporary special unemployment assistance program that expires at the end of this year.

A clerk living in Massachusetts and employed in private industry, or by a Federal Government agency, could receive up to 65 weeks of UC benefits. A clerk working for the University of Massachusetts is covered by Federal requirement and could also receive up to 65 weeks of benefits. A clerk doing similar work for another State agency in Massachusetts, or for the city of Boston, however, is not covered under permanent law, and is only eligible for the 39 weeks of benefits provided under the temporary SUA program that expires the end of this year.

There is no justification for the different treatment under the Federal UC law of wage and salary workers who do the same kind of work but happen to work for a city rather than a private firm, or for a county rather than a Federal Government agency.

While employment for a city, county, or other local or State agencies is substantially more stable than private employment, involuntary layoffs do occur. When they do, the worker involved should have the same unemployment compensation protection while he or she is seeking new employment that we have afforded other workers.

The decision was made 41 years ago that, through the unemployment compensation program, employers should bear some of the burden of temporary, involuntary unemployment of their employees. There is no longer any justification for not extending this principle and the UC program to all wage and salary workers—including State and local government workers. And there is certainly no justification for requiring private employers and some public employers to pay UC costs of their workers and the employees of cities, counties, and local school boards.

It is time all employees and employers were treated the same under the UC program.

There has been considerable confusion about the financing of UC benefits paid to public employees.

The reimbursement financing option for State and local government agencies that exists under current law and is not changed by this bill, allows them to finance UC benefits either by paying the State UC tax—the same as private employers—or by reimbursing the State fund, on a retroactive basis, for benefits paid to their employees. A city, county, or school board that opts for the reimbursement financing method will have unemployment compensation cost only if—and to the extent that—they have unemployment. A city that does have to lay off some of its employees will be liable for the amount of UC benefits, including extended benefits, paid to its workers, and any administrative costs associated with the payment of these benefits. If the city or State agency has no unemployment, it will have no unemployment costs.

According to studies by the Department of Labor, the costs of UC coverage for public employees will be substantially less—as much as 70 percent less—than the cost of covering private sector workers. One study showed that, in 1973, benefit payments to State and local government employees amounted to about 0.25 percent of total wages paid to public employees covered under the permanent law. The comparable figure for private industry was 0.79 percent.

Even though State and local government workers are less likely to need unemployment compensation they should have the same protection provided other workers. And, just like all other workers, the costs of this should be borne by their employer. I urge the Members to vote against the Ketchum amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. KETCHUM).

The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 24, noes 32.

Mr. KETCHUM. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Seventy-three Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to clause 2, rule XXIII, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from California (Mr. KETCHUM) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 186, noes 212, not voting 34, as follows:

[Roll No. 519]

AYES—186

Abdnor	Brown, Ohio	Dickinson
Alexander	Broyhill	Downing, Va.
Andrews, N.C.	Buchanan	Duncan, Tenn.
Andrews, N. Dak.	Burgener	du Pont
	Burke, Fla.	Edwards, Ala.
Archer	Burleson, Tex.	Emery
Armstrong	Butler	English
Ashbrook	Byron	Erlenborn
AuCoin	Carter	Eshleman
Bafalis	Cederberg	Evans, Colo.
Bauman	Chappell	Findley
Beard, Tenn.	Clancy	Flowers
Bedell	Clausen, Don H.	Flynt
Bell	Clawson, Del	Fountain
Bennett	Cleveland	Frey
Boggs	Cochran	Fuqua
Bowen	Collins, Tex.	Ginn
Breaux	Conable	Goldwater
Breckinridge	Crane	Goodling
Brinkley	Daniel, Dan	Grassley
Brooks	Daniel, R. W.	Guyer
Broomfield	Derrick	Hagedorn
Brown, Calif.	Devine	Haley
Brown, Mich.		Hall, Tex.
Hansen	McCollister	Runnels
Harsha	McDonald	Santini
Hays, Ohio	McEwen	Satterfield
Hefner	McKay	Schneebeli
Henderson	Mahon	Schulze
Hightower	Mann	Sebelius
Hillis	Martin	Shriver
Holland	Mathis	Shuster
Holt	Michel	Skubitz
Hubbard	Milford	Slack
Hungate	Miller, Ohio	Smith, Iowa
Hutchinson	Montgomery	Smith, Nebr.
Hyde	Moore	Snyder
Ichord	Moorhead, Calif.	Spence
Jarman		Steiger, Ariz.
Jenrette	Myers, Ind.	Stephens
Johnson, Colo.	Myers, Pa.	Stratton
Johnson, Pa.	Natcher	Stuckey
Jones, N.C.	Neal	Sullivan
Jones, Okla.	Nedzi	Symms
Kasten	Nichols	Talcott
Kazen	O'Brien	Taylor, Mo.
Kelly	Paul	Taylor, N.C.
Kemp	Pettis	Teague
Ketchum	Pickle	Thone
Kindness	Poage	Treen
Krebs	Preyer	Waggonner
Lagomarsino	Quie	Wampler
Landrum	Quillen	White
Latta	Railsback	Whitehurst
Levitas	Randall	Whitten
Lloyd, Calif.	Rhodes	Wiggins
Lloyd, Tenn.	Risenhoover	Wilson, Bob
Long, La.	Roberts	Wilson, C. H.
Long, Md.	Robinson	Wilson, Tex.
Lott	Rogers	Winn
Lujan	Roncalio	Wylie
McClory	Rose	Young, Fla.
McCloskey	Rousselot	Young, Tex.

NOES—212

Adams	Fithian	Mineta
Addabbo	Flood	Minish
Allen	Florio	Mink
Ambro	Foley	Mitchell, Md.
Anderson, Calif.	Ford, Mich.	Mitchell, N.Y.
	Ford, Tenn.	Moakley
Annunzio	Forsythe	Mollohan
Aspin	Fraser	Moorhead, Pa.
Badillo	Frenzel	Morgan
Baldus	Gaydos	Mosher
Baucus	Gibbons	Moss
Beard, R.I.	Gilman	Mottl
Bergland	Gonzalez	Murphy, N.Y.
Bevill	Gradison	Murtha
Biaggi	Green	Nix
Biester	Gude	Nolan
Bingham	Hall, Ill.	Nowak
Blanchard	Hamilton	Oberstar
Blouin	Hammer-schmidt	Obey
Boland		O'Hara
Bolling	Hanley	O'Neill
Bonker	Hannaford	Ottinger
Brademas	Harrington	Passman
Brodhead	Harris	Patten, N.J.
Burke, Calif.	Hayes, Ind.	Patterson, Calif.
Burke, Mass.	Hechler, W. Va.	
Burlison, Mo.	Heckler, Mass.	Pattison, N.Y.
Burton, John	Hicks	Perkins
Burton, Phillip	Holtzman	Pike
Carney	Horton	Pressler
Carr	Howard	Price
Chisholm	Hughes	Pritchard
Cohen	Jacobs	Rangel
Collins, Ill.	Jeffords	Rees
Conte	Johnson, Calif.	Regula
Conyers	Jordan	Reuss
Corman	Kastenmeier	Richmond
Cornell	Keys	Rinaldo
Coughlin	Koch	Rodino
D'Amours	Krueger	Roe
Daniels, N.J.	LaFalce	Rooney
Danielson	Leggett	Rosenthal
Davis	Lehman	Rostenkowski
de la Garza	Lent	Roush
Delaney	Lundine	Roybal
Dellums	McCormack	Ruppe
Dent	McDade	Russo
Diggs	McFall	Ryan
Dingell	McHugh	St Germain
Downey, N.Y.	McKinney	Sarasin
Drinan	Madden	Sarbanes
Duncan, Oreg.	Madigan	Scheuer
Early	Maguire	Schroeder
Eckhardt	Matsunaga	Seiberling
Edgar	Mazzoli	Sharp
Edwards, Calif.	Meeds	Simon
Eilberg	Melcher	Sisk
Evans, Ind.	Metcalfe	Solarz
Fary	Meyner	Spellman
Fascell	Mezvinsky	Staggers
Fenwick	Mikva	Stanton, J. William
Fish	Miller, Calif.	
Fisher	Mills	Stark

Steed	Ullman	Wirth
Steiger, Wis.	Van Deerlin	Wolff
Stokes	Vander Veen	Wright
Studds	Vanik	Wydler
Thompson	Vigorito	Yates
Thornton	Walsh	Yatron
Traxler	Waxman	Young, Ga.
Tsongas	Weaver	Zablocki
Udall	Whalen	Zeferetti

NOT VOTING—34

Abzug	Hawkins	Pepper
Anderson, Ill.	Hébert	Peyser
Ashley	Heinz	Riegle
Clay	Helstoski	Shipley
Conlan	Hinshaw	Sikes
Cotter	Howe	Stanton, James V.
Derwinski	Jones, Ala.	Steelman
Dodd	Jones, Tenn.	Symington
Esch	Karth	Vander Jagt
Evins, Tenn.	Litton	Young, Alaska
Giaimo	Moffett	
Harkin	Murphy, Ill.	

The Clerk announced the following pairs:

On this vote:

Mr. Jones of Tennessee for, with Mr. Pepper against.

Mr. Hébert for, with Mr. Symington against.

Mr. Sikes for, with Ms. Abzug against.

Mr. Conlan for, with Mr. Hawkins against.

Mr. Dewinski for, with Mr. Murphy of Illinois against.

Ms. KEYS and Messrs. REES, THORNTON, HANLEY, and WRIGHT changed their vote from "aye" to "no."

Messrs. YOUNG of Texas, HUNGATE, MYERS of Indiana, LANDRUM, and EMERY changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Clerk will read title II.

The Clerk read as follows:

TITLE II—FINANCING PROVISIONS

SEC. 211. INCREASE IN FEDERAL UNEMPLOYMENT TAX WAGE BASE AND RATE

(a) INCREASE IN WAGE BASE.—Paragraph (1) of section 3306(b) of the Internal Revenue Code of 1954 (defining wages) is amended by striking out "$4,200" each place it appears and inserting in lieu thereof "$8,000".

(b) INCREASE IN TAX RATE.—Section 3301 of such Code (relating to rate of Federal unemployment tax) is amended to read as follows:

"SEC. 3301. RATE OF TAX.

"There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

"(1) 3.4 percent, in the case of a calendar year beginning before the earlier of—

"(A) the calendar year 1982, or

"(B) the first calendar year after 1975, as of January 1 of which there is not a balance of repayable advances made to the extended unemployment compensation account (established by section 905(a) of the Social Security Act); or

"(2) 3.2 percent, in the case of the earlier of the calendar years referred to in subparagraphs (A) and (B) of paragraph (1) and each calendar year thereafter;

of the total wages (as defined in section 3306 (b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).".

(c) TECHNICAL AMENDMENTS.—

(1) Subparagraph (C) of section 901(c)(3) of the Social Security Act is amended to read as follows:

"(C) Each estimate of net receipts under this paragraph shall be based upon (i) a tax rate of 0.5 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 3.2 percent, and (ii) a tax rate of 0.7 percent in the case of any calendar year for which the rate of tax under such section 3301 is 3.4 percent.".

(2) The last sentence of section 905(b)(1) of such Act is amended to read as follows: "In the case of any month after March 1976 and before April of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting 'five-fourteenths' for 'one-tenth'.".

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1976.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to remuneration paid after December 31, 1975.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on the date of the enactment of this Act.

SEC. 212. FINANCING COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES.

(a) DENIAL OF REIMBURSEMENT FOR CERTAIN ADMINISTRATIVE EXPENSES.—Section 302(a) of the Social Security Act is amended to read as follows:

"SEC. 302. (a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. The amounts certified by the Secretary of Labor under the preceding sentence for payment to any State shall not include amounts which are attributable to the administration of the State law with respect to services to which section 3306(c)(7) of the Federal Unemployment Tax Act applies. The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.".

(b) DENIAL OF CERTAIN PAYMENTS UNDER THE EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM.—Subsection (a) of section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new paragraph:

"(4) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which section 3306(c)(7) of the Internal Revenue Code applies shall be reduced by an amount which bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to amounts certified under section 302(a) of the Social Security Act for calendar quarters beginning on or after January 1, 1978.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply with respect to compensation paid for weeks of unemployment beginning on or after January 1, 1978.

SEC. 213. ADVANCES TO STATE UNEMPLOYMENT FUNDS.

(a) ADVANCES TO BE MADE FOR 3-MONTH PERIODS.—Paragraph (1) of section 1201(a) of the Social Security Act is amended—

(1) by striking out "any month" and inserting in lieu thereof "any 3-month period";

(2) by striking out "the preceding month" and inserting in lieu thereof "the month preceding the first month of such 3-month period"; and

(3) by striking out "such month" and inserting in lieu thereof "such 3-month period".

(b) APPLICATIONS.—Paragraphs (2) and (3) of such section 1201(a) are each amended by striking out "month" each place it appears and inserting in lieu thereof "3-month period".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 214. PRORATION OF COSTS OF CLAIMS FILED JOINTLY UNDER STATE LAW AND SECTION 8505 OF TITLE 5, UNITED STATES CODE.

(a) GENERAL RULE.—Section 8505(a) of title 5, United States Code, is hereby amended to read as follows:

"(a) Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages his base period bears to the total amount of his base period wages."

(b) TECHNICAL AMENDMENT.—Section 8501 of title 5, United States Code, is amended by striking out "and" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(8) 'base period' means the base period as defined by the applicable State unemployment compensation law for the benefit year.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with regard to compensation paid on the basis of claims for compensation filed on or after July 1, 1976.

SEC. 215. FEDERAL REIMBURSEMENT FOR UNEMPLOYMENT BENEFITS PAID ON BASIS OF CERTAIN PUBLIC SERVICE EMPLOYMENT.

(a) GENERAL RULE.—Chapter 85 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER III—CERTAIN PUBLIC SERVICE EMPLOYEES

"§ 8531. Definitions.

"For purposes of this subchapter—

"(1) 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

"(2) 'compensation' has the meaning given to such term by section 8501(4) of this title;

"(3) 'qualified public service job' means any public service job funded with assistance provided under the Comprehensive Employment and Training Act of 1973;

"(4) 'public service wages' means all pay and allowances, in cash and in kind, for services performed in a qualified public service job; and

"(5) 'base period' has the meaning given to such term by section 8501(8) of this title.

EXHIBIT H

UNITED STATES OF AMERICA

Congressional Record

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(PAGES 33229 TO 34372)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1976

It is with pleasure that I transmit this annual report describing current planned Federal activities contributing to the World Weather Program. The report details how the United States is following the intent of Senate Concurrent Resolution 67 of the 90th Congress to participate in this international program.

GERALD R. FORD.

THE WHITE HOUSE, *September 28, 1976.*

REPORT ON COOLEY'S ANEMIA PROGRAMS—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States which was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

I am pleased to send to the Congress the Fourth Annual Report on the Administration of the Cooley's Anemia Programs in accordance with the requirements of Section 1115 of the Public Health Service Act before it was amended by P.L. 94–278.

The Report describes the activities of the Health Services Administration (HSA), the Center for Disease Control (CDC), and the National Institutes of Health (NIH) in implementing the Public Health Service Act, as amended by the National Cooley's Anemia Control Act. Screening, counseling, and education activities are underway to provide such services to the public through ongoing genetic blood diseases programs. Efforts are continuing to improve laboratory methods for the detection of Cooley's anemia and expanded training programs for health personnel are improving the capability for such detection. Research in the diagnosis, treatment and prevention of Cooley's anemia is progressing with continued high priority being given to the development and evaluation of more effective ways to reduce the iron load in the bodies of patients that has resulted from repeated blood transfusions required to maintain life.

GERALD R. FORD.

THE WHITE HOUSE, *September 28, 1976.*

UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

The Senate continued with the consideration of the bill (H.R. 10210) to require States to extend unemployment compensation coverage to certain previously uncovered workers; to increase the amount of the wages subject to the Federal unemployment tax; to increase the rate of such tax; and for other purposes.

AMENDMENT NO. 2370, AS MODIFIED

Mr. JAVITS. Mr. President, I send another amendment to the desk on behalf of the same sponsor. It is numbered 2370, with certain modifications, which I send to the desk. I shall explain them. The committee has a copy.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) for himself and others, proposes amendment No. 2370, as modified:

Beginning on page 12, line 18, strike all through page 13, line 13, and insert in lieu thereof the following:

"(D) by inserting before ', and' at the end thereof the following: ', and (II) with respect to service in any other capacity for an educational institution (other than an institution of higher education) to which section 3309(a)(1) applies, compensation payable on the basis of such service may be denied to any individual for any week which begins before January 1, 1980, and which commences during a period between two successive academic years (or for a similar period between two regular but not successive terms) if such individual performed such service in the first such academic year or terms and there is notification of reasonable assurance from such an educational institution that such individual will be reemployed to perform such services in the later of such academic years or term, but any individual to whom a provision conforming with subparagraph (A)(I) or subparagraph (A)(II) is applied, and who is in fact not offered reemployment beginning with the later academic year or term in an applicable capacity by the educational institution with which the individual had a contract or from which the individual had received notification of reasonable assurance of reemployment, as the case may be, shall upon application therefor be furnished a redetermination of entitlement to compensation for all weeks of unemployment which begin between the academic years or term involved, and with respect to which the individual was available for work and otherwise was entitled to compensation (disregarding the provisions corresponding with subparagraphs (A)(I) and (A)(II)), and the individual shall be paid a lump sum in the amount to which the individual is so determined to be entitled for all such weeks, subject to regulations promulgated by the Secretary which shall prescribe reasonable means to facilitate the filing and receipt of such applications, a time limit on such applications, and reasonable conditions on entitlement applicable in the circumstances so as to effectuate the purposes of this provision'.".

Mr. JAVITS. Mr. President, this raises a question—not the biggest question in the world, and we shall come to that shortly—but it does raise a serious question. It relates to employees who, under the bill, may be denied unemployment compensation, who are professional or nonprofessional school employees. It seeks to determine their situation during summer vacation periods, as to whether they are unemployed or just on vacation, if they have, quoting from the bill "a reasonable assurance of employment for the next school term." Under present law, which requires States to provide unemployment insurance coverage for employees of their own higher educational institutions, teachers and other professional employees in such higher educational institutions are not entitled to compensation during vacation periods if they have contracts for the following terms. As passed by the House, the bill before us would require the States to deny compensation during summer vacation periods to all professional employees of all schools—that is, elementary, secondary, and post-secondary—who have contracts for the next term.

With respect to nonprofessional school employees, the House-passed bill permits the States to deny benefits during summer vacation periods if they have reasonable assurance of employment in the succeeding year.

So the House makes a difference. Professional employees—teachers, et cetera—have to have a contract. Otherwise, they get unemployment compensation. For nonprofessional employees, they have to have reasonable assurance of employment in the succeeding term, in which case, they, too, are denied unemployment compensation.

This provision in the Ways and Means bill from the other body expires on December 31, 1978, the House report says—

in order to permit a reexamination by Congress on the basis of State experience.

The Committee on Finance made these two provisions even more restrictive by applying the reasonable assurance of reemployment which, in the House bill, applies only to the nonprofessional school employees, to both professional and nonprofessional employees, despite the fact that virtually all teachers and many other administrative school personnel—that is, in the professional class—either have year round contracts or have contracts for the next school term before the vacation period begins.

Moreover, the Committee on Finance changed the 2-year experimental authority in the House bill concerning nonprofessional employees to a permanent provision.

I am sympathetic to the intent of these restrictions on the payment of unemployment benefits to school employees during summer vacation periods. Certainly, many such employees expect to have little or no employment during such periods and intend to return to their school at the end of the summer. Others, of course, must depend on summer employment to provide adequately for themselves and their families. More importantly, many school employees—teachers, clerks, custodians, cafeteria workers, and others—have, during this recession, experienced layoffs in significant numbers for the first time in their career. Their rights to unemployment insurance benefits have therefore become much more important to them.

On the other hand, in the consideration of this amendment, we should very carefully examine the full implications of any restrictive provisions such as this before we establish a mandatory Federal requirement and apply it to one class of covered employees engaged in seasonal employment.

It must be understood that public employers—in this case, employed by school agencies—will typically be providing coverage for their employees on the basis of dollar-for-dollar reimbursement of benefits paid to former employees, rather than using the taxing provisions applicable, as we know them, to private sector employers. The reimbursement approach has been followed by most jurisdictions for public employees' coverage under present Federal-State unemployment insurance laws, and, therefore, is likely to follow the same reimbursement method.

What we have proposed in the way of an amendment to deal with these problems is to neutralize the economic incentive for abuse. The amendment provides that if, at the beginning of the term following the vacation period, the em-

ployee, whether professional or nonprofessional, is in fact not offered reemployment by the educational agency that gave him the reasonable assurance in the first place, he will be entitled to a redetermination of benefits applicable to the period for which he has been denied his entitlement to compensation. In short, if this restrictive provision has worked unfairly to the detriment of an actually unemployed school employee, he or she will be entitled to a lump sum payment for the denial period.

This will in no way operate as a paid vacation. A claim for benefits must have been initially filed with the State employment security agency and that person must have been available for work and otherwise qualify to be entitled to compensation under the applicable Federal and State laws.

But if, as a matter of fact, by qualifying—that is, he has filed for his benefits under unemployment and he has complied with all the laws and requirements in that regard—if, at the end of that vacation period, he actually finds that he had no reasonable assurance of employment by the school agency, and indeed, is not employed, then retroactively, he may have his benefits redetermined. He does not get them until that determination is made.

If we do it otherwise, Mr. President, I think we are really penalizing, especially in these days of considerable layoffs, a school employee who is really unemployed but, because of the terms of the law, may never collect unemployment compensation because he may be charged with having reasonable assurance that he will be employed at the end of the year, even though he is not. It seems to us that, in the way that I have described, we can deal with the abuses and, at the same time, not deprive a public employee of the legitimate unemployment compensation to which he is entitled.

Now, Mr. President, I would like to quote from a hearing on this particular matter by witnesses representing the administration. The representative of the National School Boards Association was a witness in the course of that hearing, and I thought he explained it very well. He said as follows:

I might add, sir, that Senator Javits asked the question about reasonable assurance. I would indicate that we would have no problem with respect to retroactivity if that were placed in the law. In other words, if, for example, in a tenure state a notification was given to an employee in April, which is the usual period of time, offering reemployment that following year, even without a contract, and something should take place during the summer months to prevent that from occurring, we contend that person was legitimately unemployed and should be eligible for unemployment compensation for those months.

That is the essence of what this amendment seeks to accomplish.

Mr. President, I would also like to read into the RECORD—I do not like to bore the Senator from Arizona, but I want to honor my colleague, Senator GOLDWATER—a statement from the American Federation of Teachers signed by Albert Shanker, president, a letter dated September 23, 1976, addressed to me, which reads as follows:

It is my understanding that you intend to offer an amendment to this bill that will allow for a retroactive payment of benefits in cases where they are wrongfully denied.

And that is the intent of this amendment.

The American Federation of Teachers, AFL–CIO, strongly supports your amendment as a method of assuring if justice is delayed it will at least not be denied. We hope when this bill goes into conference the conferees will review the facts of this situation and restore payment of benefits for teachers consistent with the House-passed provision.

So, Mr. President, I present that to the Senate and hope very much that we may hear from Senator LONG as to his views on this particular matter.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. CURTIS. Mr. President, the distinguished Senator from New York has raised some questions about the language adopted by the Committee on Finance with respect to teachers. I believe he is unduly alarmed over our change with respect to the requirement of contracts.

The House would provide that they would not get the unemployment compensation if they had a contract for the coming year. Upon examination we find that that is a little too farreaching. I think it is overly legalistic. You could have countless cases where a teacher's services would be continued on, yet for many reasons the contract might not have been entered into.

It would hinge too much upon the execution of a contract when there is no intention of either body to interrupt the employment through the regular school year.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. CURTIS. Yes.

Mr. LONG. If we agree to the Senator's amendment we would have this type of situation: under most of these teacher tenure laws the law requires you to hire that teacher come the fall, so he knows that his job is there. Thanks to the good work of the teacher organizations, they have undertaken and achieved pay schedules which take into account the fact that that is a 9-month school year, so either by paying them more during the 9 months or otherwise they pay a salary which is adequate to pay that teacher for a year even though he worked for the school board for 9 months.

A schoolteacher does not have to have employment during those 3 months because almost every State has a pay arrangement in such a fashion if they are not paid during those 3 months the pay during the other 9 months is adequate to provide for their needs during the 12 months.

So a schoolteacher is really not unemployed during the summer recess. He can take other employment if he wants to, but he has a pay schedule, in most States, and I think that is true in Louisiana as well as Nebraska, that, assuming he wants to take a vacation during the summer, he still has adequate income to provide for him on an annual basis.

Now, if we say he is regarded as unemployed unless he has a contract to hire him again in the fall, let us say in September, then that would set the stage for a ripoff for the teachers who say, "Look, we do not want a contract. We will come back next year. We know the law requires you to hire us when we do come back, but we do not want a contract because we want to draw unemployment insurance in addition to school teachers' pay even though we are being paid a salary for which our people campaigned and obtained adequate adjustment to provide for an annual salary, adequate to provide for our needs."

Now under those circumstances, we would then set the stage for a ripoff, and there are too many ripoffs in this program where it is now, where the people are not unemployed, where they have a salary that is adjusted to take care of their annual needs. Here one could choose to regard himself as unemployed simply by not having a contract although he knows he has a job.

Mr. CURTIS. The distinguished chairman is so correct.

It is not unreasonable to anticipate that in these days where some schools find is difficult to secure teachers they would wink at this and they would say, "Well, you do not want a contract, go ahead. We won't interfere in what you are trying to get for yourself this summer, just so you are back here when school starts." That could very well happen. We know that some people administering unemployment compensation, and some employers, actually submit some things they know are not right because they are timid about speaking out and taking another course.

Here is another situation: Many States have a teacher tenure law. The teacher's job goes on unless the board takes affirmative action and notifies them to terminate it. Well, if they are going to go on they are not unemployed. Why should we link it then to an actual contract? It could cause all sorts of trouble in reference to that.

I would like to also call attention to the fact that in small communities, in communities of small population, they do not have too much of an office force for the school board. School board members serve without compensation. They are busy, successful people, and they have their businesses to look after. But they serve, and they serve very well, as members of the school board, but they do not have secretarial help or help that is full time, and so sometimes actual formal contracts are delayed or not executed. That would make the teacher eligible for unemployment compensation for the summer.

I believe the language of the Finance Committee is fair to all the parties. I think it was well thought out. I believe the proposal of the distinguished Senator from New York is overly legalistic, that it will lead to some ripoffs. that it will cause applications to be filed for unemployment compensation where clearly the individual is not unemployed.

I believe it should not be agreed to.

Mr. BARTLETT. Mr. President, the distinguished Senators from Louisiana and Nebraska have been talking about ripoffs. I think they could have mentioned loopholes. I would like to compli-

ment the distinguished chairman on closing one, so far as this bill is concerned, a few minutes ago.

I also wish to say that in my short time in the Senate I have often wondered how valuable it is to prepare for a hearing on a broad subject such as unemployment compensation and present that thinking even in the form of amendments to the committee, wondering whether any action might be taken.

I found, much to my pleasant surprise, that section 15 of the bill before us on page 41 capsulized the two amendments we did have, which would do away with the double dip provision of permitting people who retire either on Federal or private retirement programs to immediately qualify for unemployment compensation to the full extent of the law.

We introduced both of these provisions as bills, but, unfortunately, they did not get anywhere, though they did attract the attention of a member of the Associated Press, Mr. Witt, who probably has done the most intensive study of the question to point out that there are some $200 million plus being spent on unemployment compensation to retirees of either private or Government retirement programs.

I want to thank the distinguished Senator from Wisconsin for accepting the modifying amendment of the distinguished chairman to provide for section 15, a dollar-per-dollar reduction, so that someone who does have a retirement program less than the unemployment compensation would be entitled to the difference, which was a provision in my amendment.

I want to thank the chairman and the gentleman from Wisconsin. I also want to advise my colleagues that I do have a detailed statement that I will put in the RECORD as soon as I can to explain the value of this amendment that has been adopted.

Mr. President, I yield the floor.

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER (Mr. BUMPERS). The Senator from New York.

Mr. JAVITS. Mr. President, I have heard the arguments made against the amendment which I have proposed, and with all respect I do not consider them valid.

The Finance Committee's argument really boils down to this, that reasonable assurance is a more precise standard than contract for the professional employee, which is the standard of the House committee.

I just do not believe that is so. On the contrary, the House standard is far more precise and, in addition, the tenure argument does not really enter in here because if there is a contract, it is a contract whether the teacher has tenure or not.

That is a standard of the House and that is the right standard.

Also, Mr. President, my amendment is very strong on the question of retroactivity. In other words, there cannot be any ripoffs because the claimant collects nothing until such time as the event actually happens. To wit, only if whatever reasonable assurance the claimant might have had proves to be no assurance whatever because the claimant is not reemployed. Under the standard which is set in the Senate bill, we could have a situation in which there is true unemployment, where the claimant is really not employed at the end of the summer period and, nonetheless, because at the beginning of that period some subjective determination is made, that he had "reasonable assurance," then he is denied compensation for that period of time.

I think there is no possibility of a ripoff through the retroactivity proposed, and that the contract provision in the House bill is an infinitely more precise standard than the reasonable assurance provision of the Senate bill.

For those reasons, I believe that the amendment is properly to be adopted and the professional employees, such as teachers, should not be prejudiced in the way they are prejudiced by the Finance Committee's bill.

QUORUM CALL

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. FANNIN. I object.

The PRESIDING OFFICER. Objection is heard.

The second assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 57 Leg.]

Allen	Fannin	McIntyre
Bartlett	Hatfield	Morgan
Bellmon	Helms	Randolph
Brooke	Jackson	Ribicoff
Bumpers	Javits	Sparkman
Curtis	Kennedy	Symington
Durkin	Long	Talmadge
Eastland	McClure	

The PRESIDING OFFICER. A quorum is not present.

Mr. JAVITS. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New York. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Wyoming (Mr. McGEE), the Senator from Montana (Mr. METCALF), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Rhode Island (Mr. PELL), the Senator from California (Mr. TUNNEY), and the Senator from Florida (Mr. CHILES) are necessarily absent.

I further announce that the Senator from Ohio (Mr. GLENN), the Senator from Hawaii (Mr. INOUYE), the Senator from Montana (Mr. MANSFIELD), and the Senator from South Dakota (Mr. McGOVERN) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Wyoming (Mr. HANSEN), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

The result was announced—yeas 77, nays 2, as follows:

[Rollcall Vote No. 670 Leg.]

YEAS—77

Abourezk	Garn	Moss
Allen	Gravel	Muskie
Baker	Griffin	Nelson
Bartlett	Hart, Gary	Nunn
Bayh	Hartke	Packwood
Bellmon	Haskell	Pastore
Biden	Hatfield	Pearson
Brooke	Hathaway	Percy
Bumpers	Helms	Proxmire
Burdick	Hollings	Randolph
Byrd, Harry F., Jr.	Hruska	Ribicoff
Byrd, Robert C.	Huddleston	Roth
Case	Humphrey	Schweiker
Church	Jackson	Scott, Hugh
Clark	Javits	Sparkman
Cranston	Johnston	Stennis
Culver	Kennedy	Stevens
Curtis	Lavalt	Stevenson
Domenici	Leahy	Stone
Durkin	Long	Symington
Eagleton	Magnuson	Taft
Eastland	Mathias	Talmadge
Fannin	McClellan	Thurmond
Fong	McClure	Tower
Ford	McIntyre	Williams
	Morgan	Young

NAYS—2

Goldwater	Weicker

NOT VOTING—21

Beall	Hansen	Montoya
Bentsen	Hart, Philip A.	Pell
Brock	Inouye	Scott, William L.
Buckley	Mansfield	Stafford
Cannon	McGee	Tunney
Chiles	McGovern	
Dole	Metcalf	
Glenn	Mondale	

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. JAVITS. Mr. President, there is a pending amendment.

The PRESIDING OFFICER (Mr. BARTLETT). The Senator from California is behind the Senator from New York. The Senator from California is walking up on the Senator's blind side.

Mr. JAVITS. Mr. President, there is a pending amendment, is there not?

The PRESIDING OFFICER. The Senator is correct, amendment No. 2370, as modified.

Mr. JAVITS. Mr. President, in order to give the Senator from California an opportunity I withdraw the pending amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The Senator from California is recognized.

UP AMENDMENT NO. 503

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes unprinted amendment No. 503.

On page 41, strike lines 10, 11 and 12 and insert in lieu thereof the following:

"(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is 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 his alien status shall be made except upon a preponderance of the evidence;"

Mr. CRANSTON. Mr. President, I thank the Senator from New York for his generosity and helpfulness. I shall speak very briefly to this amendment, which I think is not in any way controversial.

The purpose of the amendment is to provide standards for the administration of section 303 of the bill in order that innocent citizens and lawful permanent resident aliens will not be inadvertently denied or delayed payment of unemployment compensation benefits to which they otherwise are entitled.

The purpose of the amendment is as follows:

First, to define more precisely those individuals who shall not be paid unemployment compensation as aliens not lawfully admitted for permanent residence in the United States;

Second, to establish a principle of nondiscrimination in administration of the provision by requiring that data shall be uniformly required of all applicants; and

Third, to provide that no individual shall be denied unemployment compensation under this provision except upon a preponderance of the evidence.

The Immigration and Naturalization Act as interpreted by courts and agencies is a very complex body of law. It is administered by U.S. consuls abroad and by experts in the Immigration and Naturalization Service and the Department of Labor at home. Even these trained experts have difficulty in determining the status of individuals.

The problems for unemployment claims workers will be especially severe with respect to persons who claim citizenship but have no ready proof of citizenship. For example, there are many individuals who have neither birth certificates nor naturalization papers, but who are citizens under 8 U.S.C. 1401.

It is not fair to ask untrained unemployment claims workers to attempt to interpret the Immigration and Naturalization Act. The amendment, therefore, proposes that all applicants be asked basic questions about citizenship or status as an alien. This information, together with other claims information, is verified by the employer in the normal claims process.

Unless a preponderance of the evidence is developed indicating that the individual is not lawfully admitted for permanent residence in the Unted States, the claim will be paid. These administrative provisions are consistent with the intent of the bill to deny unemployment compensation to aliens not lawfully admitted to the United States without unintentionally penalizing persons who are eligible as citizens or as aliens lawfully admitted for permanent residence.

Mr. President, I thank the staff of the Committee on Finance, Michael Stern, and others, who actually worked out this very sensible solution to a problem that has been creating a great deal of unnecessary difficulty.

Mr. HASKELL. Mr. President, H.R. 10210, the Unemployment Compensation Amendments of 1976, contains a prohibition against payment of compensation to aliens "not lawfully admitted to the United States."

This prohibition was added to the bill on the floor of the House of Representatives, and was retained in the bill as reported to the Senate by the Committee on Finance.

Obviously we do not want to pay unemployment compensation to illegal aliens. On the other hand the administration of this prohibition must not have the unintended effect of discriminating against American citizens and persons legally residing in this country and eligible for work, simply because of their ethnic, racial, or linguistic characteristics.

I am specifically concerned that many of my own constituents in Colorado may be harassed simply because they speak Spanish, and the potential for abuse of this provision obviously affects other parts of the country and other minorities.

I fear unemployment office administrators and interviewers, in order to enforce this provision, will simply presume all Spanish-speaking people guilty until the individuals themselves can shoulder the burden of providing documentary proof to the contrary. Thus, benefits could be denied to people lawfully entitled to receive them—including lifelong American citizens.

I believe that the amendment offered by the distinguished Senator from California, Mr. CRANSTON, goes a long way toward remedying this problem. I congratulate him for the concern and leadership he has shown on this issue.

Mr. LONG. Mr. President, the committee tried to deal with this problem, but in the brief time available to us we simply were not able to do it justice and, therefore, did not propose a solution to it.

I believe the Senator from California has come up with a good answer, and he is to be congratulated for working this matter out.

I am pleased to support the amendment.

Mr. CRANSTON. I thank the Senator very, very much.

Mr. FANNIN. Mr. President, the minority concurs with the chairman of the committee and supports the amendment.

Mr. JACKSON. Vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

Mr. CRANSTON. I thank the Senators very much.

The PRESIDING OFFICER. The Senator from New York is recognized.

UP AMENDMENT NO. 504

Mr. JAVITS. Mr. President, I send an amendment to the desk, No. 2370, modified, and I shall explain the modification.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes unprinted amendment No. 504 to amendment No. 2370, as modified.

The amendment is as follows:

Beginning on page 12, line 18, strike all through page 13, line 13, and insert in lieu thereof the following:

"(F) by inserting before ', and' at the end thereof the following: ', and (II) with respect to service in any other capacity for an educational institution (other than an institution of higher education) to which section 3309(a)(1) applies, compensation payable on the basis of such service may be denied to any individual for any week which commences during a period between two successive academic years (or for a similar period between two regular but not successive terms) if such individual performed such service in the first such academic year or terms and there is notification of reasonable assurance from such an educational institution that such individual will be reemployed to perform such services in the later of such academic years or term, but any individual to whom a provision conforming with subparagraph (A)(I) or subparagraph (A)(II) is applied, and who is in fact not offered reemployment beginning with the later academic year or term in an applicable capacity by the educational institution with which the individual had a contract or from which the individual had received notification of reasonable assurance of reemployment, as the case may be, shall upon application therefor be furnished a redetermination of entitlement to compensation for all weeks of unemployment which begin between the academic years or terms involved, and with respect to which the individual filed a timely claim for compensation and reported in accordance with the State law, was available for work, and otherwise was entitled to compensation (disregarding the provisions corresponding with subparagraphs (A)(I) and (A)(II)), and the individual shall be paid a lump sum in the amount to which the individual is so determined to be entitled for all such weeks, subject to regulations promulgated by the Secretary which shall prescribe reasonable means to facilitate the filing and receipt of applications for reconsideration, a time limit on such applications, and reasonable conditions on entitlement applicable in the circumstances so as to effectuate the purposes of this provision'.".

Mr. JAVITS. Mr. President, some Members who are here will remember that we were discussing the problems of a teacher or a nonprofessional employee in a school who during the summer vacation period may or may not be entitled to unemployment compensation depending on whether at the end of that time he actually gets his job. There were different

definitions adopted by the House of Representatives and the Senate.

The Senate definition said he has "reasonable assurance" of a job. The House definition as to a professional employee says he has a "contract."

Senator LONG did not feel that he wished to change the Senate position and would rather deal with it in conference. But he did indicate he would be willing to accept a provision which would make for retroactivity for that employee if in fact at the end of the summer he had no job and, therefore, was actually unemployed even though it were a vacation period, provided that the claim had been filed in time, to wit, at the beginning of the summer, and the employee complied with all the rules and regulations respecting unemployment compensation, including reporting to the State agency. If he did that, and if at the end of the summer it proved that he had no job, he might submit a claim for it retroactively. We have modified the amendment that way, and we hope it is satisfactory to Senator LONG.

Mr. LONG. Mr. President, I do not know precisely how this amendment will work out, but I say that it is far more acceptable than the first one, and perhaps we might be able to work it out in conference.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The modified amendment was agreed to.

AMENDMENT NO. 2367, AS MODIFIED

Mr. JAVITS. Mr. President, I send an amendment to the desk numbered 2367, as modified.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an amendment numbered 2367, as modified.

The modified amendment is as follows:

Beginning on page 36, line 7, section 301, is amended to read as follows:

SEC. 301. The Federal-State Extended Unemployment Compensation Act of 1970 is amended to read as follows:

"SEC. 201. This title may be cited as the 'Federal-State Extended Unemployment Compensation Act of 1976.'

"SEC. 202. (a) (1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide that payment of extended compensation shall be made for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of the Virgin Islands or Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to regular compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

"(2) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide that payment of supplemental extended compensation shall be made, for any week of unemployment which begins in the individual's supplemental eligibility period, to individuals who have exhausted all rights to regular compensation and extended compensation under the State law and who have no rights to regular compensation or extended compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of the Virgin Islands or Canada. For purposes of the preceding sentence, an individual shall have exhausted all rights to regular and extended compensation under a State law (A) when no payments of regular or extended compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period and has received all of the extended compensation payable to him, or (B) when his rights to regular compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

"(3) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and supplemental extended compensation and to the payment thereof.

"(b) (1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor—

"(A) an extended compensation account with respect to such individual's benefit year, or

"(B) a supplemental extended compensation account.

The amount established in each such account shall be not less than whichever of the following is the least:

"(i) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

"(ii) thirteen times his average weekly benefit amount, or

"(iii) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced, in the case of extended compensation, by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

"(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

"SEC. 203. (a) For purposes of this title, in the case of any State—

"(1) an extended benefit period—

"(A) shall begin with the third week after whichever of the following weeks first occurs:

"(i) a week for which there is a national 'on' indicator, or

"(ii) a week for which there is a State 'on' indicator; and

"(B) shall end with the third week after the first week for which there is both a national 'off' indicator and a State 'off' indicator;

"(2) a supplemental extended benefit period—

"(A) shall begin with the third week after whichever of the following weeks first occurs:

"(i) a week for which there is a national supplemental 'on' indicator, or

"(ii) a week for which there is a State supplemental 'on' indicator; and

"(B) shall end with the third week after the first week for which there is both a national supplemental 'off' indicator and a State supplemental 'off' indicator;

"(b) (1) In the case of any State—

"(A) no extended benefit period or supplemental extended benefit period shall last for a period of less than thirteen consecutive weeks, and

"(B) no extended benefit period may begin by reason of a State 'on' indicator before the fourteenth week after the close of a prior extended benefit period or supplemental extended benefit period with respect to such State.

"(2) When a determination has been made that an extended benefit period or a supplemental extended benefit period is beginning or ending with respect to a State (or all the States), the Secretary shall cause notice of such determination to be published in the Federal Register.

"(c) (1) For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

"(2) For purposes of this title, an individual's supplemental eligibility period under the State law shall consist of the weeks which begin in an extended benefit period and any weeks thereafter which begin in supplemental extended benefit period.

"(d) For purposes of this section—

"(1) There is a national 'on' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployed (seasonally adjusted) for all States equaled or exceeded 4.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period).

"(2) There is a national 'off' indicator for a week if, for the period consisting of such work and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States was less than 4.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period).".

"(e) For purposes of this section—

"(1) There is a State 'on' indicator for a week if the rate of insured unemployment (seasonally adjusted) under the State law for the period consisting of such week and the immediately preceding twelve weeks equaled or exceeded 4 per centum.

"(2) There is a State 'off' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, paragraph (1) was not satisfied.

For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.".

"(f) For purposes of this section—

"(1) There is a national 'supplemental on' indicator for a week if, for the period consisting of such week and the immediately

preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States equalled or exceeded 5.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period).

"(2) There is a national 'supplemental off' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States was less than 5.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

"(g) For purposes of this section—

"(1) There is a State 'supplemental on' indicator for a week if the rate of insured unemployment (seasonally adjusted) under the State law for the period consisting of such week and the immediately preceding twelve weeks equaled or exceeded 5 per centum.

"(2) There is a State 'supplemental off' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, paragraph (1) was not satisfied.

For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

"Rate of Insured Unemployment; Covered Employment

"(h)(1) For purposes of subsections (d), (e), (f), and (g), the term 'rate of insured unemployment' means the percentage arrived at by dividing—

"(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all State agencies (or, in the case of subsections (e) and (g), by the State agency) to the Secretary, by

"(B) the average monthly covered employment for the specified period.

"(2) 'Determinations under subsections (d) and (f) shall be made by the Secretary in accordance with regulations prescribed by him.

"(3) Determinations under subsections (e) and (g) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

"AMOUNT PAYABLE

"SEC. 204. (a)(1) There shall be paid to each State an amount equal to one-half of the sum of—

"(A) the sharable extended compensation, and

"(B) the sharable regular compensation, paid to individuals under the State law.

"(2) No payment shall be made to any State under this subsection in respect of compensation for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act.

"(b)(1) There shall be paid to each State an amount equal to the sum of supplemental extended compensation paid to individuals under this title.

"(2) No payment shall be made to any State under this subsection in respect of compensation for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act.

"Sharable Extended Compensation

"For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual's eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

"Sharable Regular Compensation

"For purposes of subsection (a)(1)(B), regular compensation paid to an individual for a week of unemployment is sharable regular compensation—

"(1) if such week is in such individual's eligibility period (determined under section 203(c)), and

"(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

"Payment on Calendar Month Basis

"There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

"Certification

"The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

"DEFINITIONS

"SEC. 205. For purposes of this title—

"(1) The term 'compensation' means cash benefits payable to individuals with respect to their unemployment.

"(2) The term 'regular compensation' means compensation payable to an individual under any State unemployemnt compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

"(3) The term 'extended compensation' means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

"(4) The term 'supplemental extended compensation' means compensation payable for weeks of unemployment beginning in a supplemental extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of supplemental extended compensation.

"(5) The term 'additional compensation' means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

"(6) The term 'benefit year' means the benefit year as defined in the applicable State law.

"(7) The term 'base period' means the base period as determined under applicable State law for the benefit year.

"(8) The term 'Secretary' means the Secretary of Labor of the United States.

"(9) The term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico.

"(10) The term 'State agency' means the agency of the State which administers its State law.

"(11) The term 'State law' means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1954.

"(12) The term 'week' means a week as defined in the applicable State law.

"APPROVAL OF STATE LAWS

"SEC. 206. Section 3304(a) of the Internal Revenue Code of 1954 is amended by inserting after paragraph (10) (added by section 121(a) of this Act) the following new paragraph:

"'(11) extended compensation and supplemental extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;".

SEC. . (a) No supplemental extended benefit period may begin with a week beginning before April 1, 1977.

(b) For purposes of Section 3304(a)(11) of the Internal Revenue Code of 1954, the amendments made by this section shall not be a requirement for the State law of any State with respect to any week of unemployment which begins prior to October 1, 1977.

Mr. JAVITS. Mr. President, in my judgment, this is the first really significant amendment in terms of the substantive question which the Senate should decide; and I believe that it would be appropriate on this one, if it comes to issue, that we have a rollcall vote.

Right now, we are operating, because of the exigencies of the unemployment situation, under two programs. We are operating, first, under a Federal-State unemployment compensation system; and that provides a maximum benefit duration, generally, of 26 weeks. We are operating, second, under an extension of that program, called the Federal-State extended benefits program.

This program is a key component of the permanent Federal-State system of unemployment insurance protection. It was originally enacted in 1970, and is designed to provide an extended duration of UI benefits during periods of high unemployment. The EB program provides up to 13 weeks of unemployment compensation, at the same rate as the applicable regular State UI program provides, for workers who have exhausted their rights to regular UI payments.

As originally enacted, the program is triggered "on" in all States when the national insured unemployment rate—the IUR—equals or exceeds 4.5 percent for 3 consecutive months. The program triggers "off" nationally when the IUR drops below 4.5 percent for 3 consecutive months.

When the national trigger is not "on," States suffering high unemployment may trigger on independently if the State trigger requirements are met. As originally adopted, the State trigger required that the statewide IUR equal or exceed 4 percent and also that the IUR in the State be 120 percent of the average of such rates for the corresponding month of each of the previous 2 years. Similarly, the EB program would be

triggered "off" if the statewide IUR fell below either 120 percent of the average rates for the corresponding month during each of the previous 2 years or fell below 4 percent.

It should be noted that the IUR traditionally runs, and is currently running, about 2 percent below the total unemployment rate, with which most of us are familiar as the rate reported monthly by the Bureau of Labor Statistics. Last month, the total civilian unemployment rate was 7.9 percent, and the corresponding insured rate was 5.6 percent.

The EB program was adopted to provide the additional income security necessary for the large number of workers who suffer long-term unemployment during periods of high unemployment. Unfortunately, the current permanent Federal-State UI system, providing up to 26 weeks of compensation under regular State law and up to an additional 13 weeks of benefits under the Federal-State extended benefits program, has proved insufficient to provide for the needs of the unemployed during prolonged periods of high unemployment. This fact has been made clear by the deep recession and record high unemployment rates during the last 2 years.

Only swift action by the Congress in December 1974, in enacting two emergency unemployment compensation programs, kept economic disaster from befalling millions of unemployed workers and their families and prevented the permanent UI system from falling altogether. These are the special unemployment assistance—SUA—program which provides up to 39 weeks of unemployment benefits for workers not covered by the permanent UI system, including public employees, farm workers, and domestic workers; and the Federal supplemental benefits—FSB—program which provides up to 26 additional weeks of unemployment compensation for workers who have exhausted all of their entitlements under the regular State unemployment insurance laws and the extended benefits program.

Today, although we have a few signs of halting economic recovery, 7.5 million American workers continue to suffer unemployment. In many of our urban areas, particularly in central city ghettos, unemployment reaches well into the double-digit range. But, whether or not our economy improves over the next 1 or 2 years, we can draw no comfort from the lessons of the current recession. At best, even with modest economic recovery over the next year or two, we know that we are still subject to sharp swings in the business cycle. At worst, there will be no near-term abatement in high unemployment, with millions out of work for very extended periods, and there could even be a substantial deterioration. I note in this connection that a study recently released by Chase Econometrics predicts another recession in 1978 and an increase in the unemployment rate to a peak level of 10 percent in 1979.

Either way we should act now to remedy the permanent UI system's capacity to respond to prolonged periods of high unemployment. H.R. 10210 provides the opportunity to bring about this long overdue reform of the UI system and thereby strengthen our capability to protect workers against future recessions.

The reform of the permanent unemployment insurance program I propose is an amendment to expand the EB program, making it a more effective mechanism for income security protection during prolonged periods of high unemployment. This amendment will establish a second tier of extended benefits to be known as the supplemental extended benefits—SEB—program. SEB will provide up to an additional 13 weeks of unemployment compensation for workers who exhaust entitlements under the current extended benefits program.

Similar to the current EB program, SEB would be triggered "on" automatically on a national or statewide basis. Because this new program will provide benefits beyond those provided by the existing EB program and is intended to respond to deeper and longer term recessions, the trigger levels would be 1 percent higher than those in the current program. Thus, the national "on" trigger would be established at 5.5 percent insured unemployment rate nationwide. If the national trigger is not "on", workers in States suffering high unemployment could still be eligible to participate in the EB program by meeting the State trigger. The SEB program would trigger "on" in any State suffering an insured unemployment rate of 5 percent or higher.

If the program were in place, it would provide a potential duration of up to 52 weeks of unemployment compensation for workers who suffer long-term unemployment during severely depressed economic periods. This represents the minimum level of income security protection which I would consider acceptable during such times. The 5-percent statewide and 5.5-percent national trigger levels correspond to a total unemployment rate of approximately 7 percent and 7.5 percent respectively.

The experience under the temporary Federal supplemental benefits program over the last 2 years demonstrates the need to develop a permanent program such as SEB. In calendar year 1975, over 2¾ million unemployed workers received benefits under the FSB program. These unemployed workers received $2.2 billion in urgently needed income security payments. This money served the dual purpose of providing for the essential needs of unemployed workers and at the same time pumped funds directly into the economy to help slow the effects of the recession and speed economic recovery.

Just how soon this program will be needed will of course depend on the state of the economy next year and in ensuing years. Certainly we know that if it had been in place in 1974, the Congress would not have had to act so suddenly in response to the steep economic decline we experienced then. The Federal-State unemployment insurance system is far too important to be left to ad hoc temporary measures. Current and projected economic conditions, and the needs of the very long-term unemployed, demand that permanent reform be included in this bill now.

The amendment which I have proposed would provide for financing the SEB program entirely from the Federal Unemployment Trust Fund. In comparison, regular unemployment benefits, usually up to 26 weeks, are financed entirely from the State trust funds, and the current extended benefits program is financed on a 50–50 basis between the Federal and State trust funds. All benefits under the temporary FSB program are now financed from the Federal fund. I believe that it is appropriate to finance this new second tier of extended benefits from the Federal Unemployment Trust Fund, particularly in light of the precarious financial condition of many State trust funds, 21 of which are currently borrowing from the Federal trust fund in order to meet their current obligations.

In order to permit the States with sufficient time to enact the necessary changes in their unemployment insurance laws, and also to obviate any potential conflict with the ceilings established in the second budget resolution, this amendment is to take effect October 1, 1977.

The amount involved is variously estimated. We think the proper annual estimate is $300 million. The Budget Committee says that their estimate, which was included in the budget calculations, is $500 million. I cannot say exactly what it would be, but we believe that the estimate of $300 million annually is a proper one. However, it falls somewhere in that area.

Mr. President, this is a matter for very serious consideration by the Senate. We have 7.9-percent unemployment, which is a very serious number. We have approximately 7.5 million unemployed. We know that hundreds of thousands of people are having their benefits expire.

Mr. President, I yield briefly to Senator THURMOND.

Mr. THURMOND. Mr. President, I ask unanimous consent that a member of the staff of the Committee on the Judiciary, have the privilege of the floor during the consideration of this bill.

Mr. FANNIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. JAVITS. Mr. President, I have dealt with this matter here ever since this recession began. In voting these various unemployment compensation programs, we have adopted—not written in letters of fire, but we have adopted—a general philosophy that in this recession we will not let a person who is unemployed through no fault of his own go on welfare or relief. Therefore, we have sought, within reason, to continue the unemployment compensation program, rather than force that unemployed person off unemployment compensation.

It is on that basis, Mr. President, that I submit it to the Senate, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LONG. Mr. President, I do not believe this amendment is necessary. It seeks to establish a permanent program based on some of the experience that we have had with the temporary program in the current crisis. Two or three things are wrong with that type of assumption. One of them is that although one could argue that history repeats itself, because we do see certain parallel events, in fact, history never repeats itself in identically the same fashion. There is always a difference. Assuming a future crisis of a high degree of unemployment, the measures that we have adopted this time might not be the best way to meet the problem that might occur at a future date.

Furthermore, Mr. President, we get into the problem created by this bill: At what point should a worker lower his sights and take a job that is somewhat different than his training and experience? Let us assume that a man is accustomed to a white-collar job in a pleasant, air-conditioned situation, the type of thing that he had always hoped he would do, and he had that type of job over a period of time. He finds himself unemployed.

Here are any number of jobs he could hold, but he does not want to lower his sights to accept lesser pay and to work under conditions that are not as favorable as those which he had enjoyed before.

The whole theory of the unemployment insurance law is that, in normal times, he can draw unemployment insurance benefits while he looks for a similar job, with the same type compensation, for 26 weeks or for 6 months. But after 6 months, it is felt that he ought to lower his sights. He ought to be willing to settle for something less than that. He ought to take whatever job he can get. That is the theory of the program.

In times of higher unemployment, we provided a program to take him up to 39 weeks so he can go for 9 months without lowering his sights and accepting other employment that would be available to him.

Then we found that, because of continued distress in the economy, we went up to 65 weeks and let him go along for a whole, solid year and 3 months without reducing his sights and continue to draw the unemployment insurance benefits, rather than take some other job.

So a man can work for 20 weeks, a little less than 5 months, and then be able to draw unemployment insurance payments for 15 months—a year and 3 months. He can work for 5 months and then rest for a year and 3 months—15 months of employment insurance benefits for 5 months of work—rather than reduce his sights and take a job that he might ordinarily feel is something that does not quite meet what he believes to be fair.

Ronald Reagan has given an illustration of that type of fellow and shown some of the ridiculous extents to which we can go sometimes. He said if he were unemployed in his old hometown where he was born and reared, and if he were applying for unemployment insurance benefits, they would say, "Well, what kind of experience do you have?"

He would say, "Well, I have had some experience as a radio announcer." They would say, "That is too bad, we do not have a radio station in this little town; there is no job available as a radio announcer. What other experience do you have?"

He would say, "Well, I am a movie actor."

"Well, that is too bad. There are no jobs available around here for a movie actor; you have to go out to Hollywood to get a job out there. The law does not require you to go anywhere; but there are no jobs for movie actors in this little town of Iowa. What else do you do?"

"I have been Governor of a State."

"Well, that is too bad, we do have one job as Governor, but that job is taken. It will not be open for another 3 years."

Before we try to enact some kind of permanent program to provide another 3 months of extended benefits, we ought to have a great deal more study than we have had a chance to give this Javits amendment. We ought to review some of our experiences and perhaps consider some of the mistakes we have made in past programs.

Goodness knows, the program has fallen into disrepute in many ways, as we saw in the program "60 Minutes," made down in Florida. They showed the actual people going in and out of the offices, drawing unemployment benefits, some of whom had jobs and some of whom had plenty of employment opportunities, even for doing the kind of work they had done before, but managed to avoid taking the jobs and still drew the benefits all at the same time. Before we get into all that and try to draw up a permanent program of all these benefits for 1 year, we ought to know a lot more about it and judge by the experiences that we have had with this bill and previous bills we have had.

I hope, Mr. President, that the amendment will not be agreed to.

Mr. JAVITS. Mr. President, just to complete the argument on this, the policy which we have followed in respect of this recession has clearly been a very wise one and has had a lot to do with bringing us somewhat out of it. We are bringing down the coverage for unemployment compensation from 65 to 52 weeks. I respectfully submit that that is even not in proportion to the degree to which we have had a reduction in unemployment.

It has worked well from the point of view of the fundamental economy of the country and we should not now, because we are by no means out of the recession yet, with a 7.9-percent unemployment rate, precipitately cut it off from 65 to 39 weeks in one fell swoop.

For that reason, I hope the Senate will support this amendment.

Mr. FANNIN. Mr. President, the Members of the Senate, certainly the members of the Committee on Finance have great sympathy for the unemployed. I commend the distinguished Senator from New York for the tremendous amount of work he has done in this field. He is certainly well versed. But I think we must consider whether we have a permanent program or a temporary program. Certainly, from the hearings that were held by the Committee on Finance, it was determined that this would not be essential, it would not be wise to make a permanent program out of this particular 52-week period that is involved.

I do feel that we have problems that the chairman of the committee, the Senator from Louisiana, has explained. There is great abuse. We are, I think, inviting greater abuse if we just have a permanent program, a 52-week permanent program.

Mr. President, many illustrations can be given. As the chairman has stated, on the "60-Minute" program, they showed illustrations of what is happening, and it is shameful. At the same time, we cannot condemn a complete program on the basis of the abuses, because, after all, we have a responsibility to do away with those abuses to the greatest extent possible.

But I know, that in my own State of Arizona, we have examples where, in a little resort town, we have people applying for unemployment compensation and they are machinists. There is not a machinist job in the whole area. If a fellow wanted to be a cowboy, maybe he could get a job, or he could take many other jobs of menial service compared to being a machinist. Probably the pay would not be as much, but it would certainly be a living for him. Rather than that, he wants to live in this beautiful part of the country where the climate is nice and warm and he can enjoy it and all those privileges. At the same time, we have a responsibility to try to carry through on what is essential for the Nation as far as the cost is concerned, as far as being equitable and fair with the working people of this country.

Mr. President, I hope we would not agree to this amendment because, so far as the Senator from Arizona is concerned, it is not essential at this time, and certainly we will run out, there is no doubt about that.

At the same time, the Senate will have an opportunity next year to have hearings, further hearings, if necessary, to make these determinations. But, at the present time, it was felt from the standpoint of the Finance Committee, from the hearings involved, it would not be essential.

Mr. BELLMON. Mr. President, amendment No. 2367 was introduced and designed to increase the costs of the fiscal 1978 program and, on that basis, it would be subject to a point of order. I understand it has now been amended so it becomes effective in fiscal year 1977, so no point of order would lie.

The problem is the amendment now before the Senate has a price tag of $250 million, and the way the amendment is drawn that money would come out of the allocation to the Finance Committee.

If the Members will look at pages 48 and 49 of the latest scorekeeping report, which is on each desk, they will find the Finance Committee has totally used up

its allocation, so there is no $250 million available to pay for the price of this program unless the Finance Committee is willing to give up some other program for which they have already allocated their funds.

So I think the question that has to be answered here is what program inside the Finance Committee jurisdiction would be canceled or cut back in order to provide the $250 million that the Javits amendment is going to cost.

I think there is very good reason to support the position the distinguished chairman of the Finance Committee and the ranking minority member have taken here that this amendment is not timely.

Mr. LONG. I did not hear the last part of the Senator's statement.

Mr. BELLMON. The question was since the Finance Committee has already used up all the funds available, if this program were passed, if this amendment were passed, what would the Finance Committee cut back in order to provide the $250 million for school costs?

Mr. LONG. We would have to then reduce the funds for some other program.

I do not see how we could cut the funds for social security, nor do I see how we could reduce the funds for the hospital insurance trust fund, nor social services, nor medicaid, nor aid for families with dependent children.

In this particular program we are dealing with here we are right on target. We used up everything the budget resolution assumptions allow us. So we are not above and not below; we are right on target.

If the Javits amendment is agreed to we will be beyond that target by an estimated $250 million, and I do not see why we need to do that. It seems to us the law we now have will take care of the situation adequately until the end of March next year. If, when we come back in here, regardless of who wins the election, regardless of whether you have President Ford in office the next time or whether you have a new President, Candidate Carter, in either event, either one of those two would be looking at the situation, and if we should have something more than we have now or than the bill would provide, I am sure those men, either one of them, would have recommendations to make in the area. The Budget Committee, I am sure, would like to consider the cost of it, just like the Finance Committee and the Senate would like to consider the cost of it.

But I submit what we have here now is all the President thinks we ought to do at this moment; it is all the House thinks we ought to do at this moment; it is all the Finance Committee thinks we ought to do at this time; it is all the Budget Committee thinks we ought to do at this time.

To adopt this amendment then puts the burden on us to go to try to find some other place in the budget to cut just because we went beyond what anybody else thought we ought to do, from the President on down, with respect to this program.

That, in my judgment, would be a bad mistake. We can come back next year, and if we decide we want a more liberal program we can vote for a more liberal program. If it is needed, I am sure, whether it is President Ford, who incidentally has not been remiss in making recommendations to extend this program, he would make a recommendation to extend and to do more; and I am sure President Carter would do no less if we need that next year.

Under those circumstances, Mr. President, I do believe that this is the type of thing we ought to consider next year if it is needed. Therefore, Mr. President, I move that the amendment be laid on the table.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BARTLETT). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, will the Senator just allow me to speak for 1 minute?

Mr. LONG. I think we can delay the vote for the Senator to take 1 minute.

The PRESIDING OFFICER. The motion is not debatable. The yeas and nays have been ordered. The question is on agreeing to the motion of the Senator from Louisiana. The clerk will call the roll.

Mr. JAVITS. The Senator can delay his motion for 1 minute.

The PRESIDING OFFICER. It will take unanimous consent.

Mr. JAVITS. All right. Let us vote.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from California (Mr. TUNNEY), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), and the Senator from Florida (Mr. CHILES) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. MCGOVERN), the Senator from Hawaii (Mr. INOUYE), the Senator from Montana (Mr. MANSFIELD), and the Senator from Ohio (Mr. GLENN) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Wyoming (Mr. HANSEN), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

I further announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

The result was announced—yeas 53, nays 27, as follows:

[Rollcall Vote No. 671 Leg.]

YEAS—53

Abourezk	Goldwater	Morgan
Allen	Gravel	Moss
Baker	Hart, Gary	Muskie
Bartlett	Haskell	Nelson
Bellmon	Hatfield	Nunn
Biden	Hathaway	Packwood
Bumpers	Helms	Proxmire
Burdick	Hollings	Randolph
Byrd, Robert C.	Hruska	Ribicoff
Church	Huddleston	Sparkman
Curtis	Johnston	Stennis
Domenici	Laxalt	Stevenson
Eagleton	Leahy	Symington
Eastland	Long	Talmadge
Fannin	McClellan	Thurmond
Fong	McClure	Tower
Ford	McIntyre	Young
Garn	Metcalf	

NAYS—27

Bayh	Humphrey	Percy
Brooke	Jackson	Roth
Case	Javits	Schweiker
Clark	Kennedy	Scott, Hugh
Cranston	Magnuson	Stevens
Culver	Mathias	Stone
Durkin	Pastore	Taft
Griffin	Pearson	Weicker
Hartke	Pell	Williams

NOT VOTING—20

Beall	Dole	Mondale
Bentsen	Glenn	Montoya
Brock	Hansen	Scott, William L.
Buckley	Hart, Philip A.	Stafford
Byrd, Harry F., Jr.	Inouye	Tunney
Cannon	Mansfield	
Chiles	McGee	
	McGovern	

So the motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I had planned to introduce another amendment concerning the 120-percent trigger requirement of the extended benefits program which is effective in each State. It adds to the requirement for the triggers now, which are 4½ percent national and 4 percent State, an additional requirement that the unemployment in that State must be 120 percent of the unemployment in the same month in each of the preceding 2 years.

The PRESIDING OFFICER (Mr. BELLMON). The Senate is not in order. The Senator is entitled to be heard. Senators will take their seats.

Mr. JAVITS. Shortly after enactment of the EB program, it became clear that to require a State's insured unemployment rate to exceed the rate for the corresponding month of the previous 2 years was unrealistic. In the words of the report of House Committee on Ways and Means on H.R. 10210:

> The intent of the trigger mechanism contained in the 1970 amendments was to establish an extended benefit program which would provide early response to adverse economic conditions . . . The triggers have been unsatisfactory, particularly during periods when high unemployment has continued over a protracted period.

Under the 120-percent requirement, a State which suffered a high level of unemployment for a period longer than 1 year would not be able to meet the State trigger requirement—regardless of whether statewide unemployment was 8 percent, 10 percent, or more—unless the rate continued to escalate. Once unemployment leveled off, or began a slow decline over a period of several months, the 120-percent requirement could well oper-

ate to trigger off the EB program prematurely.

We talk here of complicated and obscure numbers, but we must remember that an unemployment rate can be translated into real working American men and women who are ready, willing, and able to go to work, but who cannot find gainful employment. When unemployment is high, more workers are competing for too few jobs. How does it matter to those workers, especially in a weak labor market, what percentage of the historical unemployment rate the current rate represents?

In recognition of these factors, beginning in October 1972, Congress has acted 8 times in 4 years to suspend the 120-percent requirement. I ask unanimous consent that a table showing the actions by Congress with regard to the 120-percent requirement be printed at this point in my remarks.

There being no objection, the table was ordered printed as follows:

TEMPORARY LEGISLATION SUSPENDING 120-PERCENT REQUIREMENT IN STATE EXTENDED TRIGGERS

DATE, LAW, AND ACTION

Oct. 27, 1972—Public Law 92-599. Suspended 120-percent "off" indicator through June 30, 1973.

July 1, 1973—Public Law 93-53. Suspended 120 percent for both "on" and "off" indicators through Dec. 31, 1973, with "tail-off" through Mar. 31, 1974.

Dec. 31, 1973—Public Law 93-233. Suspended 120 percent for both "on" and "off" indicators through Mar. 31, 1974.

Mar. 28, 1974—Public Law 93-256. Extended suspension of 120-percent indicators until July 1, 1974.

June 30, 1974—Public Law 93-329. Extended suspension of 120-percent indicators until Aug. 31, 1974.

Aug. 7, 1974—Public Law 93-368. Extended suspension of 120-percent indicators until Apr. 30, 1975.

Dec. 31, 1974. Public Law 93-572. The Emergency Unemployment Compensation Act of 1974 included a provision permitting States to waive 120-percent indicators until Dec. 31, 1976.

June 30, 1975—Public Law 94-45. Extended waiver provision of the Emergency Unemployment Compensation Act until Mar. 31, 1977.

Mr. JAVITS. In considering H.R. 10210, the House of Representatives recognized the infeasibility of the 120-percent requirement. The history of congressional actions in waiving or modifying the requirement clearly indicate the need for its permanent repeal. The Finance Committee, however, has rejected permanent repeal of the 120-percent requirement, despite the statement in its report on H.R. 10210, at page 19, that:

The provisions of present law have not been adequate when unemployment in a State rises and remains unusually high for several years.

The committee has recommended that only when statewide insured unemployment equals or exceeds 6 percent, should the States be permitted voluntarily to waive the 120-percent requirement. This position is wholly unsatisfactory as compared to permanent repeal. A 6-percent insured unemployment rate is the equivalent of a total unemployment rate of 8 percent or more. In my judgment, we have an emergency unemployment situation at a much lower threshold, certainly no more than 6 percent, as has been recognized in previously enacted jobs and temporary unemployment assistance legislation.

Today, on a nationwide basis, we continue to reel under a nationwide total unemployment rate of 7.9 percent. Seven and one-half million Americans are looking for jobs and cannot find them. In comparison, the nationwide IUR is only 5.6 percent. Now this is the picture on a national level where the 120-percent requirement fortunately does not apply. If it did, the EB program would be currently triggered off because of this requirement. The 120-percent requirement has not and will not serve a useful purpose. If unemployment is high, the program should respond by triggering on quickly, and by staying on until unemployment levels recede.

Under the Finance Committee proposal, if the national trigger were not "on," following 17 States with insured unemployment rates in excess of 4 percent would be ineligible to implement the EB program solely because of the 120 percent requirement, as of July 31, 1976:

Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky, Maryland, Missouri, Montana, New Mexico, Oklahoma, Oregon, South Carolina, Tennessee, and West Virginia.

Indeed, among all the States, including 5 with an insured unemployment rate over 7 percent and 10 with rates between 6 and 7 percent, only 4 States would meet the 120-percent requirement, and 2 of these would be ineligible to participate because their statewide IUR is not above 4 percent.

Mr. President, I said I had planned to propose an amendment to strike the Finance Committee's amendment restoring the 120 percent requirement. However, considering the vote on the last amendment I do not believe, in fairness to the workers—the unemployed workers who would suffer under this 120-percent trigger—and I should, rather, I should let the matter go to conference, as the House and Senate differ in this. Therefore, I will refrain from introducing the amendment.

MESSAGE FROM THE HOUSE

ENROLLED BILLS SIGNED

A message from the House of Representatives delivered by Mr. Berry, one of its clerks, announced that the Speaker has signed the following enrolled bills:

S. 3149. An act to regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes.

H.R. 8119. An act for the relief of Fernando Alves Macos.

H.R. 11407. An act to amend title 14, United States Code, to authorize the admission to additional foreign nationals to the Coast Guard Academy.

The enrolled bills were subsequently signed by the President pro tempore.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, September 29, 1976, he presented to the President of the United States the following enrolled bills.

S. 3734. An act to approve the sale of certain naval vessels, and for other purposes.

S. 3843. An act to name the visitors' center at the Sleeping Bear Dunes National Lakeshore the "Philip A. Hart Visitors' Center."

S. 3149. An act to regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes.

UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

The Senate continued with the consideration of the bill (H.R. 10210) to require States to extend unemployment compensation coverage to certain previously uncovered workers; to increase the amount of the wages subject to the Federal unemployment tax; to increase the rate of such tax; and for other purposes.

UP AMENDMENT NO. 505

Mr. HATHAWAY. Mr. President, I send an amendment to the desk and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. HATHAWAY) proposes an unprinted amendment No. 505.

The amendment is as follows:

At the end of the bill, insert the following new section:

"SEC. . Section 3309(a)(2) of the Federal Unemployment Tax Act is amended by striking out "(A)"."

Mr. HATHAWAY. Mr. President, this amendment corrects what I believe is an oversight in both the House and Senate language. It would permit State and local governments to pay compensation directly to their own workers, when such workers are unemployed, rather than paying contributions in lieu of taxes for all their employees.

This is a practice currently in effect in several States, and one which is designed to benefit governmental units with stable employment situations.

Mr. President, it is my belief that both the House and Senate committees intended that this option be made available to State and local governments. I call your attention to the explanatory materials appearing at page 38 of the Finance Committee staff "bluebook":

Under the bill as passed by the House the state law would have to permit the employing entity (in this case, local governments) to pay for its coverage either through contributions equivalent to the state payroll or by reimbursing the fund for benefits paid to its former employees.

However, that statement is erroneous in its description of the effects of the bill. In fact, as the Department of Labor has pointed out, this option would only be available to private nonprofit institutions without the amendment I am proposing. For that reason, I hope this

amendment is acceptable to the floor managers of the bill.

Local governments are a special class of employers and should have maximum flexibility in determining how to finance this new cost. In many cases, since the employment record of local government employers is overall stable, reimbursing the State unemployment insurance trust fund would be cost beneficial to those municipalities that do not lay off any of their employees. In those cases where local government employment is less stable, a locality would have the option to pay the State tax, and would not suddenly find itself burdened with additional costs that could only be financed by laying off more employees. City officials are in the best position to determine what is the most appropriate financing mechanism for their own locality.

In addition, changes in the Federal law will not prohibit those who have already extended coverage to local government employees from maintaining their existing plans. For example, in Michigan, State law permits localities to be self-insured so long as benefits are comparable to all other employees so insured in that State.

Since the Congress in this case is mandating an additional cost to local government without full knowledge of the fiscal impact on local government budgets, it is only reasonable that we allow these governments to address the financing questions on the basis of their own intimate knowledge of their fiscal conditions.

Furthermore, all we would be doing by my proposed amendment is extending to local governmental entities an option we have already extended to private, nonprofit organizations. It would in no way affect the extension of coverage to these newly covered employees.

I have discussed this matter with the manager of the bill, and I know of no objection to it.

Mr. JAVITS. Mr. President, does this apply only to governmental entities under the SUA?

Mr. HATHAWAY. The Senator is correct.

Mr. LONG. Mr. President, I believe the amendment has merit, and I know of no reason why it should not be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

Mr. LONG. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

UP AMENDMENT NO. 506

Mr. TAFT. Mr. President, I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. TAFT) proposes an unprinted amendment numbered 506:

On page 1, line 4, strike "act" and substitute "title".

On page 64, insert after line 10, the following:

"TITLE II—OCCUPATIONAL SAFETY AND HEALTH."

Mr. TAFT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 4, strike "Act" and substitute "title".

On page 64, insert after line 10, the following:

TITLE II—OCCUPATIONAL SAFETY AND HEALTH

SEC. 201. Section 21 of the Occupational Safety and Health Act of 1970 is amended by adding at the end thereof the following new subsection:

"(d)(1) In order to further carry out his responsibilities under this section, the Secretary may visit the workplace of any employer for the purpose of affording consultation and advice to the employer. Such consultative visits may be conducted only upon a valid request by the employer for consultation and advice at the workplace concerning the obligations of the employer under section 5. In making consultative visits under this subsection, the Secretary shall give priority to small businesses and to hazardous workplaces. The Secretary shall make and transmit to the employer a written report, containing recommendations regarding the elimination of any hazards disclosed during any such consultative visit.

"(2) No consultative visit authorized by this subsection shall be regarded as an inspection or investigation under section 8 of the Act and no citations shall be issued nor shall any civil penalty be imposed by the Secretary upon such visit, except that: (A) where an employer fails to eliminate an imminent danger disclosed during a consultative visit, the Secretary shall take any appropriate action under section 13 to eliminate such condition; and (B) if there is substantial probability that death or serious physical harm to employees could result from conditions disclosed during a consultative visit, the Secretary shall immediately notify the employer of such conditions and afford the employer a reasonable time to eliminate such conditions. Where the Secretary is not satisfied through a further consultative visit, documentary evidence, or otherwise that such elimination has taken place, the Secretary may take any appropriate action under this Act.

"(3) Information regarding consultative visits shall not be transmitted to representatives of the Secretary engaged in enforcement activities except where necessary in order to carry out the provisions of paragraph (2).

"(4) Except as otherwise provided, nothing herein shall affect the duties and responsibilities of the Secretary under sections 8, 9, 10, and 13. Advice given during a consultative visit shall not be binding on the Secretary in the event of any inspection of the workplace. In the event of such inspection, a written report of the consultation visit may, with the consent of the employer, be considered by the Secretary for the purpose of determining the employer's good faith in proposing penalties.

"(5) In prescribing rules and regulations pursuant to this subsection, the Secretary shall provide for the separation of functions between officers, employees, or agents who conduct consultative visits pursuant to this subsection and officers, employees, or agents who conduct inspections or investigations under section 8.

"(6) In order to further carry out his responsibilities under this section, the Secretary shall establish programs for the education and training of employers and employees which, to the extent practicable, shall be conducted in local communities and shall deal with hazards in particular industries.".

SEC. 202. For the purpose of carrying out the amendment made by the first section of this Act, there is authorized to be appropriated the sum of $2,000,000 for the period beginning July 1, 1975, and ending September 30, 1976, $7,000,000 for the fiscal year ending September 30, 1977, and $8,000,000 for fiscal year ending September 30, 1978.

Mr. TAFT. Mr. President, as we all know, we are late in this congressional session. Despite all the clamor for change, there has been no substantive constructive OSHA proposals brought to the Senate floor. This is true despite my pleas to the Senate Labor Committee and the pleas of my colleagues on this floor. In all probability, this effort that we make today will be our last chance during this Congress to take a position of a constructive substantive OSHA reform proposal which can reduce much of the employer opposition to the act and induce greater compliance with it.

In bringing the amendment on this bill, I do recognize it is not exactly on the subject of the bill, nor is this even the committee which has the responsibility for handling OSHA matters. However, in all candor, I will say this is the only way, in my opinion, that this provision will get before the Senate in this session. For that reason, I am bringing it up at this point.

I did discuss bringing it up, and I had given notice that I would bring it up, on the revenue sharing proposal when that matter was before the Senate. After discussion with the chairman at that time, I agreed not to do so, because I felt it might in some way jeopardize the progress of the revenue sharing measure, which I thought was tremendously important. In making that statement, I in no way want to run down the importance of the bill before us or amendments to that bill, because I believe that it is extremely important and indeed vital that we pass this measure during the present session.

Let me say also that if anyone is of the opinion that we could wait for a bill coming out of the appropriate committee, the Committee on Labor and Public Welfare, on which I serve, they may be disabused of that idea, because no other bills will come out of that committee until this measure is disposed of. That has become abundantly clear, even, unfortunately, as to amendments to the railroad retirement bill, of which I am a cosponsor. It has been indicated that that bill will be reported only if it is understood that this OSHA amendment will not be offered to it. So that is the parliamentary situation before us.

The distinguished chairman may have some feeling or disagreement about putting this particular amendment on the pending bill, but I do want to point out a few things with regard to it, particularly the point that it has passed the House of Representatives by an overwhelming vote in exactly the form in which this amendment is offered. It also

has the backing of the administration, and I think that this provision has a very good chance of not only not hurting the eventual enactment of this legislation, but of helping it to become enacted.

The amendment which I have called up is identical in all respects with S. 3182, my OSHA on-site consultation bill, and with H.R. 8618, which was overwhelmingly passed in the House on November 17, 1975. It will be a shame for this Senate not to take corrective action this year on this proposal because another House bill on this subject will not likely be forthcoming in the foreseeable future. Change is needed now, not 2 or 3 years from now, and this is our chance to enact it.

The purpose of this amendment is to provide a much-needed program of Federal onsite consultation and education to encourage and assist employers to comply with safety and health standards promulgated under USHA and to furnish their employers with a place of employment which is safe and healthful.

The amendment will further the major objective of OSHA, which is to provide safe and healthful working conditions for the 65 million workers covered by the act, by establishing onsite consultation in every jurisdiction, and by providing for corrective procedures in cases where a consultant discovers an imminent or serious danger. This amendment does not seek to exempt anyone from OSHA's coverage, that is just not the proper approach, and we all know it.

Moreover, the amendment does not seek to dilute the full enforcement of the act, but merely to add a separate consultation service to which employers may refer to help them to comply with OSHA's complex standards.

Because OSHA prohibits Federal onsite consultation visits except as a part of an enforcement proceeding, employers are discouraged from asking for OSHA's advice on applicability of standards to their work sites.

I think this has been vividly demonstrated in the Labor Committee's oversight on OSHA and this has been testified to by a number of associations in behalf of their members. I am sure we have received letters from individual firms located within our States to the same effect.

This prohibition in the act has generated much misunderstanding about the act in the business community. The establishment of a free, voluntary, Federal onsite consultation program should reduce much of this opposition to the act.

Under section 18 of OSHA, any jurisdiction which does desire to assume responsibility for development and enforcement of occupational safety and health standards may submit a State plan for development of such standards and their enforcement. If the Secretary of Labor determines that the standards and enforcement of the State plan will be at least as effective as Federal OSHA standards, he will approve the plan and make available Federal funds to operate the State program under section 23(g). The Federal share for each State grant may not exceed 50 percent of the total cost to the State of such a program. Currently, 22 out of the 56 jurisdictions covered by OSHA operate their own section 18 State OSHA programs with 50 percent Federal funding. Of these jurisdictions, 20 offer onsite consultation services to employers.

In addition, the Congress established in the fiscal year 1975 Labor-HEW appropriations bill a program to operate onsite consultation under section 7(c)(1) in jurisdictions under Federal OSHA. A similar consultation services program was contained in fiscal year 1976 appropriations measure. Section 7(c)(1) authorizes the Secretary of Labor to use the services, facilities, and personnel of any consenting State to carry out his responsibilities under the act, and to reimburse the State for these services.

Largely because of financial constraints, there are 20 eligible jurisdictions which have not joined in section 7(c)(1) programs to provide job site consultation services. Employers in these States are therefore unable to obtain onsite consultation.

Mr. President, following the conclusion of my remarks I shall ask unanimous consent that a chart describing the current status of consultation plans by the States be printed in the RECORD.

Mr. President, I submit that this situation is inequitable. An employer covered by the act should be able to obtain consultative services in his workplace, regardless of its locale.

It is my intention that these services be available in every jurisdiction so as to assist all employers in complying with OSHA. Until the act is amended to include a provision for Federal onsite consultation separated from enforcement and staffed by personnel distinct from compliance officers, there will continue to be inequities in the availability of onsite consultation services.

This amendment will rectify the present discrepancy in the act by guaranteeing onsite consultation to employers in every jurisdiction. In fulfilling requests for consultation, the Department of Labor will give preferred consideration to those employers who would otherwise be unable to obtain onsite consultation from either a State OSHA consultation program under section 18 or through a contract program established under section 7(c)(1).

Mr. President, the issue is clear cut, and everyone knows what is at stake. Businessmen have cried out for remedial OSHA relief, and they feel that their cries have fallen on deaf ears. Well that may be true in some instances. But 38 of my colleagues from both sides of the aisle and from differing ideological persuasions have affirmatively responded by cosponsoring S. 3182, my OSHA onsite consultation bill which is identical in all respects to the amendment I am offering. This is our last chance to go on record as favoring a helpful and constructive OSHA proposal. I trust my colleagues will not allow this opportunity to go by the boards.

I might also say, with regard to the particular amendment, that the provisions of it, if there is an onsite consultation, do not result in any mandatory or any total protection of any code against the employer.

The effect on onsite consultation and recommendation would be merely to have that in the record as the consultation service which would be separate from the enforcement service and have it available for the employer if there is later enforcement action and the employer makes the decision that he wants to plead it in litigation of the offense that has been charged.

Mr. President, I also indicate to the Senate that on September 1, I wrote to the chairman of the Committee on Finance, as I indicated, that I was going to bring this up on the revenue-sharing bill. I also sent a letter to all Members of the Senate at that time, indicating I expected to bring it up on this bill or some later bill.

Mr. President, I ask unanimous consent to include the consultation status table by States at the conclusion of my remarks.

Mr. FANNIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. TAFT. I also wish to read a number of cosponsors of this particular bill, who I think would be happy to see it come before the Senate today.

On our side, it includes myself, Senators BEALL, LAXALT, DOMENICI, FANNIN, YOUNG, PERCY, CURTIS, DOLE, HRUSKA, BAKER, GRIFFIN, HATFIELD, GARN, HUGH SCOTT, MCCLURE, BUCKLEY, THURMOND, and HANSEN.

On the Democratic side, it includes Senators ABOUREZK, NELSON, BUMPERS, EASTLAND, LEAHY, CHILES, ALLEN, BURDICK, SPARKMAN, CANNON, MORGAN, TALMADGE, GRAVEL, STONE, BENTSEN, JOHNSTON, MCINTYRE, NUNN, and GLENN.

Senator PEARSON has also indicated to me that he is interested in becoming a cosponsor if that could be done at this time which under the procedures we are operating under I cannot do it at this time but I will do it at the proper later time.

Mr. President. I wish to read into the RECORD a portion of a letter from the Office of Management and Budget. It is from Mr. Paul H. O'Neill. Acting Director. The last paragraph states:

> Nevertheless, in testimony last year, the Administration endorsed H.R. 8618 as an additional tool for assisting employers in complying with the law, by permitting Federal OSHA employees to give on-site consultation. The Administration's views on that measure apply equally to S. 3182, which, as you noted in your letter, is identical to H.R. 8618.

Mr. President, I might say that every effort, I believe, has been made to attempt to get the Committee on Labor and Public Welfare to act on this measure. On June 22 I wrote to the distinguished chairman of the subcommittee a letter, that was signed by Senators LAXALT and BEALL as well as myself, requested such a hearing, and pointed out the numerous key factors that I thought ought to be taken into consideration by the committee, particularly the very broad degree of support that existed in the Senate membership for the measure.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. TAFT. I am glad to yield to the Senator from New York for a question.

Mr. JAVITS. Mr. President, this has been a matter of long standing. No one

knows it better than I. I feel that it should have a hearing and consideration.

I am a bit embarrassed by the present situation, and it will affect my vote because we have tried to strip this bill of everything but unemployment compensation. There is no unanimous agreement or anything like that for it. But we told Senator LONG we would not bring anything up on SSI. I think that also impliedly meant anything else which could mean a conference where there would be differences of view. We know there is considerable labor opposition to this. I only say that by way of explanation.

I wish to say affirmatively, first, that if this should fail now, and it may, I will do my utmost—I wish to promise the Senator—to get a deliberative hearing very early in the year.

Second, I hope the Senator will carefully examine the amendment which I think could stand some attention in drafting.

Third, this is an enormous undertaking. There are some 7 million small businesses in the country, and we really could inundate the Department with it at the expense of enforcement and everything else. As the Senator knows, consultative services cannot be provided in 3 or 4 million places at once.

But I did wish to explain to the Senator my own situation respecting using this bill as the vehicle, in view of what we told Senator LONG in order to induce him to keep SSI material in the bill.

Mr. TAFT. I appreciate the remarks of the distinguished Senator from New York. However, I would have to say, as the Senator himself has pointed out, of course, there is no agreement of any kind.

Mr. JAVITS. That is right.

Mr. TAFT. And there was no agreement by myself of any kind. In fact, quite the contrary. I believe the people involved have known of the intention of the Senator from Ohio to bring up this measure on this bill if indeed it appeared impossible to bring it up on any other measure, and that to me seems likely under the present legislative situation.

So the Senate has a chance to vote on this now and will have no other chance, really, in this session.

As to the drafting, I think that the drafting has been very carefully worked out and studied for a long time by many people involved. There are many, many laws on the books under which the duty devolves upon the Secretary of a particular Department of the Government to perform a particular function, and I think there is no question at all but what he has the authority to delegate that responsibility if he wishes to do so.

Of course, as to the scope of the program, the Senator from New York has hit right upon one of the problems of the entire OSHA legislation.

The broad estimate that I have heard so far with regard to OSHA and its inspections is that at most it could inspect locations involving only 4 percent of the covered employees each year of its operation.

One reason we have to go to consultation I think to achieve the purposes of better health and better safety in working places is just because of that. With the current mandatory citing of any violation that is seen, even if advice is asked for on the most minor provisions, there is no way I think we are going to be able to achieve the goals involved.

We are going to have cooperation and education in this field and only by having a consultation service can this occur.

There may be some rough spots in the beginning. Actually, the estimate that has been given to us by the Budget Office as to what would be involved here the first 3 years in a reasonable start upon this program to at least see how it works would come to only $19 million.

So I do not think we are starting out to create some tremendous additional bureaucracy. We are putting it in an already established bureau.

I believe this proposal could do a great deal to help health and safety in the working places of the country.

Mr. President, I am ready to yield the floor.

Mr. WILLIAMS. Mr. President, Federal onsite consultation has been put forth this Congress as the panacea for OSHA's problems. It has been most emphatically advocated as a means of enabling small businessmen to understand and comply with the law.

Mr. President, I know the basic problem here with offering this amendment to this bill and the difficulty that will present itself if an amendment of this nature should be added to the bill will be described by the Senator from Louisiana.

But I would like to speak on the merits of the situation presented by this onsite consultation amendment.

Federal onsite consultation has been put forth this Congress as the panacea for OSHA's problems. It has been most emphatically advocated as a means of enabling small businessmen to understand and comply with the law.

Yet I do not know whether it is fully realized, and it should be realized that what this proposes is another layer of bureaucracy in an area where there is already a bureaucratic opportunity. I will tell the Senate what I mean.

We have authorized and then we have appropriated money. Federal money, to the States for exactly what the Senator from Ohio proposes to do, and that is onsite consultation.

It impresses me more and more each day that our business community is becoming increasingly frustrated with layers of Government overlay and bureaucratic attention to their business. This would just be another layer of bureaucracy in an area where, if consultation makes sense, the opportunity is right there at the State level. That is why we have encouraged the States to support onsite consultation and why we have appropriated Federal money to go to the States for this purpose.

Our Labor Subcommittee, mindful of the problems of administration of the program and the discontent that has been expressed, has conscientiously gone to the country with hearings on OSHA.

As recently as Monday of this week, the Senator from New Hampshire went to the State of Florida to hold OSHA hearings for the Committee on Labor and Public Welfare. One of the matters to be heard was the business community's attitude about the need for onsite consultation. I think the Senator from New Hampshire, very briefly, can describe how many witnesses offered themselves to request Federal onsite consultation.

I yield to the Senator from New Hampshire for a brief answer to that question.

Mr. DURKIN. I thank the Senator.

On Monday, we went to Jacksonville, at the request of the chairman and Senator CHILES. It seems to me that there were 25 or 26 witnesses; and, at the most, 2 or 3 came out concretely and asked specifically for onsite consultation.

Mr. WILLIAMS. Now I ask the Senator another question: That opportunity for onsite consultation runs to the State of Florida. They can seize that opportunity, and Federal money will come to them to support it. In other words, they can have onsite consultation.

Mr. DURKIN. The consensus was that the State of Florida runs a consultation program and does an excellent job.

I might point out that we have had 4 days of hearings already. We are scheduled to go to South Dakota next month and are scheduled to go to Oregon. Senator PELL has indicated that he wants a hearing in Rhode Island sometime before the end of the year.

I think everyone in the Chamber would admit that there have been problems with OSHA and problems with the administration and that there have been problems with the hasty adoption of some of the standards which were very confusing. Dr. Corn has made an effort to rectify some of these problems. That is beginning to surface in the hearings.

I think it may well be premature at this time, even though Senator TAFT's idea may ultimately carry, in light of the fact that we still will have hearings across the country. So we get more than just testimony from those who make a living testifying in Washington before congressional hearings. We are going out in the field and getting testimony from people who have to live under the law, who have to live under the administration as it varies from State to State.

Mr. WILLIAMS. The Subcommittee on Labor, at my direction, has been holding legislative and oversight hearings which have focused on finding out what is really happening in small workplaces as a result of OSHA. We have gone to several States and interviewed dozens of small businessmen who have actually been inspected by OSHA.

We have held hearings in Washington where associations have come in to tell us what the businessman, large and small, thinks about OSHA.

The hearings have not been concluded yet, and therefore our findings are tentative. But there has not been any strong call for consultative services among the small businessmen themselves.

In New Hampshire, South Dakota, Florida, and Oregon, where we did our interviewing, only one State, South Dakota, did not have OSHA-oriented public on-site consultation available. Interestingly, in New Hampshire and

Florida, State staff who previously enforced State safety laws are providing State-funded on-site consultation to businessmen on compliance with OSHA regulations.

Prior to fiscal year 1975, on-site consultation was an option only under section 18(b) OSHA State plans. States without State plans did not have federally supported on-site consultation available to them.

In the fiscal 1975 Labor-HEW appropriations bill, Congress recognized the value of making onsite consultation available to all States by earmarking $5 million to be used under section 7(c)(1) for State-administered onsite consultation in those States which did not have State plans.

Today we have a total of 33 States which offer federally supported onsite consultation.

As some remaining States' reluctance to participate has been caused by the 50 percent match requirement which was administratively imposed by the Department of Labor on the 7(c)(1) program, the Appropriations Committee report for fiscal year 1977 instructs the Department of Labor "to change the match for State onsite consultation to such a level as will assure full State participation in this program" under 7(c)(1).

Further, the fiscal year 1977 appropriations contains $2.5 million for hiring private consultants to provide onsite consultation in those States which still are uninterested in running their own program.

Under the fiscal year 1977 appropriations bill $15.5 million has been authorized for onsite consultation. This will provide for a program of considerable size on a national basis.

Federal onsite consultation has been proposed as the answer to the needs of small businessmen who do not have and may not be able to afford expert staff to advise them about OSHA compliance. Onsite consultation has also been endorsed as a means to achieve a greater incidence of voluntary compliance.

A look at the experience of these State programs is instructive. In the States that have 7(c)(1) contracts, 34 percent of the consultation services have been requested by and provided to larger employers, who represent only 10 percent of the establishments covered by OSHA.

Another twist to the program that we have found in our visits to the States is that in many instances the preponderant use of the consultation services is by employers who have been inspected and cited and want assistance in finding methods of compliance.

While this may represent a real need, it does not warrant onsite consultation and is not going to increase the number of employers coming into voluntary compliance with OSHA.

Roger Wingate of Liberty Mutual testified before the Labor Committee in 1974 that when his company experimented in offering occupational safety and health consultation services to small businesses, they got very little response. Their experience was that the people who ask for consultation services when they are offered are the people that need it least.

It is particularly not clear whether the small businessmen themselves are interested in availing themselves of onsite consultation services provided by Federal OSHA. There is a great reluctance among many employers to call in the enforcement agency to consult.

Under this amendment, as under current regulations for the 7(c)(1) programs, serious hazards which are not corrected by the employer within a set time are reported by the consultant to OSHA.

It seems to me that what we are engaged in here with this amendment is legislative tokenism. OSHA has been caught up in the general antiregulation sentiment which has been fostered by the administration and the state of the economy. It is certainly not clear that Federal onsite consultation answers any legitimate problems with the existing legislation.

The Occupational Safety and Health Act has never had the benefit of operating in an administration that cared about workers or the effectiveness of the act. The range of attention given this program has ranged from intentional subversion to ineptness to the current procedural strangulation.

It would be a shame at this 11th hour before the election to make changes in this important law before a benevolent administration has had the opportunity to implement the law with the balance and efficiency envisioned when the act was passed.

Mr. President, for all all these reasons, I believe that a motion to table——

Mr. TAFT. Mr. President, will the Senator withhold that?

Mr. WILLIAMS. I am not making the motion. I believe the Senator from Louisiana will.

I yield the floor.

Mr. HRUSKA. Each of us has been inundated by letters from small businessmen complaining about surprise visits by Occupational Safety and Health Administration inspectors and the subsequent fines that invariably follow. Our constituents do not wish to break the law, nor do they wish to provide unsafe working conditions for their employees.

But the problem with OSHA's relationship with small business was summed up well by one of my constituents in a letter to me:

> Please give your support to the proposed bill granting to all of us the right to request consultation from OSHA to enable us to comply with regulations which are too voluminous for us to be fully familiar with, and in which the wording is such that it would take an engineer, lawyer and whatever else might be required to interpret these volumes.

The original intent of OSHA was to create safe working conditions for Americans. It is totally consistent with this goal to give employers a chance to correct violations or regulations before levying a fine. And this is what the onsite consultation bill will permit. For these reasons I support this amendment.

Mr. TAFT. Mr. President, in reply to the point that has been brought up, the measure has had very broad backing from business. It has broad backing in the business community, as represented by their national association. I will cite the names: the U.S. Chamber of Commerce, the National Federation of Independent Businesses, the National Association of Manufacturers, Printing Industries of America, Associated General Contractors, and Sheet Metal National Contractors Association. These are just a few.

As to the other point with regard to the State of Florida, I find it very interesting. I have not had an opportunity to review the hearings in Florida as yet, but it is interesting to note that both Senators from Florida are cosponsors of the bill. Apparently, they felt some necessity for some improvement.

As to building up another layer of bureaucracy, it does not do that. It uses the established bureau that has been set up to handle this within the Labor Department, which I think is the proper place for it. It does set up a separate division, which I think should be done and almost has to be done if we are going to keep it separate. The whole principle of getting voluntary compliance with consultation implies that there would be some degree of separation.

There is no new bureaucracy set up here. Indeed, if this works effectively, as I think it should, it will cut down on the level of bureaucracy that is going on now in the enforcement proceedings that I think are often really without much reason and result in immediate violation of the citation and sometimes a very large penalty imposed as a result of that, or threatened as a result of it, and sometimes then negotiated down to some figure, perhaps 5 or 10 percent of what the original penalty was. This is little other than legislative blackmail in this kind of situation. A great deal of resentment has been aroused because of this, and I think it would hurt the accomplishment of the overall purposes of OSHA.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LONG. Mr. President, this amendment illustrates why the Senator from Louisiana felt it necessary to move to recommit the bill and strip off our own Finance Committee amendments on SSI earlier in this debate.

Everyone knows that this is a bill the President wants to sign, so that anyone who has a good amendment, even though it does not have anything to do with the jurisdiction of the Finance Committee and is totally irrelevant to our bill, is then tempted to offer an amendment on this bill. This bill could then become a Christmas tree bill. Then somebody could start filibustering against it because it is a Christmas tree bill. We would have a filibuster within a filibuster, with filibusters waiting in line, and they would not know which bill they want to filibuster—this bill or the other. All that finally could result would be that we would have to recommit and report back, which would put us right back where we are now. Why do we

want to spend days of work, just to get back to where we are now?

The Senator from Ohio was not a party to the agreement, but most of us have a gentlemen's agreement that we are not going to offer irrelevant amendments to this bill.

I understand the Senator's problem. Perhaps we can deal with it on some other bill. What he is trying to do is completely futile. If we agreed to it here, it would go to the House; and the Ways and Means people would refuse to have anything to do with it, because their labor committee would inform the Ways and Means Committee that it is beyond the Ways and Means Committee's jurisdiction, and they would refuse to accept it. All they could do, if it were agreed to after we spent days on it, would be for it to go to the House and drop it, and then ask the Senate to take the bill we had to begin with. We have enough trouble fighting over the attorneys' fees bill, without getting extraneous matters involved here.

So, Mr. President, I say, regretfully, that it does not belong in this bill. All we are doing is making work and making it difficult to adjourn without looking after matters we might be able to take care of, including this, in connection with a proper vehicle.

So, Mr. President, I move that the amendment be laid on the table.

Mr. TAFT. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana. On this question the yeas and nays are ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from California (Mr. TUNNEY), the Senator from Indiana (Mr. HARTKE), the Senator from Colorado (Mr. HASKELL), and the Senator from Florida (Mr. CHILES) are necessarily absent.

I further announce that the Senator from Ohio (Mr. GLENN), the Senator from Montana (Mr. MANSFIELD), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Hawaii (Mr. INOUYE) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Vermont (Mr. STAFFORD), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "nay."

The result was announced—yeas 43, nays 35—as follows:

[Rollcall Vote No. 672 Leg.]

YEAS—43

Bayh	Hansen	Muskie
Bellmon	Hart, Gary	Nelson
Biden	Hathaway	Pastore
Brooke	Hollings	Pell
Byrd, Robert C.	Huddleston	Proxmire
Case	Humphrey	Randolph
Clark	Jackson	Ribicoff
Cranston	Javits	Stennis
Culver	Johnston	Stevenson
Curtis	Kennedy	Symington
Durkin	Long	Talmadge
Eastland	Magnuson	Weicker
Fannin	McClellan	Williams
Fong	Metcalf	
Ford	Moss	

NAYS—35

Abourezk	Gravel	Packwood
Allen	Griffin	Pearson
Baker	Hatfield	Percy
Bartlett	Helms	Roth
Bumpers	Hruska	Schweiker
Burdick	Laxalt	Scott, Hugh
Byrd, Harry F., Jr.	Leahy	Sparkman
	Mathias	Stevens
Church	McClure	Stone
Domenici	McIntyre	Taft
Eagleton	Morgan	Tower
Garn	Nunn	Young

NOT VOTING—22

Beall	Goldwater	Mondale
Bentsen	Hart, Philip A.	Montoya
Brock	Hartke	Scott, William L.
Buckley	Haskell	
Cannon	Inouye	Stafford
Chiles	Mansfield	Thurmond
Dole	McGee	Tunney
Glenn	McGovern	

So the motion to lay on the table was agreed to.

Mr. LONG. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DURKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 507

Mr. JOHNSTON. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON) proposes unprinted amendment No. 507:

On page 42, after the word "Commission" in line 20 insert the following:

The Commission shall consist of at least one representative of labor, industry, the Federal Government, State government, local government, and small business.

The PRESIDING OFFICER. Will the Senator suspend? The Senate is not in order. The Senator is entitled to be heard. Will Senators please take their seats?

Mr. JOHNSTON. Mr. President, as the clerk's reading in full of the amendment indicated, all this amendment does is to guarantee that the Commission set up to study unemployment compensation under this bill will have at least one representative each from labor, industry, the Federal Government, State governments, local governments, and small business.

The impetus for this amendment came from the small business people who were concerned that they might be frozen out. It is a little protection for them, and I ask for its favorable consideration.

Mr. LONG. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment was agreed to.

The PRESIDING OFFICER. If there are no further amendments, the question is on the engrossment of the amendments and the third reading of the bill.

Thet amendments were ordered to be engrossed and the bill to be read a third time. The bill was read the third time.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that——

Mr. FANNIN. I object.

Mr. PERCY. The Senator from Illinois would like to say that Senator LONG has known all day and long before that that I have had an amendment. We have been working at a compromise on that amendment. We have the compromise worked out, and final language is now being put together and, as I understand it, can be accepted.

Mr. FANNIN addressed the Chair.

The PRESIDING OFFICER. The Chair will state that after third reading of the bill it will take unanimous consent.

Mr. FANNIN. The Senator from Illinois I know has made a reasonable request. The Senator from Arizona (Mr. GOLDWATER)—reserving the right to object, and I shall make a statement and discuss it further——

Mr. ABOUREZK. Mr. President, will the Senator use his microphone.

Mr. GRIFFIN. Could we have a quorum call? Could that be a possibility and then we can discuss it with Senator GOLDWATER?

Mr. FANNIN. That is all right.

Mr. GRIFFIN. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER (Mr. HANSEN). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HANSEN). Is there objection?

Without objection, it is so ordered.

Mr. PERCY. Mr. President, I ask for reconsideration of third reading. I move that the third reading be reconsidered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Illinois.

The motion was agreed to.

UP AMENDMENT NO 508

Mr. PERCY. Mr. President, I call up my amendment and ask that it be modified in the manner I send now to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY) proposes an unprinted amendment numbered 508:

At the end of Title III of the bill, add the following new section: Prompt payment of compensation when due.

The amendment is as follows:

At the end of title III of the bill, add the following new section:

SEC. . PROMPT PAYMENT OF COMPENSATION WHEN DUE.

(a) IN GENERAL.—Section 303(a) of the Social Security Act is amended in paragraph (3) thereof, by inserting immediately before the semicolon at the end thereof the following: ", or are not acted on with reasonable promptness". The Secretary of Labor shall issue regulations within 60 days of the enactment of this Act defining "reasonable promptness" under this paragraph.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective with respect to certification periods, with respect to which the Secretary of Labor is authorized to make certification of payment to States under title III of the Social Security Act, which begin after December 31, 1977.

On page 43, line 24, strike out "and".

On page 44, line 2, after "abuse" insert "and (c) problems of claimants in obtaining prompt processing and payment of their claims for benefits and any appropriate measures to relieve such problems".

Mr. PERCY. Mr. President, the original purpose of this amendment was to set a Federal standard to require the expeditious payment of unemployment compensation checks to qualified jobless workers. Through personally visiting unemployment compensation offices, I have learned that sometimes bona fide applicants have had to wait as long as 3 to 6 months while bills for food, shelter, and fuel pile up.

Those who are now jobless or have been jobless know how important that unemployment compensation payment is to them and their families. When it is unduly delayed—which has too often been the case during the recent recession—it can cause undue hardship and suffering. Even with regular receipt of a biweekly paycheck, many families have had a difficult time making ends meet. When that paycheck terminates, it can create a crisis.

Even though many economists see improved economic conditions in the months ahead, unemployment remains high. In August 1976, the national unemployment rate was 7.9 percent, or 7.5 million jobless persons, compared with 7.8 percent unemployed in July 1976, or 7.4 million persons without jobs.

The number of persons applying for unemployment compensation also remains high, though not quite as bad as the crest of the 1974–75 recession. For the week ending September 4, 1976, 4.1 million Americans were receiving some type of unemployment compensation. This figure does not include 1.9 million who have exhausted all benefits. Many of these persons have gone on welfare to survive economically.

Six months ago, 5.8 million persons were drawing some form of unemployment compensation, so we do see an improvement.

Even though the number of new applicants for unemployment compensation has dropped by 85,000 from 6 months ago, the number of new applicants remains high. For the week ending September 11, 1976, 280,920 American workers initially applied for unemployment compensation, almost the same as September 1974, when the recession was just beginning to cast a chill on the economy.

Unemployment compensation, though, goes beyond mere statistics.

I would like to clear up two misconceptions about the program that frequently come up in conversations. First, that it is a bonanza for cheats. Last summer, the media focused attention on a handful of social parasites who cheat the unemployment compensation program through fraudulent claims. These cheaters should be punished to the fullest extent of the law for stealing public funds. Additionally, I support the amendment denying benefits to illegal aliens and professional athletes during the off season.

But despite the presence of cheaters, I have also learned that the overwhelming majority of unemployment compensation beneficiaries are hard-working breadwinners, who have been thrown out of work through no fault of their own. Virtually all of them, if given the choice, would prefer the paycheck that comes as a result of productive work over the unemployment check.

Second, there is a misconception that unemployment compensation is a welfare program. It is not. Unemployment compensation funds in 47 States come from a payroll tax levied on employers. In three States, employers and employees jointly contribute to the fund from which unemployment compensation benefits are paid. The Federal Government merely holds unemployment compensation funds in a fiduciary trust for the use of unemployed workers. In some ways it resembles a form of insurance.

Perhaps one reason that our society weathered last year's recession was because the unemployment compensation program constructed a financial cushion for the jobless. The program provided, and still provides, the jobless with sustenance when their income has been cut off and their bills continue to mount. The worker need not take to the streets to beg his Government to financially support him.

Still, the program is far from perfect and needs a host of reforms. During the worst of the recession, I personally visited an unemployment compensation office in Chicago that serves the depressed near South Side, and learned of some workers who were waiting 3 to 6 months for benefits. I was surprised to find out that the U.S. Labor Department, in the 37-year history of this program, never required the States to expeditiously process claims for unemployment compensation. States could delay payments without fearing any adverse reaction from the Labor Department.

I urged then-Labor Secretary John T. Dunlop to correct this situation, reminding him that in initiating the program, the 74th Congress stipulated that unemployment compensation should be made "when due."

Interpretation of that clause has been left solely to the Federal courts. They have ruled that the unemployed worker should receive his check within 2 weeks following the end of his first compensable week, which in most States is 28 days after he initially applies for benefits.

The leading case is *California Human Resources Department* v. *Java*, 402 U.S. 121 (1971). The U.S. Supreme Court ruled that the objective of Congress in passing the 1935 Unemployment Compensation law was to provide a substitute for wages lost during a period of unemployment. The court said that while no program could be devised to make insurance payments available precisely on the nearest payday following the termination, this must be regarded as the intent of Congress. The court noted that the report of the Committee on Economic Security, which laid the groundwork for the 1935 law, had estimated that the longest waiting period for unemployment compensation would be 4 weeks, with the "normal time" no longer than 2 weeks.

The "when due" clause of the 1935 act was further defined by *Phillips* v. *Dawson*, 393 F. Supp. 360 (W.D. Ky., 1975). A Louisville Federal court ordered employees of the Kentucky Department for Human Resources, Bureau for Social Insurance, to mail or personally deliver unemployment compensation payments to any qualified worker within 24 days of initial application.

Most recently, the Legal Assistance Foundation of Chicago successfully argued that the Illinois Bureau of Employment Security—IBES—was disobeying the intent of Congress by unduly delaying first-benefit payments to jobless beneficiaries. In *Burtton* v. *Johnson and Dunlop*. 75 C 982 (N.D. Ill., 1975) Federal court Judge Thomas McMillen ruled that the IBES must pay beneficiaries within 14 days of the first week they are eligible for benefits, or 28 days after they initially apply.

This past July, the Federal Government finally issued regulations requiring that 80 percent of all intrastate and 60 percent of all interstate first-benefit claims must be paid within 14 days after the recipient becomes eligible.

Unfortunately, the rules hardly help first-claim beneficiaries who live in States that comply with the new Federal guidelines. And, it hardly aids the unemployed worker, whose claim has been delayed, to tell his creditors that he resides in a State whose unemployment compensation machinery has officially been declared "efficient" by the Federal Government. The applicant should have some way to force the State to make payment of unemployment compensation that is due him.

Originally, the amendment clarified and defined in precise terms the amount of time the States were to be given to either approve or disapprove, applications for unemployment compensation. The modified amendment strikes the specific language delineating "when due"

but places forward a new opportunity for beneficiaries whose claims for jobless benefits are unduly delayed. It permtis beneficiaries to petition the State unemployment compensation agency for a fair hearing, to determine the reasons for the delay.

The standard in the revised amendment is that of "reasonable promptness" and the Secretary of Labor is given 60 days to promulgate regulations giving definition to that phrase.

The Secretary, hopefully, will follow my original amendment and define "reasonable promptness" to mean 28 days, as the courts have found, after which period an applicant can ask for a fair hearing to find out why his claim has not been processed.

Additionally, the revised amendment makes the issue of delayed payments an agenda item to be examined by the study commission on unemployment compensation. I support the examination in expectation that the commission will conclude, as I have concluded and the courts have concluded, that 28 days is more than sufficient time to process these unemployment compensation claims.

Even though the revised amendment does not spell out in specific terms the amount of time that the States are given to process unemployment compensation claims, the intention is supportive of these decisions of the courts that have established a 28-day guideline as sufficient time for the States to approve or disapprove an unemployment compensation application. It is anticipated that the Secretary of Labor will follow that guideline and specify the meaning of the "when due" provision of the act according to the intent of the amendment as originally submitted.

Mr. President, in order to expedite the consideration of this amendment, I have discussed it with the managers of the bill. I understand it is acceptable to them in the modified form in which I have presented it, and I hope it will be agreed to by the Senate.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

UP AMENDMENT NO. 509

Mr. LEAHY. Mr. President, on behalf of myself and my colleague (Mr. STAFFORD), I send to the desk an unprinted amendment and ask for its consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk reads as follows:

The Senator from Vermont (Mr. LEAHY), for himself and Mr. Stafford, proposes an unprinted amendment No. 509.

Mr. LEAHY. Mr. President, I ask unanimous consent to dispense with the reading of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC.—. AFDC BENEFITS WHERE UNEMPLOYED FATHER RECEIVES UNEMPLOYMENT COMPENSATION.

(a) In General.—Section 407(b)(2) of the Social Security Act is amended—

(1) by striking out "and" at the end of subparagraph (B); and

(2) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a)—

"(i) if and for so long as such child's father, unless exempt under section 402(a)(19)(A), is not registered pursuant to such section for the work incentive program established under part C of this title, or, if he is exempt under such section by reason of clause (iii) thereof or no such program in which he can effectively participate has been established or provided under section 432(a), is not registered with the public employment offices in the State, and

"(ii) with respect to any week for which such child's father qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States, but refuses to apply for or accept such unemployment compensation; and

"(D) for the reduction of the aid to families with dependent children otherwise payable to any child or relative specified in subsection (a) by the amount of any unemployment compensation that such child's father receives under an unemployment compensation law of a State or of the United States.".

(b) CONFORMING PROVISION.—Section 407(d)(3) of such Act is amended by inserting ", for purposes of section 407(b)(1)(C)," before "be deemed".

(c) EFFECTIVE DATE.—The amendments made by the preceding provisions of this section shall be effective with respect to months after (and weeks beginning in months after) the date of the enactment of this Act.

(d) SIMPLIFICATION OF PROCEDURES.—Section 407 of the Social Security Act is further amended by adding at the end thereof the following new subsection:

"(e) The Secretary of Health, Education, and Welfare and the Secretary of Labor shall jointly enter into an agreement with each State which is able and willing to do so for the purpose of (1) simplifying the procedures to be followed by unemployed fathers and other unemployed persons in such State in registering pursuant to section 402(a)(19) for the work incentive program established by part C of this title and in registering with public employment offices (under this section and otherwise) or in connection with applications for unemployment compensation, by reducing the number of locations or agencies where such persons must go in order to register for such programs and in connection with such applications, and (2) providing where possible for a single registration satisfying this section and the requirements of both the work incentive program and the applicable unemployment compensation laws.".

SEC. —. STATE EMPLOYMENT OFFICES TO SUPPLY DATA IN AID OF ADMINISTRATION OF AFDC AND CHILD SUPPORT PROGRAMS.

(a) IN GENERAL.—Section 3(a) of the Act entitled "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 (29 U.S.C. 49b(a)), is amended by adding at the end thereof the following new sentence: "It shall be the further duty of the bureau to assure that such employment offices in each State, upon request of a public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act or of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act, shall (and, notwithstanding any other provision of law, is hereby authorized to) furnish to such agency making the request, from any data contained in the files of any such employment office, information with respect to any individual specified in the request as to: (A) whether such individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, (B) the current (or most recent) home address of such individual (C) whether such individual has refused an offer of employment and, if so, a description of the employment so offered and terms, conditions, and rate of pay therefor, and (D) such other matters as may be relevant to the discharge of such agency's duties insofar as such duties relate to such individual or any member of his family.

(b) PROVISIONS FOR REIMBURSEMENT OF EXPENSES.—For purposes of section 403 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 3(a) of the Act entitled "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 (29 U.S.C. 49(b)(a)), by a State or local agency administering the State plan approved under part A of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 455 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan.

Mr. LEAHY. Mr. President, the primary purpose of my amendment is to require unemployed fathers who apply for aid-to-families-with-dependent-children-unemployed fathers—AFDC–UF—to collect any unemployment compensation—UC—to which they are entitled before they can receive any AFDC–UF benefits for which they might qualify. In those cases where an individual collecting UC meets the State AFDC–UP eligibility requirements, the State would be required to supplement UC benefits up to AFDC–UP benefit levels. The 28 States that are participating in the AFDC–UF program would be affected by this legislation. These States are: California, Colorado, Connecticut, Delaware, the District of Columbia, Guam, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, West Virginia, and Wisconsin.

Mr. President, this amendment is necessary because of the June 9, 1975 Supreme Court decision—Philbrook v. Glodgett—which held that an unemployed father of dependent children eligible for AFDC–UF, who is also entitled

to UC benefits, must be given the option of receiving either UC or AFDC–UF.

Prior to this ruling, an unemployed father entitled to UC benefits was prohibited from receiving AFDC–UF, even if he met the AFDC–UF eligibility requirements and benefits under AFDC–UF were higher than his UC payments. The Supreme Court ruling allows individuals to draw AFDC–UF instead of UC benefits in those cases where the AFDC–UF benefits are higher. The result has been to increase AFDC–UF expenditures and decrease UF expenditures.

Prior to the Supreme Court's June 9, 1975 ruling an unemployed father eligible for UC benefits was prohibited from receiving AFDC–UF, even if he met the AFDC–UF eligibility requirements and AFDC–UF payments would be higher than his UC benefits.

The amendment would also reduce the number of locations or agencies to which recipients of AFDC–UF and recipients of both UC and AFDC–UF must go in order to register for employment. If the work incentive program—WIN—is accessible, an individual receiving just AFDC–UF would have to register only with WIN, rather than with both WIN and the Employment Service as under current law. If a WIN program is not accessible, the individual would have to register with the Employment Service. For those receiving both UC and AFDC–UF, the amendment directs the Secretary of Health, Education, and Welfare and the Secretary of Labor to work with the States in reducing the number of places these individuals must go to fulfill the employment registration requirements in both programs.

Mr. President, some States, particularly those that are State-supervised States, that is in which the counties administer the AFDC program pursuant to a State plan, have had serious difficulties in receiving information from unemployment insurance officers in the State. As a result, this lack of information as to the amount of unemployment insurance received causes large dollar errors in the AFDC program and erroneous payments.

The State of Michigan, for example, does not coordinate their unemployment insurance programs with the State AFDC program. This has resulted in overpayment errors of approximately $6 million in fiscal year 1976. There are a number of other States, including my State of Vermont, which are also having problems in the same area. In addition, there are some States which do not authorize either AFDC or child support agencies to check against unemployment insurance for any reason.

The problem is so serious that there have been a number of recent revelations in the media of large dollar errors in unemployment compensation and AFDC payments.

Therefore, Mr. President, my amendment would require cooperation between the two agencies for purposes of AFDC eligibility and child support. It also provides that the AFDC agency and the child support agency would bear the cost of receiving the information from the unemployment compensation agency.

Mr. President, Senator STAFFORD and I have discussed this amendment previously with the distinguished chairman of the Finance Committee, and it is our understanding that it is acceptable to him and the committee.

Mr. LONG. Will the Senator yield?

Mr. LEAHY. I yield.

Mr. LONG. Mr. President, under this amendment, if a person is entitled to unemployment insurance, he should apply for the unemployment insurance and take that rather than applying for welfare.

Mr. LEAHY. The distinguished chairman, as usual, has approached the matter in a most distinguished manner.

Mr. LONG. I am willing to accept the amendment, Mr. President.

Mr. LEAHY. I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Vermont.

The amendment was agreed to.

Mr. LONG. Mr. President, I ask unanimous consent to have printed in the RECORD, a statement by the distinguished Senator from Texas (Mr. BENTSEN).

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR BENTSEN

Title V of H.R. 10210, the Unemployment Compensation Amendments of 1976, now being considered by the Senate contains several provisions of vital importance to the aged and disabled of this country. These provisions amend the Supplemental Security Income Program which provides assistance to the aged, blind and disabled poor. The SSI program has been in operation for about 2 years now and we are beginning to hear about inequities in the law, about cases where the law acts to harm the very people that it was intending to help.

For example, under current law, when a husband or wife needs medical care in an institution, much of their joint SSI benefit goes toward payment of the institution's bills. This has led, in some cases, to the elderly being forced to file for a divorce so that the spouse remaining at home can have enough money to live on. Section 502 of H.R. 10210 would solve this problem by requiring that when one spouse is institutionalized, the SSI program provide benefits to the couple as if they were actually individuals. I sponsored this amendment to the SSI program in the Finance Committee because clearly the law did not intend to penalize the couple where one needed medical attention. This amendment has a negligible cost to the Treasury according to the Administration.

Another amendment to the SSI program which I sponsored in Committee would prevent a person from losing their Medicaid eligibility when their Social Security benefits rose due to the cost of living increases. What happens now is that people with low social security benefits and little other income are eligible to receive SSI benefits. Although these SSI benefits may amount to only a few dollars, they entitle the person to Medicaid health insurance coverage. However, as the law now stands, when social security benefits rise some 10,000 to 15,000 people lose their SSI benefit because the social security increase pushes them above the eligibility cutoff for SSI. Loss of a few dollars of SSI benefits is not what really hurts. The real problem is loss of the Medicaid benefits that are tied to SSI eligibility.

One case in Texas was reported to me in which a woman lost her SSI and Medicaid eligibility because her Social Security benefit was too high by 30 cents. Clearly, this kind of arbitrary cut-off does not draw the kind of distinctions that are necessary for a humane implementation of the laws. Section 501 of the bill we are considering today allow people to keep their Medicaid eligibility despite increases in Social Security benefits.

There are two more sections in Title V of the Unemployment Compensation bill which amend the Supplemental Security Income Program and which I co-sponsored in the Finance Committee.

Section 505 of the bill removes the prohibition in current law that prevents people living in small residential group homes from receiving SSI benefits. Although this prohibition in current law applies directly only to people residing in public facilities, its effect is to also prevent people in private group homes from receiving SSI. This situation must be corrected. We have spent much time in this Congress talking about the rising cost of health care . . . and here is a perfect example of why those costs are going up. An elderly or retarded person who is not in need of medical care but is in need of some aid in his or her daily chores like dressing and preparing food is forced, under current law either to forego his welfare benefit in order to get that help or go into a much more costly medical institution. It is time that we took some positive steps to assure that alternative care arrangements are in reality available to the elderly and retarded.

The amendment also requires that the States set up standards for these facilities and monitor them to assure that the standards for health and safety are met.

The Administration has pointed out that this amendment could cost as much as $12 million in the first year of operation with costs increasing in future years. However, this estimate is very misleading . . . for although SSI costs will increase, Medicaid costs will drop as a result of people being taken out of medical institutions in which they receive unnecessary care. In my State of Texas alone there will be an estimated reduction in Federal Medicaid costs of $1.6 million in fiscal year 1977 due to the enactment of this amendment.

Section 501 of today's bill requires H.E.W. to implement provisions of the SSI law that have essentially gone unnoticed since the law went into effect in January 1974. These provisions relate to the development of a definition of disability as it applies to children and the provision of rehabilitative services that are specifically geared to children. The current situation is that the only definition of disability applied for purposes of SSI eligibility relates to employability . . . a concept obviously irrelevant to children. Thus, different jurisdictions treat children with the same disability in different ways. Moreover, these children are referred to the State vocational rehabilitation agency which often does not offer services helpful to children.

Section 501 requires H.E.W. to issue a definition of disability as it relates to children, requiring that these children to be referred to a State Agency that has expertise in rehabilitation for children and sets a limit of $30 million a year for the next three years to provide these services to children.

The provisions which I have just discussed are crucial to a fair and rational implementation of the SSI program. They will rectify several problems that may appear to be minor but which mean the difference between desperation and security for many of our Nation's aged, blind and disabled. I urge my colleagues to give their full support to Title V of the Unemployment Compensation bill so that these measures can go into effect as soon as possible.

I would like to add that I have received assurances from Mr. Ullman and Mr. Corman, our distinguished colleagues on the House side, that the inclusion of the SSI measures in this bill will in no way impede the con-

ference. These provisions have previously passed the House as Sections of H.R. 8911.

Mr. BAYH. Mr. President, we are considering today an extremely important piece of legislation. This legislation extends the coverage of the existing unemployment compensation programs to several categories of workers not previously covered; increases the amount of workers not previously covered; increases the amount of wages subject to Federal unemployment tax in order to bring in needed revenues; and makes several beneficial changes in the supplementary security income program, a program designed to aid disabled workers.

The legislation as reported from the Senate Finance Committee contains several beneficial provisions; however it does not go as far as the House passed bill. I intend to support various amendments which will be on the Senate floor which will seek to conform the Senate legislation to the more progressive House bill. Among those reforms I intend to support are first, the establishment of a supplemental extension benefits program to provide an additional 13 weeks of coverage; second, a repeal of the 120 percent requirement which has unduly prevented the triggering of State unemployment programs, and third, the deletion of the prohibition on compensation for those elderly workers who may be receiving any income from pension plans.

All of these reforms are contained in the House passed bill.

While the Finance Committee bill as reported does not go far enough in making needed reforms in existing unemployment compensation programs, it does contain several important features.

1. COVERAGE

Under this legislation, unemployment compensation coverage will be extended to all employees of State and local governments. However, under the Senate bill, coverage would not be extended to several categories such as elected officials, major nontenured policymaking or advisory positions, judges, emergency employees hired in the case of a disaster or inmates of custodial or penal institutions.

For the first time, under this legislation, unemployment coverage will be extended to employees of nonprofit elementary and secondary schools. This provision, covering 58,661 elementary and secondary school teachers in Indiana takes effect on January 1, 1978.

2. TAX BASE

This legislation increases the Federal unemployment taxable wage base to $6,000 from the current base of $4,200 to take effect on January 1, 1978. The Department of Labor estimates that provision will result in $2 billion of additional State taxes and $0.5 billion of additional Federal taxes for fiscal 1979.

Additionally, the committee bill increases the net Federal unemployment tax rate from 0.5 percent to 0.7 percent effective January 1, 1977, which will result in approximately $0.4 billion in additional revenues during fiscal 1977.

3. SUPPLEMENTAL SECURITY INCOME

The bill makes several significant changes in the supplemental security income program, a program to provide aid to disabled workers.

Of particular concern is the current status of children in this program. It has been 4 years since the Congress enacted the SSI program, and there are still no adequate guidelines which would enable State agencies to determine how to apply the program to children. Individual States, receiving no direction from the Federal Government, have been adopting their own widely varying guidelines. Therefore, the legislation before us today would require the Social Security Administration within 120 days of enactment to publish criteria to be used by State agencies in making child disability regulations.

In addition, the Senate Finance Committee, in studying the operation of SSI as it relates to disabled children found that there was no uniform practice of referring these children to State agencies which might offer them the proper medical and rehabilitative services. In order to correct this situation, the Senate bill requires referral by the Social Security Administration of children under 16 years of age to the State agency which administers crippled children's services or to another agency the Governor deems capable of handling these needs. The legislation provides for a funding formula under which the Federal Government would be required to pay for any administrative costs incurred by the State agency in carrying out the program for disabled children.

The legislation before us today makes several other important changes in the operation of SSI. One of these changes which I regard as significant relates to cost-of-living increases under social security and eligibility for SSI and medicaid payments. Currently, the law provides for annual cost-of-living increases in payments under Title II of the Social Security Act. Unfortunately, there have been instances where this cost-of-living adjustment under social security has had the effect of making an individual ineligible for SSI and medicaid. The committee bill would protect an individual by providing that no recipient of SSI benefits could lose eligibility for medicaid as a result of the operation of cost-of-living increases.

The committee bill contains one other noteworthy provision affecting women workers. In a number of States an individual whose unemployment is related to pregnancy has been barred from receiving any unemployment benefits. In 1975, the Supreme Court found such a provision under Utah State unemployment compensation laws to be unconstitutional. The committee bill would prohibit States from being able to enforce any such similar prohibition of benefits based solely on pregnancy.

Mr. President, I hope the Senate moves expeditiously on this needed legislation, and I hope that my colleagues will join me in supporting strengthening amendments which will bring the bill in line with the House-passed version.

Mr. HANSEN. Mr. President, the National Federation of Independent Business has a burning interest in the Unemployment Compensation Amendments of 1976 and have made some excellent points in regard to that legislation.

James D. "Mike" McKevitt, Washington counsel for the National Federation of Independent Business, testified before the Senate Finance Committee—on which I serve—when the bill, H.R. 10210, was before that unit for consideration.

Because, Mr. President, what Mr. McKevitt has to say is important—especially as it relates for the need for reform of our unemployment compensation system, I ask unanimous consent that his remarks be printed in the RECORD as we consider the measure.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

STATEMENT OF JAMES D. "MIKE" MCKEVITT

Mr. Chairman, NFIB, with an audited membership of 462,000 small and independent business firms, vigorously opposes H.R. 10210, the Unemployment Compensation Amendments of 1976. Our system of unemployment compensation needs thorough reform, not another "quick fix" with an even expanded number of workers covered.

NFIB members are distraught by the continuing abuses of the current unemployment compensation system which are both well-known and widely reported. CBS and Mike Wallace deserve special commendation for airing sample abuses to a wide spectrum of the public on the television program "60 Minutes." But "60 Minutes" added nothing to what small business people have known for years—abuse of unemployment compensation is rampant.

NFIB's files are filled with poignant examples.

An NFIB member in Seattle recently advised us of a young, single warehouseman who quit his job to attend the Olympics in Montreal. The young man draws Unemployment Compensation. Another employee of the same firm had a fight with her husband and went home to her parents "until her husband came to his senses". She, too, draws Unemployment Compensation. Case after case of similar abuses can be cited, but H.R. 10210 doesn't address this problem.

Simply put, America's small business community is sick and tired of providing paid vacations to these people who are violating the law in spirit, if not in practice. We have heard a great deal about welfare cheats, but little has been done. Will the same be true of Unemployment cheats?

NFIB members are also concerned over the staggering numbers of people drawing Unemployment benefits when small business has over 1½ million job openings. NFIB's *Quarterly Economic Report for Small Business*, July 1976, reveals 17 percent of the small firms surveyed responded positively to the question, "Do you have any job openings that you are not able to fill right now?" Since the posed question directed itself only to the number of firms with job openings, not the number of openings per firm, extrapolations from the survey sample to the entire small business population will provide a very conservative estimate. Nevertheless, NFIB's estimate of at least 1.6 million vacant jobs in the small business sector raises significant questions.

Why should this phenomenon exist? Why should so many be drawing Unemployment Compensation, yet so many jobs be available? Possibly, part can be attributed to the geographic distribution of job openings in contrast to the geographic distribution of unemployed. NFIB survey data reveals, however, that even in New England, the region where the fewest small firms reported job openings, 9 percent of the firms had

vacancies. Possibly, part can be attributed to the substantially greater need for skilled labor than unskilled labor. NFIB survey data reveals, however, 5 percent of the firms needed unskilled labor.

But there is a stronger possibility that is not revealed in NFIB survey data. It is revealed by the experiences of our members. This possibility is the disincentive Unemployment Compensation currently provides against seeking productive employment.

A couple in a small Wisconsin community recently offered their experience:

"Since Spring we have advertised for employees but have found it extremely difficult to fill the positions we have open. Our starting wage is $3.50 to $3.75 per hour depending on experience. (Experience is not required for a position.)

"On many various occasions, when prospective employees call or come to our office, they laugh when they hear of our starting wage and say, 'I can earn more money by staying home and collecting unemployment compensation.' So, we keep trying to find people to work for us."

When does Unemployment Compensation cease being a stabilizing influence and begin to contribute to the problem? No one can determine precisely when that point has been reached. But, with the significant number of jobs available, it certainly appears the watershed has long been passed and Unemployment Compensation is no longer buoying the economic system, but sinking it.

NFIB members are further concerned because H.R. 10210 will compel millions of small firms to absorb tax increases despite excellent experience ratings. Why should that be? Why should firms that have not contributed to the insolvency of the fund in many states now be asked to help bail it out?

A small agri-business employer in the Mid-West, an NFIB member, has not experienced a single layoff in 44 years of operation. Yet, H.R. 10210 would raise his taxes. The man's business happens to be located in the same community as a subsidiary of a corporate giant, the subsidiary being subject to periodic, heavy layoffs. This small employer resents this indirect subsidy to his large corporate neighbor. Can you blame him?

NFIB appreciates the fact H.R. 10210 provides for a creation of a National Study Commission to consider various aspects of Unemployment Compensation. This is a laudable, though tardy action. But for the Commission to be successful, it must direct itself to the conceptual issues as well as the mechanical. It must begin with the question "What is unemployment?" and proceed to eliminate the inequities, the abuses, and the disincentives to gainful employment. Without thorough consideration of these aspects, the Commission will be nothing more than a bureaucratic sham—a basis for another "quick fix" rather than wholesale reform.

Small business employs over 50 percent of all workers in the private sector. NFIB, therefore, feels the Commission must include persons representing the small business sector.

NFIB does not oppose Unemployment Compensation per se; indeed, we feel the purpose of the program is commendable and essential to the social and economic goals of the United States. However, H.R. 10210 encourages institutionalization of the program's current distortions and we cannot support it.

NFIB appreciates the opportunity to express our views.

Mr. HASKELL. Mr. President, H.R. 10210, the Unemployment Compensation Amendments of 1976, contains a provision which I offered in the Committee on Finance with the cosponsorship of Senators BENTSEN and GRAVEL, and which the committee unanimously adopted. The amendment, affecting the eligibility of individuals in certain institutions for supplemental security income benefits, was offered in the House of Representatives by Representative KEYS of Kansas and Representative BRODHEAD of Michigan. The merits of the amendment were carefully examined by the Subcommittee on Public Assistance of the Committee on Ways and Means, and the bill of which it was a part passed the full House overwhelmingly.

I am hopeful that this amendment—which has the strong endorsement of such groups as the National Association for Retarded Citizens, the American Association of Retired Persons, United Cerebral Palsy, numerous State organizations, and the National Governors' Conference—will open the door to more creative, humane, and relevant ways of providing for our aged and disabled citizens.

The amendment encourages the development of small, residential "group-homes" for the aged and the disabled as alternatives to institutionalization in large, and often impersonal and inappropriate medical care facilities. Many aged, disabled, or mentally retarded individuals do not need full-time medical care. Many do need a sheltered residential setting which provides some types of care or assistance and a supportive environment which encourages maximum possible participation in the community at large. The law as written, however, actively discourages the development of such small nonmedical home-like residences.

Present law stipulates that individuals in nonmedical public institutions are not eligible for SSI benefits. The bill before the Senate would amend present law to provide that the prohibition against SSI payments to persons in public institutions would not be applicable in the case of publicly operated community residences for 16 or fewer residents. The law would further be changed to provide that SSI benefits to eligible individuals would not be reduced because of assistance provided to such residences by States and localities.

The tragedy of the present system is that all too often for our aged, disabled, or retarded citizens, no alternative exists to institutionalization in large medical facilities which tend to isolate them from the community and in all too many cases serve as mere custodians of an individual's remaining days. In a single blunt word many individuals are simply left to vegetate in institutions which may provide excellent medical care, and may meet high standards of sanitation and safety, but simply cannot provide the kinds of service the individual really needs. In contrast, group homes, as the National Association for Retarded Citizens has pointed out, provide living arrangements in residential settings with the opportunity to work competitively or in a sheltered workshop. Some residents receive vocational or rehabilitation therapy during the day, returning to the group home in the evening, where in almost all cases, a live-in staff, often a married couple, oversees the facility. In group homes the emphasis is on keeping the individual involved in the community and functioning independently to the maximum possible extent. The group-home concept clearly offers hope of a better quality of life for many aged, disabled, and retarded Americans.

Yet because of the existing disincentives in the medicaid and SSI programs only a relatively few group homes yet exist.

William Morrill, Assistant Secretary of Health, Education, and Welfare for Planning and Evaluation, in testimony before the Subcommittee on Public Assistance, described how present law discourages group homes:

> Since medicaid is an open-ended program for which the States receive Federal matching (funds), and it is easier to obtain reimbursement for a package of services in an institution, there has been a tendency in many States to institutionalize persons rather than to provide them services outside of an institution even where such institutional care, which is costly, may be unwarranted.

It is that tendency, Mr. President, which this amendment seeks to redress. In doing so, there is ample evidence to indicate that we will also be able to save the taxpayer a considerable amount of money.

The cost of operating medical care institutions is in the neighborhood of $12,000 per person per year. Under the medicaid program the Federal share of that cost is never less than 50 percent and often considerably higher.

In contrast, annual SSI payments to a single individual are in the neighborhood of $2,000 per person. Informed testimony before the Subcommittee on Public Assistance in the House indicates that the majority of people who will populate group homes are currently residing in institutions and thus supported in large part by medicaid dollars.

That same testimony, given by Dr. Patrice Schmitz, president of the National Association of Private Residential Facilities for the Mentally Retarded indicates that—

> Efforts are currently underway in each of the 50 states to decrease the population of large state institutions by placing people in more normalizing, less restrictive living situations like community-based group homes.

Thus, it seems clear that by removing legal obstacles to small group homes, the Congress will save taxpayers considerable money over the long term as well as lay the basis for a better life for many of our aged and disabled citizens.

Mr. BROOKE. Mr. President, last week I introduced S. 3805, a bill which would make individuals residing in small public community residence facilities eligible for SSI benefits. When the Finance Committee was marking up the unemployment compensation bill last week, Senators HASKELL and BENTSEN offered an amendment accomplishing the same purposes as S. 3805. I am indeed pleased that the committee accepted this amendment and that its provisions now seem assured of enactment.

I would like to take a few moments to discuss why this amendment is so important.

In my State of Massachusetts and across our Nation, there is a growing movement to develop group homes and other similar community residences for the disabled, the elderly, and other vulnerable people. These community resi-

dences are designed to provide a home for people who, because of advancing age, or disability, are unable to live totally independently. They offer such persons the opportunity to live a fairly normal life and to remain active participants in their communities, despite their handicaps. Group homes are an alternative to a nursing home or State institution—an alternative which is not only more humane, but also considerably less costly.

I believe that public policy should encourage the development of group homes and other alternatives to institutional care. But a patchwork of statutory provisions under the SSI program have exactly the opposite effect. This amendment would remedy this by making several changes in current SSI law. First, the amendment makes persons living in publicly operated community residences for 16 or fewer residents eligible for SSI benefits on the same basis as those living in private community residences of the same nature. Current law precludes SSI payments to any person living in a public institution. The second change permits State and local governments to subsidize room and board costs in a home when necessary, without penalizing the residents by reducing or eliminating their SSI benefits. Under current law, funds provided by nonprofit organizations to subsidize group homes and other community residences are not counted as income to the residents, but public funds for the same purposes are counted. Thus, if private funds are used, SSI payments are not reduced; but if any public funds are used, SSI payments are reduced.

The cost of this amendnment is modest and well within the congressional budget resolution. The administration estimates that the first year cost will fall between $8 and $16 million. Net Federal costs would be somewhat less than this, since any movement of SSI recipients into community residences from publicly financed institutional care will cause a decrease in Federal medicaid expenditures.

Introduced in the House by Congresswoman MARTHA KEYS of Kansas, the amendment was unanimously approved by the Ways and Means Committee as a committee amendment to H.R. 8911, the Supplemental Security Income Amendments of 1976, and was passed by the House as a whole by 374 to 3. The legislation also has broad support among consumer groups such as the National Association for Retarded Citizens, the American Association of Retired Persons, and a variety of other public-interest groups. I believe that the time has come to make good on our oft-repeated promises to encourage alternatives to institutional care as this legislation is designed to do. This the amendment before us does.

Mr. MUSKIE. Mr. President, I rise in support of H.R. 10210, a bill amending the unemployment insurance and supplemental security income programs.

This bill would raise approximately $400 million in additional revenues to the unemployment trust fund in fiscal 1977. These revenues are sorely needed to alleviate the fiscal strains which the recession of the last few years has imposed on the unemployment insurance system. The bill would also provide various other changes to the unemployment insurance system, none of which would have any budgetary impact in fiscal 1977. Also contained in H.R. 10210 are various amendments to the SSI program which would increase 1977 budget authority and outlays for that program by slightly less than $50 million.

I would like to speak, briefly, Mr. President, to the relationship of this bill to the second budget resolution for fiscal 1977, which Congress recently adopted. In developing the second budget resolution revenue floor and spending ceilings, the conferees assumed the enactment of legislation that would increase revenues—and thus budget authority—to the unemployment trust fund by $400 million in fiscal 1977. The second budget resolution spending ceilings also assumed legislation to increase expenditures from the trust fund by $112 million in fiscal 1977, as well as legislation to increase SSI costs by $77 million.

On September 24, the Finance Committee filed its report pursuant to section 302(b) of the Budget Act, subdividing its second budget resolution allocation among major programs. According to that report, the Finance Committee has decided to allow for $400 million in new revenues—and budget authority—to the unemployment trust fund, no new expenditures from the trust fund, and less that $50 million in new SSI legislation. In other words, H.R. 10210, the bill before us today, will bring the revenues and spending for the unemployment insurance and SSI programs to the allocations for those programs by the Finance Committee in its section 302(b) allocation report. All remaining funds within the Finance Committee's allocation have been assigned to other programs under the committee's jurisdiction.

I mention this to make one important point: That while the bill before us is consistent with the 1977 congressional budget, any floor amendments to reduce the revenues provided by this bill, or to increase spending significantly in the unemployment insurance or SSI programs, would violate the allocations to the Finance Committee under the second budget resolution.

Mr. President, I urge all my colleagues to respect the subdivision of its allocation that the Finance Committee has made. If we did otherwise, we would, in effect, be directing the Finance Committee to take funds from one program, such as medicaid or aid to families with dependent children, in order to finance increases in other programs. This could greatly heighten the risk of exceeding the ceilings of the congressional budget and adding to the deficit.

Therefore, I urge all my colleagues to support H.R. 10210 as reported by the Finance Committee, and to refrain from proposing any floor amendments that would violate that committee's recommendations in its section 302(b) allocation report.

Mr. DURKIN. Mr. President, the unemployment compensation bill as reported by the Finance Committee contains a provision which in effect requires States to extend unemployment insurance coverage to State and local employees including employees of nonprofit primary and secondary schools. I would like to note my objection to this portion of the bill. The burden imposed on localities will be costly. Homeowners are already pressed to meet their current financial obligations.

The inclusion of the additional employees covered by this bill will by necessity require towns and cities to increase taxes or cut back on much needed services.

It has been estimated that this section of the bill could cost local governments up to $2 billion. I have received letters from school districts in my State of New Hampshire indicating that the bill could cost them $100,000 to pay for the additional employee coverage required. The cost to the State of New Hampshire has been estimated at $3 million. A good portion of these funds will be raised through increases in property taxes.

Mr. President, it seems to me that this matter could be better decided by the States or localities or left to collective bargaining. The Federal Government has no business mandating a program to be paid for by the already financially hard-hit cities and towns of this country without appropriating the money to pay for it. Our New Hampshire property taxpayers have already been hit hard enough.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Idaho (Mr. CHURCH), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Georgia (Mr. TALMADGE), the Senator from Indiana (Mr. HARTKE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Ohio (Mr. GLENN), the Senator from Montana (Mr. MANSFIELD), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Hawaii (Mr. INOUYE) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Vermont (Mr. STAFFORD), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "yea."

The result was announced—yeas 71, nays 6, as follows:

[Rollcall Vote No. 673 Leg.]

YEAS—71

Allen	Griffin	Muskie
Baker	Hansen	Nelson
Bayh	Hart, Gary	Nunn
Bellmon	Haskell	Packwood
Biden	Hatfield	Pastore
Brooke	Hathaway	Pearson
Bumpers	Hollings	Pell
Burdick	Hruska	Percy
Byrd, Harry F., Jr.	Huddleston	Proxmire
	Humphrey	Randolph
Byrd, Robert C.	Jackson	Ribicoff
Case	Javits	Roth
Clark	Johnston	Schweiker
Cranston	Kennedy	Scott, Hugh
Culver	Leahy	Sparkman
Curtis	Long	Stennis
Domenici	Magnuson	Stevens
Durkin	Mathias	Stevenson
Eagleton	McClellan	Stone
Eastland	McClure	Symington
Fannin	McIntyre	Taft
Fong	Metcalf	Weicker
Ford	Morgan	Williams
Gravel	Moss	Young

NAYS—6

Abourezk	Garn	Laxalt
Bartlett	Helms	Tower

NOT VOTING—23

Beall	Glenn	Mondale
Bentsen	Goldwater	Montoya
Brock	Hart, Philip A.	Scott, William L.
Buckley	Hartke	
Cannon	Inouye	Stafford
Chiles	Mansfield	Talmadge
Church	McGee	Thurmond
Dole	McGovern	Tunney

So the bill (H.R. 10210) was passed.

Mr. LONG. Mr. President, I wish the Chair to recognize me for a series of routine motions.

First, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LONG. Mr. President, I move that the Senate insist on its amendments to the bill and ask for a conference with the House and that the Chair appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. LONG, Mr. TALMADGE, Mr. RIBICOFF, Mr. NELSON, Mr. HATHAWAY, Mr. CURTIS, Mr. FANNIN, and Mr. HANSEN conferees on the part of the Senate.

Mr. LONG. Mr. President, I move that the bill—H.R. 10210—be printed with the amendments of the Senate numbered, and that in the engrossment of the amendments of the Senate to the bill the Secretary of the Senate be authorized to make all necessary technical and clerical changes and corrections.

The motion was agreed to.

UNANIMOUS-CONSENT AGREEMENT—H.R. 13655

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the hour of 5 p.m. today there begin running 30 minutes for debate on the veto message on H.R. 13655, the Automotive Transport Research and Development Act of 1976, time equally divided between Mr. PERCY and Mr. MOSS, and that the vote occur at 5:30 p.m.

Mr. FANNIN. Mr. President, reserving the right to object, and I do not intend to object, but I wish to explain why the Senator from Arizona will not object to this particular request but has objected to others.

The Senator from Arizona, my colleague, Senator GOLDWATER, explained this morning, and this Senator from Arizona completely concurred with him, that there is an action that has been taken by a Member of the Senate regarding the consideration of an appointment. It is Executive Calendar No. 359, Richard M. Bilby, of Arizona, to be U.S. circuit judge for the ninth circuit.

Mr. President, on August 3 this nomination was submitted to the Senate. On August 24 hearings were held. On September 22 it was voted out and reported to the Senate on that day. So, both Senators from Arizona feel that this is a——

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order. Will Senators please refrain from speaking.

The Senator from Arizona may proceed.

Mr. FANNIN. That is political.

What the Senator has requested at this time, regarding a veto message, would in the opinion of the Senator from Arizona also be a political action, so the Senator will not object.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. MOSS. I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. For the benefit of both cloakrooms, Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROBERT C. BYRD. Is not a rollcall on override of the Presidential veto automatic?

The PRESIDING OFFICER. It is pursuant to the Constitution.

Mr. ROBERT C. BYRD. That will occur at 5:30 p.m. today.

The PRESIDING OFFICER. Does the Senator from Michigan seek recognition?

Mr. GRIFFIN. No.

CONFERENCE REPORT—H.R. 11337

Mr. ROBERT C. BYRD. Mr. President, in accordance with the order that was entered yesterday, I ask unanimous consent now that Mr. Moss be recognized to call up the conference report on H.R. 11337.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah is recognized.

MID-DECADE CENSUS OF POPULATION—CONFERENCE REPORT

Mr. MOSS. Mr. President, I submit a report of the committee of conference on H.R. 11337 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11337) to amend title 13, United States Code, to provide for a mid-decade census of population, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of today.)

Mr. MOSS. Mr. President, the conference report on H.R. 11337, the mid-decade census bill, represents a satisfactory compromise which I believe protects the integrity of census statistics and should be confirmed by the Senate.

The differences between the Senate and the House of Representatives on this measure were not many, though they were significant. In the main, they centered on the question of penalties for refusal or neglect to cooperate with the censuses.

On this question, we did arrive at a compromise. The conference substitute provides that the present level of fines which can be assessed for failure to cooperate with the censuses will be retained, as was the Senate's position. We did agree, however, to the House position with respect to deleting most provisions of the present law providing for imprisonment of violators. In truth, no one has ever gone to jail for a census violation.

It was the Senate's position that penalties for noncompliance with census laws were imperative if census data were to continue to be reliable; if the censuses were not to become voluntary.

That is still the Senate's position, Mr. President. But the Census Bureau itself has stated that it believes potential fines of the magnitude now provided in law are sufficient to insure compliance. In general those penalties, as they affect individuals, include fines of not more than $100 for failure to answer questions and of not more than $500 for willfully giving false answers. In cases involving those responsible for census participation on the part of business firms, institutions, religious bodies or other organizations, the potential fines run to $500 for failure to answer questions and to $10,000 for willfully giving false answers.

The managers on the part of the Senate also receded in the case of a House amendment providing that a person may not be compelled to disclose information regarding his religious beliefs or membership in a religious body. Such questions already are prohibited under section 552a of title 5, United States Code, in any event.

Mr. President, I believe the Senate should approve the conference report. Although the initial mid-decade census will not occur until 1985, passage of this bill will permit the Census Bureau to undertake necessary planning, and insure as well that the upcoming 1980 Census of Population is designed in such a way as to take into account the mid-decade census to follow.

EXHIBIT I

Public Law 95-19
95th Congress

An Act

To extend the Emergency Unemployment Compensation Act of 1974, and for other purposes.

Apr. 12, 1977
[H.R. 4800]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

Emergency Unemployment Compensation Extension Act of 1977.
26 USC 3304 note.

This Act may be cited as the "Emergency Unemployment Compensation Extension Act of 1977".

TITLE I—AMENDMENTS TO THE EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM

SEC. 101. EXTENSION OF PROGRAM.

(a) GENERAL RULE.—Section 102(f)(2) of the Emergency Unemployment Compensation Act of 1974 is amended to read as follows: 26 USC 3304 note.

"(2) No emergency compensation shall be payable to any individual under an agreement entered into under this Act—

"(A) for any week ending after October 31, 1977, or

"(B) in the case of an individual who (for a week ending after the beginning of his most recent benefit year and before October 31, 1977) had a week with respect to which emergency compensation was payable under such agreement, for any week ending after January 31, 1978."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to weeks of unemployment ending after March 31, 1977.

SEC. 102. 13-WEEK MAXIMUM FOR THE EMERGENCY BENEFITS AND EMERGENCY BENEFIT PERIOD.

(a) 52-WEEK DURATION PERIOD FOR EMERGENCY BENEFITS.—Subsection (e) of section 102 of the Emergency Unemployment Compensation Act of 1974 is amended—

(1) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) The amount established in such account for any individual shall be equal to the lesser of—

"(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation; or

"(B) 13 times his average weekly benefit amount (as determined for purposes of section 202(b)(1)(C) of the Federal-State Extended Unemployment Compensation Act of 1970) for his benefit year."; 26 USC 3304 note.

(2) by redesignating paragraph (4) as paragraph (3); and

(3) by striking out "amounts determined under paragraphs (2) and (3) with respect to any individual shall each" in paragraph (3) (as so redesignated) and inserting in lieu thereof "amount

determined under paragraph (2) with respect to any individual shall".

(b) EMERGENCY BENEFIT PERIOD.—Section 102(c)(3)(A)(ii) of such Act is amended by striking out "26 consecutive weeks" and inserting in lieu thereof "13 consecutive weeks". 26 USC 3304 note.

(c) CONFORMING AMENDMENTS.— 26 USC 3304 note.

(1) Section 105 of such Act is amended by striking out paragraph (5) and by redesignating paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively.

(2) Paragraph (2) of section 102(b) of such Act is amended—

(A) by striking out "section 105(2)" and inserting in lieu thereof "section 105(a)(2)"; and

(B) by striking out "section 105(4)" and inserting in lieu thereof "section 105(a)(4)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment ending after April 30, 1977. For purposes of determining an individual's entitlement to emergency compensation for weeks ending after April 30, 1977, there shall be taken into account any emergency compensation paid to such individual for weeks which end after the beginning of the individual's most recent benefit year and before May 1, 1977.

SEC. 103. FINANCING OF EMERGENCY UNEMPLOYMENT COMPENSATION FROM GENERAL FUNDS.

(a) GENERAL RULE.—Section 104(b) of the Emergency Unemployment Compensation Act of 1974 is amended— 26 USC 3304 note.

(1) in the first sentence thereof, by striking out "as repayable advances (without interest),"; and

(2) by amending the second sentence thereof to read as follows: "Amounts appropriated and paid to the States under section 103 with respect to weeks of unemployment ending prior to April 1, 1977, shall be repaid, without interest, as provided in section 905(d) of the Social Security Act.". 42 USC 1105.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective on April 1, 1977.

SEC. 104. DENIAL OF EMERGENCY COMPENSATION TO INDIVIDUALS WHO REFUSE OFFERS OF SUITABLE WORK OR WHO ARE NOT ACTIVELY SEEKING WORK.

(a) GENERAL RULE.—Section 102 of the Emergency Unemployment Compensation Act of 1974 is amended by adding at the end thereof the following new subsection: 26 USC 3304 note.

"(h)(1) In addition to any eligibility requirement of the applicable State law, emergency compensation shall not be payable for any week to any individual otherwise eligible to receive such compensation if during such week such individual—

"(A) fails to accept any offer of suitable work or to apply for any suitable work to which he was referred by the State agency, or

"(B) fails to actively engage in seeking work.

"(2) If any individual is ineligible for emergency compensation for any week by reason of a failure described in subparagraph (A) or (B) of paragraph (1), the individual shall be ineligible to receive emergency compensation for any week which begins during a period which—

"(A) begins with the week following the week in which such failure occurs, and

"(B) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of 4 multiplied by the in-

dividual's average weekly benefit amount (as determined for purposes of section 202(b)(1)(C) of the Federal-State Extended Unemployment Compensation Act of 1970) for his benefit year. 26 USC 3304 note.

"(3) Emergency compensation shall not be denied under paragraph (1) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

"(A) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

"(i) the individual's average weekly benefit amount (as determined for purposes of section 202(b)(1)(C) of the Federal-State Extended Unemployment Compensation Act of 1970) for his benefit year, plus

"(ii) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; 26 USC 501.

"(B) if the position was not offered to such individual in writing and was not listed with the State employment service;

"(C) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of paragraph (4); or

"(D) if the position pays wages less than the higher of—

"(i) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or 29 USC 206.

"(ii) any applicable State or local minimum wage.

"(4) For purposes of this subsection—

"(A) The term 'suitable work' means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law. "Suitable work."

"(B) An individual shall be treated as actively engaged in seeking work during any week if—

"(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

"(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

"(5) Any agreement under subsection (a) shall provide that, in the administration of this Act, States shall make provision for referring applicants for benefits under this Act to any suitable work to which subparagraphs (A), (B), (C), and (D) of paragraph (3) would not apply."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to weeks of unemployment beginning after the date of the enactment of this Act.

SEC. 105. RECOVERY OF OVERPAYMENTS.

(a) GENERAL RULE.—Section 105 of the Emergency Unemployment Compensation Act of 1974 is amended by inserting "(a)" after "Sec. 105." and by adding at the end thereof the following new subsection: 26 USC 3304 note.

"(b)(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or

knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency compensation under this Act to which he was not entitled, such individual—

"(A) shall be ineligible for further emergency compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

"(B) shall be subject to prosecution under section 1001 of title 18, United States Code.

Repayment.

"(2)(A) In the case of individuals who have received amounts of emergency compensation under this Act to which they were not entitled, the State is authorized to require such individuals to repay the amounts of such emergency compensation to the State agency, except that the State agency may waive such repayment if it determines that—

"(i) the payment of such emergency compensation was without fault on the part of any such individual, and

"(ii) such repayment would be contrary to equity and good conscience.

"(B) The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the three-year period after the date such individuals received the payment of the emergency compensation to which they were not entitled, except that no single deduction may exceed 50 per centum of the weekly benefit amount from which such deduction is made.

Notice and hearing.

"(C) No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

Review.

"(3) Any determination by a State agency under paragraph (1) or (2) shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

26 USC 3304 note.

SEC. 106. MODIFICATION OF AGREEMENTS.

The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 102 of the Emergency Unemployment Compensation Act of 1974 a modification of such agreement designed to provide for the payment of emergency compensation under such Act in accordance with the amendments made by this title. Notwithstanding any other provision of law, if any State fails or refuses, within the 3-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such 3-week period.

26 USC 3304 note.

Termination of agreement.

SEC. 107. TERMINATION OF INDIVIDUAL ENTITLEMENT.

(a) GENERAL RULE.—Section 102(b)(2) of the Emergency Unemployment Compensation Act of 1974 is amended—

26 USC 3304 note.

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding after subparagraph (B) thereof the following: "except that no payment of emergency compensation shall be made to any individual for any week of unemployment which begins more than two years after the end of the benefit year for which he exhausted his rights to regular compensation.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to weeks of unemployment ending after the date of enactment of this Act.

TITLE II—REPAYMENT OF STATE LOANS

SEC. 201. REPAYMENT OF STATE LOANS.

(a) GENERAL RULE.—The last sentence of section 3302(c)(2) of the Internal Revenue Code of 1954 (relating to reduction in credits against unemployment tax) is amended by striking out "January 1, 1978" each place it appears and inserting in lieu thereof "January 1, 1980". 26 USC 3302.

(b) STATE REQUIREMENTS.—The amendment made by subsection (a) shall not apply in the case of any State unless the Secretary of Labor finds that such State meets the requirements of section 110(b) of the Emergency Compensation and Special Unemployment Assistance Extension Act of 1975. 26 USC 3302 note. 26 USC 3302 note.

TITLE III—OTHER UNEMPLOYMENT COMPENSATION AMENDMENTS

SEC. 301. DELAY IN EFFECTIVE DATES WHERE STATE LEGISLATURE DOES NOT MEET IN 1977.

(a) COVERAGE OF CERTAIN SERVICE PERFORMED FOR NONPROFIT ORGANIZATIONS AND FOR STATE AND LOCAL GOVERNMENTS.—Subsection (d) of section 115 of the Unemployment Compensation Amendments of 1976 is amended to read as follows: 26 USC 3304 note.

"(d) EFFECTIVE DATE.—

"(1) Except as provided in paragraph (2), the amendments made by this section shall apply with respect to certifications of States for 1978 and subsequent years; except that—

"(A) the amendments made by subsections (a) and (b) shall only apply with respect to services performed after December 31, 1977; and

"(B) the amendments made by subsection (c) shall only apply with respect to weeks of unemployment which begin after December 31, 1977.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by subsection (c) shall only apply with respect to weeks of unemployment which begin after December 31, 1978 (or if earlier, the date provided by State law)."

(b) PREGNANCY DISQUALIFICATIONS.—Subsection (c) of section 312 of the Unemployment Compensation Amendments of 1976 is amended to read as follows: 26 USC 3304 note.

"(c) EFFECTIVE DATE.—

"(1) Except as provided in paragraph (2), the amendments made by this section shall apply with respect to certifications of States for 1978 and subsequent years.

"(2) In the case of any State the legislature of which does

not meet in a regular session which closes during the calendar year 1977, the amendments made by this section shall apply with respect to the certification of such State for 1979 and subsequent years."

(c) ELECTION OF LOCAL GOVERNMENTS TO USE REIMBURSEMENT METHOD.—Subsection (c) of section 506 of the Unemployment Compensation Amendments of 1976 is amended to read as follows:

26 USC 3304 note.

"(c) EFFECTIVE DATE.—

"(1) Except as provided in paragraph (2), the amendments made by this section shall apply with respect to certifications of States for 1978 and subsequent years, but only with respect to services performed after December 31, 1977.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section shall apply with respect to the certification of such State for 1979 and subsequent years, but only with respect to services performed after December 31, 1978."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 20, 1976.

SEC. 302. ADDITIONAL AMENDMENTS.

(a) ILLEGAL ALIENS.—Subparagraph (A) of section 3304(a)(14) of the Internal Revenue Code of 1954 (relating to denial of unemployment compensation to illegal aliens) is amended to read as follows:

26 USC 3304.

"(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),".

8 USC 1153, 1182.

(b) REIMBURSEMENT METHOD OF FINANCING FOR LOCAL GOVERNMENTS.—Paragraph (2) of section 3309(a) of such Code (relating to State law requirements) is amended by striking out "or group of organizations" and inserting in lieu thereof "or group of governmental entities or other organizations".

26 USC 3309.

(c) DISQUALIFICATION OF TEACHERS.—Section 3304(a)(6)(A) of the Internal Revenue Code of 1954 (relating to approval of State unemployment laws) is amended—

26 USC 3304.

(1) in clause (i)—

(A) by striking out "instructional research" and inserting in lieu thereof "instructional, research"; and

(B) by striking out "two successive academic years" and inserting in lieu thereof "two successive academic years or terms";

(2) by striking out "and" at the end of cause (i); and

(3) by adding at the end thereof the following new clause:

"(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services may be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a

reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess, and".

(d) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall take effect as if included in the amendment made by section 314 of the Unemployment Compensation Amendments of 1976. 26 USC 3304 note. 90 Stat. 2680.

(2) The amendment made by subsection (b) shall take effect as if included in the amendments made by section 506 of the Unemployment Compensation Amendments of 1976. 26 USC 3309 note. 90 Stat. 2687.

(3) The amendments made by subsection (c) shall take effect as if included in the amendments made by section 115(c) of the Unemployment Compensation Amendments of 1976. 26 USC 3304 note. 90 Stat. 2670.

(e) RECIPIENTS OF RETIREMENT BENEFITS.—Paragraph (15) of section 3304(a) of the Internal Revenue Code of 1954 (relating to the denial of unemployment compensation to recipients of retirement benefits) is amended by striking "September 30, 1979" and inserting in lieu thereof "March 31, 1980". 26 USC 3304.

SEC. 303. DELAY IN REPORTING DATES FOR NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION.

(a) INTERIM REPORT.—Subsection (f) of section 411 of the Unemployment Compensation Amendments of 1976 (relating to interim report of National Commission on Unemployment Compensation) is amended by striking out "March 31, 1978" and inserting in lieu thereof "September 30, 1978". 26 USC 3304 note.

(b) FINAL REPORT.—Subsection (g) of such section 411 (relating to final report) is amended by striking out "January 1, 1979" and inserting in lieu thereof "July 1, 1979".

TITLE IV—FEDERAL SALARY ACT AMENDMENTS OF 1977

SEC. 401. EFFECTIVE DATE OF AND CONGRESSIONAL APPROVAL OF RECOMMENDATIONS OF THE PRESIDENT.

(a) Section 225(i) of Public Law 90-206 is amended to read as follows: 2 USC 359.

"(i) Effective date of and congressional approval of recommendations of the President—

"(1) Within sixty calendar days of the submission of the President's recommendations to the Congress, each House shall conduct a separate vote on each of the recommendations of the President with respect to the offices and positions described in subparagraphs (A), (B), (C), and (D) of subsection (f) of this section, and shall thereby approve or disapprove the recommendations of the President regarding each such subparagraph. Such votes shall be recorded so as to reflect the votes of each individual Member thereon. If both Houses approve by majority vote the recommendations pertaining to the offices and positions described in any such subparagraph, the recommendations shall become effective for the offices and positions covered by such subparagraph at the beginning of the first pay period which begins after the thirtieth day following the approval of the recommendation by the second House to approve the recommendation.

"(2) Any part of the recommendations of the President may, in accordance with express provisions of such recommendations,

be made operative on a date later than the date on which such recommendations otherwise are to take effect.".

2 USC 360.

(b) Section 225(j) of Public Law 90-206 is amended by inserting immediately after "subsection (b) (2) and (3) of this section shall" the language ", if approved by the Congress as provided in subsection (i),".

Approved April 12, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-82 (Comm. on Ways and Means) and No. 95-158 (Comm. of Conference).
SENATE REPORT No. 95-67 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 123 (1977):
Mar. 21, considered and passed House.
Mar. 30, considered and passed Senate, amended.
Apr. 4, House and Senate agreed to conference report.

EXHIBIT J

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 95-82

EMERGENCY UNEMPLOYMENT COMPENSATION EXTENSION ACT OF 1977

MARCH 15, 1977.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 4800]

[Including cost estimate and comparison of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 4800) to extend the Emergency Unemployment Compensation Act of 1974 for an additional year, to revise the trigger provisions in such Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF BILL

The primary purpose of H.R. 4800 is to extend the Federal Supplemental Benefits (FSB) program for one year, until March 31, 1978. The bill provides for the payment of a maximum of 13 weeks of FSB (up to a combined maximum of 52 weeks of regular, extended and federal supplemental unemployment compensation benefits) in States and local areas with abnormally high unemployment. The additional weeks of unemployment compensation provided by this extension of the FSB program will be financed out of Federal general revenues. H.R. 4800 requires the States to deny FSB to individuals who refuse offers of suitable work or who are not actively seeking work. The bill also delays for two additional years, until January 1, 1980, the provisions in Federal law which provide for the automatic recoupment of outstanding Federal unemployment insurance loans to States.

89-081 O

MAJOR PROVISIONS OF H.R. 4800

1. Extends the Federal Supplemental Benefits (FSB) program for 1 year, until March 31, 1978

FSB was enacted in December 1974 and extended and modified in June 1975. Under current law it expires March 31, 1977. The committee bill would extend the program to March 31, 1978, providing a maximum of 13 additional weeks of unemployment compensation (up to a combined maximum of 52 weeks of regular, extended and federal supplemental benefits) to unemployed workers covered under the permanent (State-Federal) unemployment compensation program.

2. Provides for the payment of up to 13 additional weeks of unemployment compensation to unemployed workers who exhaust regular and extended benefits in States and local "labor market areas" with high unemployment rates

Under current law, in States with insured unemployment rates of 6 percent or more, FSB provides a maximum of 26 additional weeks of unemployment compensation, up to a combined maximum of 65 weeks of regular, extended and Federal Supplemental Benefits. In States with insured unemployment rates between 5 percent and 5.9 percent FSB provides a maximum of 13 additional weeks of unemployment compensation, up to a combined maximum of 52 weeks.

The committee bill would provide a maximum of 13 additional weeks of unemployment compensation (52 week combined maximum) in States with insured unemployment rates of 5 percent or higher and in local "labor market areas" (generally SMSA's with 250,000 population) with insured unemployment rates of 5 percent or higher. This would make FSB payable in "local areas" with high unemployment that are located within States that do not meet the State trigger requirement.

3. Provides for Federal general revenue financing of FSB paid after March 31, 1977

Under current law, FSB is financed by employer paid Federal unemployment taxes (FUTA), which are paid into the Federal Unemployment Insurance trust fund. Because the extended benefit account in the unemployment insurance trust fund is depleted, FSB has been financed since it was enacted in December 1974 out of Federal general revenue advances to the trust fund. H.R. 4800 provides for direct Federal general revenue financing of FSB paid after March 31, 1977.

4. Denies FSB to an individual who refuses an offer of suitable work or who is not actively seeking work

Under the bill an individual would be disqualified from receiving FSB payments for refusing suitable work or failing to actively seek work. The disqualification would not end until the individual had been reemployed for at least 4 weeks and earned at least 4 times his or her weekly benefit amount.

If the State unemployment compensation office determines that an individual's prospects for obtaining work in his or her customary occupation are poor, the determination of whether any work is suitable work for the FSB claimant would be made without regard to whether the work involves lower pay or lesser skills than the individual's customary occupation. In order for the FSB claimant to be disqualified for refusing an offer of "suitable work", the job would have to be

offered in writing to the individual or be listed with the State Employment Service, pay more than the minimum wage, and pay wages equal to 120 percent of the FSB claimant's weekly unemployment compensation benefit, plus any "Supplemental Unemployment Benefits" (SUB) to which the individual might be entitled because of agreements with previous employers.

5. Delays for 2 additional years, until January 1, 1980, the provisions in Federal law which provide for the automatic recoupment of outstanding Federal unemployment insurance loans to States

Under permanent law, if all Federal unemployment insurance advances to a State are not repaid within 2 years, the Federal unemployment tax paid by the covered employers within that State is automatically increased by 0.3 percent per year until the total loan has been repaid. Public Law 94–45 delayed these automatic recoupment provisions until January 1, 1978. The committee bill extends this delay to January 1, 1980.

6. Provides new Federal provisions on fraud penalty and recovery of overpayments

Under the present law, regulations were adopted on fraud and recovery of overpayments, but there is no specific authority to prescribe a fraud penalty or qualifications on recovery of overpayments. The committee bill adopts the same provisions that were enacted in June 1975 for the Special Unemployment Assistance Program.

7. Technical and clarifying amendments are adopted for Public Law 94–566, The Unemployment Compensation Amendments of 1976

These technical and clarifying amendments correct defects in Public Law 94–566, and extend the due dates for the reports of the National Commission on Unemployment Compensation.

COMPARISON WITH PRESENT LAW

Item	Present law	H.R. 4800
FSB: Benefit weeks and triggers	26-week maximum (combined 65-week maximum) payable in States with insured unemployment rates (IUR) of 6 percent or higher.	
	13-week maximum (combined 52-week maximum) payable in States with IUR of 5 to 5.9 percent.	13-week maximum (combined 52-week maximum) payable in States with IUR of 5 percent or higher.
	No national or area triggers	13-week maximum (combined 52-week maximum) payable in local "labor market areas" (generally SMSA's of 250,000 population) with insured unemployment rates of 5 percent or higher.
Funding	Repayable advances from Federal general revenues to extended unemployment account in the Federal unemployment insurance trust fund.	General revenue funding for FSB weeks ending after Mar. 31, 1977.
Miscellaneous		Provides for the disqualification of a FSB claimant who refuses to accept an offer of "suitable work" or fails to actively engage in seeking work.
		Provides specific authority for the recapture of FSB overpayments and penalties for fraudulent FSB claims.
	Delays until Jan. 1, 1978 the provisions in Federal law which provide for the recoupment of outstanding Federal unemployment insurance loans to States through an automatic increase in employer paid Federal unemployment taxes.	Extends until Jan. 1, 1980 the delay in the provisions in Federal law which provide for the recoupment of outstanding Federal unemployment insurance loans to States.
		Provides technical and clarifying amendments to Public Law 94–566.
Expiration date	Mar. 31, 1977	Mar. 31, 1978.

SECTION-BY-SECTION EXPLANATION AND JUSTIFICATION

Section 101. Extension of program

Section 101 would extend the FSB program for one year, until March 31, 1978.

The Federal Supplemental Benefits (FSB) program was enacted in December 1974 (Public Law 93–572). This program was in response to the sharp increase in the unemployment rate and the large number of workers who were expected in the coming months to exhaust their regular and extended benefits before obtaining suitable employment. Initially FSB contained both national and state triggers to initiate and terminate the additional unemployment compensation (U.C.) benefits. It provided up to a maximum of 13 additional weeks of U.C. benefits (or a combined maximum of 52 weeks of regular, extended and Federal supplemental benefits) in all States when the national insured unemployment rate (IUR) was 4.5 percent or higher (temporarily reduced to 4 percent in 1975) and, if the national IUR dropped below 4.5 percent, the 13 weeks of FSB could be paid in States with IUR's of 4 percent or higher. As a part of the Tax Reduction Act of 1975 (Public Law 94–12) Congress increased from 13 to 26 the maximum number of weeks provided under the FSB program, increasing the combined maximum to 65 weeks of regular, extended, and Federal supplemental benefits.

Public Law 94–45, enacted in June 1975, extended FSB until March 31, 1977. It extended through December 1975 the payment of up to 26 weeks of FSB on the basis of national or state triggers. Beginning January 1, 1976 the national trigger was eliminated and FSB was made payable on the basis of State insured unemployment rates.

Under current law, in States with insured unemployment rates of 6 percent or more, FSB provides a maximum of 26 additional weeks of unemployment compensation—up to a combined maximum of 65 weeks of regular, extended and Federal supplemental benefits—to unemployed workers covered under the permanent State and Federal U.C. programs. In State with insured unemployment rates between 5 percent and 5.9 percent, FSB provides a maximum of 13 additional weeks of unemployment compensation—up to a combined maximum of 52 weeks—to unemployed workers who exhaust their regular and extended benefits.

FSB has been a necessary program. It has fulfilled the objective of providing additional unemployment compensation during a period when it has taken unemployed workers a substantially longer period of time to find suitable work.

FSB has added to the financial and administrative strain on our Federal-State unemployment compensation program resulting from the recent period of high unemployment. The additional weeks of unemployment compensation provided under the FSB program, however, have made it possible for thousands of workers to sustain themselves and their families during the past several years. The Unemployment Compensation system, supplemented by the temporary FSB program, has been a major force in preventing the recent recession from reaching the disastrous proportions of the depression of the 1930's.

As shown in Table 1, as of February 19, 1977, 32 States met the trigger requirements to pay FSB. Eight States had insured unem-

ployment rates (IUR) between 5 percent and 5.9 percent, making a maximum of 13 weeks of FSB payable. In 24 States the IUR was 6 percent or higher, allowing the payment of up to 26 weeks of FSB to unemployed workers who exhaust their regular-State benefits (weeks 1–26) and Federal-State extended benefits (weeks 27–39). Currently over 500,000 claimants are receiving FSB payments.

Throughout most of last year there was a consistent decrease in the number of States "triggered on" to FSB. In recent weeks, for the first time in almost a year, additional States have not "triggered off". In fact, several have been added. It is expected that over 30 States will be "triggered on" to either 13 or 26 weeks of FSB as of March 31, 1977, when the program expires, and that there will be in excess of 500,000 individuals collecting FSB who will be abruptly terminated.

Even though the economy has shown definite signs of improvement, it has not improved enough to justify a complete termination of the FSB program. Total unemployment is still in excess of 7 percent, and over 7 million unemployed workers are searching and competing for existing jobs. It is the committee's position that the conditions which necessitated the enactment of the FSB program are still sufficiently severe to warrant its continuation for another year with the modifications described below.

TABLE 1.—*States by EB–FSB trigger rates and FSB status—week ending Feb. 19, 1977*

Below 5 percent, no FSB being paid

Arizona	4.80	Nebraska	3.23
Colorado	3.38	New Hampshire [1]	3.86
District of Columbia	3.43	Ohio	4.69
Florida	4.36	Oklahoma	3.99
Georgia	4.66	South Carolina	4.94
Indiana	3.85	South Dakota	3.47
Iowa	4.12	Texas	2.14
Kansas	3.82	Utah	4.68
Louisiana	4.37	Virginia	3.07
Mississippi	4.84	Wyoming [1]	2.71

5 percent to 5.99 percent

Hawaii	5.24	New Mexico [3]	5.04
Maryland	5.45	North Carolina	5.45
Minnesota	5.29	North Dakota	5.40
Missouri	5.66	Wisconsin	5.22

6 percent and over

Alabama	6.53	Montana	6.48
Alaska	11.86	Nevada	7.04
Arkansas	7.01	New Jersey	8.66
California	6.42	New York	7.29
Connecticut	7.09	Oregon	7.07
Delaware	6.32	Pennsylvania	8.31
Idaho	6.44	Puerto Rico	19.86
Illinois	6.20	Rhode Island	8.49
Kentucky [2]	6.11	Tennessee	6.32
Maine	8.96	Vermont	7.98
Massachusetts	6.34	Washington	8.84
Michigan [1]	7.52	West Virginia	7.69

[1] Trigger indicator as of Feb. 12, 1977.
[2] Kentucky's rate changed from 5.83 percent Feb. 12, 1977, to 6.11 percent Feb. 19, 1977. The beginning date for the 6 per centum category is Mar. 6, 1977.
[3] New Mexico's rate changed from 4.98 percent Feb. 12, 1977, to 5.04 percent Feb. 19, 1977, thereby starting a new Federal supplemental benefit period, to commence on Mar. 6, 1977.

SOURCE: U.S. Department of Labor, ETA, UIS, Office of Research, Legislation and Program Policies, Mar. 7, 1977.

Section 102. Payment of emergency benefits on the basis of State or area triggers and 52-week duration of benefits

Section 102 would limit to 13 the maximum number of additional weeks of unemployment compensation payable to unemployed workers who exhaust regular and extended benefits. The combined maximum would be 52 weeks of regular (weeks 1–26), extended (weeks 27–39), and federal supplemental (weeks 40–52) benefits. FSB would be payable to unempolyed workers in States with insured unemployment rates of 5 percent or higher or whose last place of employment is in a local "labor market area" (generally SMSA's of 250,000 population) with an insured unemployment rate of 5 percent or higher.

The State trigger system has been effective in terms of directing FSB payments to unemployed workers in those States with the highest unemployment rates. The State trigger mechanism, however, has excluded from the FSB program some local areas with high unemployment that are within States that do not meet the State trigger requirements.

The Committee bill makes FSB payable on the basis of local "labor market area" unemployment levels as well as State unemployment rates in order to provide additional unemployment compensation benefits to unemployed workers in high unemployment areas that are presently excluded from the FSB program. This will make the FSB program more effective in terms of directing additional weeks of unemployment compensation to those parts of the country with the most severe unemployment problems, and it will make the program more equitable in terms of providing the same assistance to workers facing similar difficulties in obtaining jobs.

These modifications are made effective in a way that will smooth the conversion from State-wide emergency benefit periods under the present law to area emergency benefit periods provided in this bill. The extension of FSB payments becomes effective for all weeks of unemployment ending after March 31, 1977, immediately following the present expiration of the program. The conversion to area emergency benefit periods will, however, become effective with the week beginning on April 24, 1977, so as to allow time for the administrative work necessary to make a smooth conversion. Emergency benefit periods will begin on that date in all areas that meet the "on" trigger requirement in the first full week of April. For those States that have in effect an emergency benefit period (or additional eligibility periods) on March 31, 1977, it is intended that such periods will continue in effect subject to the 52-week maximum that is effective for all weeks ending after March 31, 1977.

Section 103. Financing of emergency unemployment compensation from general funds

Section 103 would provide for Federal general revenue financing of any FSB paid for weeks of unemployment ending after March 31, 1977.

Under current law, FSB is financed by employer paid Federal payroll taxes (FUTA) which are paid into the Federal unemployment insurance trust fund. Part of the money from the FUTA tax revenue is credited to the extended unemployment compensation account (EUCA) in the unemployment trust fund. The EUCA account is

used to pay the Federal share of extended benefits and all of FSB. It has been necessary to supply repayable advances from general revenue to the EUCA account in fiscal years 1972, 1973 and 1975 through the present. The debt is currently $8.1 billion, of which $5.3 billion is attributable to FSB. The Unemployment Compensation Amendments of 1976 provided for a temporary increase in the net FUTA tax from 0.5 percent to 0.7 percent of the FUTA wage base (currently $4,200 but increasing to $6,000 as of January 1, 1978) to reduce the debt to general revenue. This increase will remain in effect until the advances are all repaid.

It is the position of the committee that after a person has exhausted regular and extended benefits the reason for his unemployment can no longer be attributed to his previous employers. Therefore, the financing of any additional unemployment compensation benefits should be shifted from employer-paid payroll taxes to general revenues.

Section 104. Denial of emergency compensation to individuals who refuse offers of suitable work or who are not actively seeking work

Section 104 would disqualify a FSB claimant from benefits if he or she refused to accept an offer of or referral to "suitable work" or failed to actively engage in seeking suitable work. The period of disqualification would continue until the individual had worked for at least 4 weeks and earned at least 4 times his or her weekly unemployment compensation benefit amount.

Once a State Agency determines that an individual's prospects for obtaining work in his or her customary occupation are poor, the determination of whether work is suitable work for the individual is to be made without regard to whether the work involves lower pay, or lesser skills than the individual's customary occupation. However, an individual would not be disqualified from FSB for refusing to take a job not offered in writing or not listed with the State Employment Service, or paying wages less than the minimum wage, or paying wages less than 120 percent of the individual's weekly unemployment compensation benefit, plus any "Supplemental Unemployment Benefits" (SUB) to which he or she might be entitled because of agreements with previous employers.

It is intended that when an individual applies for FSB the State Agency will determine whether the individual may reasonably expect to be reemployed in his or her customary occupation during the period that the individual's benefits will be payable. If the individual may not reasonably expect to be so reemployed then the individual would be required to accept other employment or suffer a disqualification from benefits, provided the work in question satisfied the criteria set forth in the bill. If the individual lacks the training to perform the work in question it may none the less be suitable if the employer involved is willing to train the individual, on the job or otherwise, to perform the work.

Present law relative to the protection of labor standards would not be changed. The Federal Unemployment Tax Act requires that no State law may be approved for employer tax credit purposes unless it provides that compensation may not be denied to an individual who has refused to accept new work: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the

wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. This section would not abrogate these standards of present Federal law, or other state laws or practices pertaining to "suitability of work" that are not consistent with the provisions of this section.

All State laws now provide for the disqualification of an individual who refuses to accept suitable work. These provisions vary substantially from State to State and were enacted to govern the operation of the permanent unemployment compensation system. The requirements of this section would not override the provisions and practices of State programs as they pertain to benefits under the regular and extended unemployment compensation programs, but would broaden the grounds for disqualification under the Federal Supplemental Benefits program.

The provision provides for disqualification only for refusing a job listed with the State Employment Service or offered to the claimant in a written statement which specifies the nature of the job, including wages, hours, and fringe benefits. This limitation is imposed to facilitate administration of the provision so that local U.C. officials will be able to make the various judgments required to determine an individual's eligibility for Federal Supplemental Benefits.

The section also requires an individual to actively engage in seeking work or be disqualified from benefits. To satisfy this provision an individual would have to engage in a systematic and sustained effort to obtain work. Also tangible evidence is required to substantiate the claimant's job search activities. The tangible evidence required is some reliable and satisfactory evidence other than merely the statement of the claimant.

In this latter connection, when looking for tangible evidence of job search activity the agency should consider the applicant's prior job experience. his education and the job market involved. It is intended that each FSB recipient actively search for employment opportunity and substantiate his or her activity to the State Agency. This is a more stringent requirement than that imposed by most State laws and is imposed in recognition of the desire that FSB recipients be treated differently for these purposes than beneficiaries of regular and extended benefits because of the duration of their unemployment and their inability to obtain reemployment in their customary occupations.

Section 105. Recovery of overpayments

Section 105 would establish new statutory authority and procedures pertaining to the treatment of fraud and erroneous payments under the FSB program. It would provide that any individual who obtains FSB by means of a false statement. or failure to disclose information, or causes another to do so will be disqualified for FSB in accordance with the corresponding fraud provisions of the State Unemployment Insurance law. The section also requires repayment of FSB overpayments. Repayment may be waived when an overpayment was received without fault of the individual. and such repayment would be contrary to equity and good conscience. States would be required to offset such

overpayments against future assistance or benefits payable under any other Federal unemployment compensation or allowance programs.

This section adds to the law explicit provisions for a fraud penalty and recovery of overpayments, which are identical to the provisions governing the Special Unemployment Assistance Program that were enacted in section 203 of Public Law 94–45—the Emergency Compensation and Special Unemployment Assistance Extension Act of 1975. The Secretary of Labor has adopted regulations putting into effect rules governing fraud and recovery of overpayments to the extent that he could do so under the present law. The provisions added by this section perfect the law by prescribing an explicit penalty for fraud and the manner and conditions under which overpayments shall be recovered or may be waived. This will result in changes in the way in which fraud and overpayment cases are handled since there is no criminal penalty for fraud in the present law, and no limitation of time or amount on recovery of overpayments or authority to waive overpayments in cases where waiver is merited. Effective upon enactment, fraud and overpayments in the FSB program will be subject to the same rules as apply to the other temporary program of special unemployment assistance and may be implemented by revised regulations like those adopted by the Secretary of Labor to implement the identical provisions for the SUA program.

Section 106. Modification of agreements

Section 106 provides for implementation of the amendments in this bill by modification of the agreements with the States. As under the original law and past amendments the option is left with the States to enter into the agreements and modifications. However, each State is required to enter into a modification of its present agreement within 3 weeks after the Secretary of Labor proposes the modification to the State. Should a State not desire to enter into a modification of its present agreement, the Secretary is directed to terminate the agreement with the State so that the FSB program in that State will expire with the last week which ends on or before March 31, 1977, as it would under the present law.

Section 201. Repayment of State loans

Section 201 would delay for two additional years, until January 1, 1980, the provisions in Federal law which provide for the recoupment of outstanding Federal Unemployment Insurance (U.I.) loans to States. The recoupment operates through an automatic increase in the Federal unemployment tax paid by employers in States with outstanding loans.

As shown in table 2, as of February 15, 1977, 22 States had borrowed a total of $3.8 billion from the Federal Government to enable them to continue paying unemployment compensation benefits.

Under permanent law, if all Federal advances to a State are not repaid within 2 years, the Federal unemployment taxes paid by the covered employers within that State are automatically increased by 0.3 percent per year until the total loan has been repaid. Public Law 94–45 delayed these automatic recoupment provisions until January 1, 1978. In order to qualify for the delay in the automatic tax increase, a State has to take actions aimed at restoring solvency to its unemployment insurance fund, such an increasing the State unemployment

tax rate or taxable wage base, or changing the experience rating system.

The States that have been forced to borrow Federal funds are generally those that have been hardest hit by unemployment in recent years. In most cases, these States are still faced with higher than normal levels of unemployment. It is the committee's position that the present suspension of the recoupment provisions be extended two more years in order to delay the increase in employer payroll taxes which would impose an additional burden on State economies still suffering from high joblessness. Furthermore, the additional 2-year delay would provide Congress with time to consider any recommendations pertaining to State and Federal unemployment insurance financing that might be forthcoming from the National Commission on Unemployment Compensation established by Public Law 94–566.

TABLE 2.—ADVANCES TO STATES FROM FEDERAL UNEMPLOYMENT ACCOUNT

[Millions of dollars]

States	Calendar year—					Through Feb. 15,	Total
	1972	1973	1974	1975	1976	1977	
Connecticut	$31.8	$21.7	$8.5	$190.2	$111.0	$35.0	[1] $398.2
Washington		40.7	3.4	50.0	55.3		149.4
Vermont			5.3	23.0	9.2	3.7	41.2
New Jersey				352.2	145.0	36.3	533.5
Rhode Island				45.8	20.0		65.8
Massachusetts				140.0	125.0		265.0
Michigan				326.0	245.0		571.0
Puerto Rico				35.0	22.0	10.0	67.0
Minnesota				47.0	76.0	4.0	127.0
Maine				2.4	12.5	1.0	15.9
Pennsylvania				173.8	379.1	149.4	702.3
Delaware				6.5	14.0	6.1	26.6
District of Columbia				7.0	26.6	9.8	43.4
Alabama				10.0	20.0	5.6	35.6
Illinois				68.8	446.5	135.2	650.5
Arkansas					20.0	3.0	23.0
Hawaii					22.5		22.5
Nevada					6.6		7.6
Oregon					18.5		18.5
Maryland					36.1	2.5	38.6
Montana					1.4	4.3	5.7
New York						29.3	29.3
Total	31.8	62.4	17.2	1,477.7	1,813.3	435.2	3,837.6

[1] Actual loans received, $437,000,000; less repayment of reduced employer credits ($12,800,000); from trust fund account ($26,000,000): total, $398,200,000.

Note: Balance remaining in Federal Unemployment Account $191,900,000.

TITLE III. TECHNICAL AMENDMENTS TO UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

In title III technical and clarifying changes are made in the Unemployment Compensation Amendments of 1976 (Public Law 94–566) to resolve problems with the language as adopted.

Section 301. Delay in effective dates where State legislature does not meet in 1977

The effective date of most of the provisions is January 1, 1978. Kentucky does not have a scheduled legislative session in 1977 and cannot amend its unemployment insurance law by the effective date. It is thus faced with either conducting an expensive special session

solely for the purpose of implementing the Federal law requirements or failing to conform with these requirements and thereby jeopardizing the tax credit otherwise afforded the State's employers as well as forfeiting administrative grants. Section 301 of the committee bill would delay the effective date of certain required provisions until 1978. This would not affect workers' rights, since the coverage extension provisions of the Federal law which become effective for all States January 1, 1978, automatically apply to Kentucky under the current State statute.

Section 301 (a) Clarify conditions of benefit denial during summer of 1978

Current language provides that the required denial of benefits between school terms to professional employees of schools will be limited only to benefits based on services performed (in an instructional, research or principal administrative capacity) after 1977. This means that when the break between academic years occurs during the summer of 1978, professional school personnel will be eligible for benefit based solely on services performed before January 1, 1978.

The intent of the denial provision was to prohibit the payment of benefits between terms to professional employees of schools if they had contracts for both terms or reasonable assurance of reemployment. The denial was not intended to be confined only to benefits based on services performed after December 31, 1977, and not to benefits based on work performed prior to that date. Section 301(a) clarifies this intent.

Section 302(a). Clarifying amendment on illegal aliens

The current language of the required denial of benefits to certain aliens in section 3304(a)(14)(A) would make ineligible certain Canadian and Mexican citizens who legally work in the United States and have heretofore been considered eligible for benefits. In addition, the language appears to conflict with section 3304(a)(7)(A), FUTA, enacted in 1970. That section prohibits a State from denying or reducing benefits to an individual solely because he files a claim in or resides in another State or Canada.

A large part of the problem is resolved by the classification of many of these international commuters as premanent residents by the Immigration and Naturalization Service. The Supreme Court upheld this classification in *Saxbe* v. *Bustos*, 419 U.C. 65. However, an unknown number of Canadian nonimmigrant workers would still appear to be barred. Section 302(a) clarifies the situation by excluding from the prohibition aliens lawfully present in the United States for the purpose of performing the work on which benefits were based.

Section 302(b). Clarifying amendment on reimbursement method of financing for local governments

Under current law, nonprofit organizations that elect to finance benefits on a reimbursement basis can form into groups for purposes of pooling or combining unemployment compensation costs. The technical amendment is to ensure that governmental entitles that have elected the reimbursement method have the same right as nonprofit organizations to form into groups for the purpose of financing benefit

costs. The clear intent of Congress was that governmental entities should have the same flexibility in determining how to finance costs as is afforded nonprofit organizations. Section 302(b) clearly establishes their right to form into groups.

Section 302(c). Clarifying amendment on disqualification of teachers

Section 115 of the Unemployment Compensation Amendments of 1976 amended the Internal Revenue Code with respect to the denial of benefits to certain categories of school personnel during the periods between academic years or terms. In enacting this provision, a comma was omitted between the words "instructional" and "research," allowing them to be read with instructional modifying research rather than as alternatives. Clearly the omission was unintended since the denial provision was to parallel the existing provision relating to the same categories of college workers, where a comma is present. Section 302 (c)(1) adds the omitted comma.

Current language now limits the period when benefits based on services performed by professional employees for schools may be denied to periods occurring between two successive academic years and between two regular but not successive school terms. It does not explicitly provide for the denial of benefits during periods between successive school terms. The language is similar to the corresponding provision enacted in the Employment Security Amendments of 1970. The intent of that provision, as reflected in the relevant congressional reports was to provide for denial of benefits during the period between successive terms as well as between successive academic years if the individual had a contract to perform services during both terms. The language has been interpreted as requiring denial (under the conditions specified) during the period between successive terms and most State laws now contain such a prohibition. Section 302(c)(2) clarifies that the denial provisions apply between two successive terms as well as between two successive academic years and between two regular but not successive terms.

Section 303. Delay in reporting dates for National Commission on Unemployment Compensation

The Unemployment Compensation Amendments of 1976, Public Law 94–566, established a National Commission on Unemployment Compensation. This Commission is directed to submit an interim report by March 31, 1978 and its final report by January 1, 1979. Because of unanticipated delays in setting up and funding the Commission, section 303 of this bill moves the submission dates for both reports forward six months. The interim report of the Commission will then be due September 30, 1978 and the final report July 1, 1979.

Cost Estimate and Report Prepared by the Congressional Budget Office

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statements are made:

H.R. 4800 provides for a 1-year extension of the Federal Supplemental Benefits (FSB) program, until March 31, 1978. The Congres-

EXHIBIT K

Contract

between

San Francisco Unified School District

And

United Educators of San Francisco

(415) 956-8373
www.uesf.org

Covering Certificated Personnel

July 1, 2014 — June 30, 2017

Doc# 19484

Preamble

The San Francisco Board of Education and the United Educators of San Francisco recognize their mutual responsibility to work toward the achievement of quality education for all students in the San Francisco Unified School District.

The United Educators of San Francisco and the San Francisco Board of Education have jointly entered into this contract under the Educational Employment Relations Act. This contract enumerates the rights, benefits, and working conditions for all teacher bargaining unit members of the San Francisco Unified School District and provides an orderly method for the resolution of problems.

Under this contract, the parties shall continue to pursue their individual interests in a spirit of mutual respect while working cooperatively toward their common goal of quality education for all San Francisco public school students.

UESF/SFUSD Vision Statement

Quality of teaching is the most influential factor in student learning. Nothing matters more to raising student achievement than the knowledge and effectiveness of teachers and those who support them. The District and UESF are committed to building a lasting labor-management relationship at the central administration and all work sites. This relationship must be based on respect, collaboration and open communication. We must focus on attracting and retaining the highest quality certificated staff and paraprofessionals to achieve sustainable improvement in student learning while constructing a District culture that supports the needs of the classroom, honors our rich diversity, and adapts to leadership transitions.

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1. Recognition

1.1 In accordance with and pursuant to the Rules and Regulations of the Public Employment Relations Board of the State of California, the San Francisco Unified School District recognizes the United Educators of San Francisco, AFT Local 61, AFL-CIO, NEA/CTA, as the exclusive representative as defined in Government Code, Sections 3540 through 3549.3, also known as the Educational Employment Relations Act.

1.2 Hereafter, the San Francisco Unified School District will be referred to as the "District" or as the "Employer."

1.3 Hereafter, the United Educators of San Francisco will be referred to as the "Union."

2. Bargaining Unit Defined

2.1 In accordance with the Public Employment Relations Board's Certification of Representation, the Bargaining Unit consists of all certificated employees of the San Francisco Unified School District excluding: management employees; confidential employees; supervisory employees; and non-permanent hourly employees working fewer than twenty (20) hours per week, except for day-to-day substitute teachers and part-time temporary Special Assignment Teachers, defined as those hourly non-permanent Hospital/Agency teachers scheduled for twenty (20) hours per week throughout the school year, identified by PERB #SF-UM-334 (R184A) dated April 30, 1984.

2.2 Proposed revisions in the negotiating unit shall be discussed between the Union and the District. Any changes shall be made in accordance with the Public Employment Relations Board's regulations for unit modification or clarification.

3. Definitions

3.1 Wherever the term "school" is used, it is to include any work location, center, unit, or any facility where members of the bargaining unit are located.

3.2 Wherever the term "principal," "site administrator" or "school management" is used, it is to include the appropriate chief administrator of a work location.

3.3 Wherever the term "teacher" is used, it is to include all members of the bargaining unit except where specifically noted.

3.4 Wherever the singular is used, it is to include the plural.

3.5 Wherever the term "Union," "Union representative," or "representative of the Union" is used, it is to mean a person, or persons, who have been officially designated as such by the Union.

3.6 Unless otherwise noted, the terms "Employer," "Board," and "Board of Education" are synonymous.

3.7 Unless otherwise noted, the terms "District," and "San Francisco Unified School District," and "Superintendent" are synonymous.

3.8 Whenever the term "permanent teacher" is used, it is to include both tenured TK-12 teachers and Early Education Department permit teachers who have passed probation.

3.9 Whenever the term "tenure-track teacher" is used, it is to include tenured TK-12 teachers, Early Education Department permit teachers who have passed probation, and probationary teachers.

3.10 Whenever the term "regularly assigned teacher" is used, it is to include those permanent, probationary, temporary, emergency, categorical, pre-intern and intern teachers who have been assigned to a site by the Human Resources Department.

3.11 Whenever the terms "pay check," "pay warrant," "monthly warrant," "paycard," or words to similar effect are used, it is to mean payment of earnings or salary payments. An electronic notification of monthly compensation, deduction, accruals, taxes, etc. will be made available after 2:00 p.m., the day before the scheduled pay date.

3.12 **Substitute teacher classifications**

3.12.1 Day-to-Day is to mean those teachers working on a day-to-day basis.

3.12.2 Ten-Day Substitute is to mean those teachers who serve ten (10) or more consecutive days in the same class for the same absent teacher.

3.12.3 Forty-Day Substitute, as defined in Section 26.7, is to mean those teachers serving more than forty (40) consecutive days in the same position with no more than two (2) authorized absences. Teachers in this classification shall be paid according to Article 11, Salaries, Increments and Classifications, and Appendix B and provided benefits per Article 12, Fringe Benefits.

3.12.4 QTEA substitute teachers shall receive health benefits providing they meet the qualifications specified in Section 26.12.

3.12.5 Core Substitute teachers, selected per the criteria specified in Section 26.7.1, shall be provided regular assignments and paid according to Article 11, Salaries, Increments and Classifications, and Appendix B, according to credential status, and be provided fringe benefits per Article 12, Fringe Benefits.

3.13 "Extended hours" means all approved work time beyond seven (7) hours in a day or thirty-five (35) hours in one week. The decision to accept administrative assignments of extended hours shall be at the sole discretion of the teacher.

4. District and Union Responsibilities

4.1 The Board of Education hereby retains all rights, authorities and duties conferred upon and vested in it by the laws and constitutions of the United States and the state of California. Such rights, authorities, and duties include the right to determine and administer policy and are limited only by the terms of this contract.

4.2 The Union and the District agree that:
Differences between the parties shall be settled by peaceful means as provided in this contract. For the duration of this contract, the Union, in consideration of the terms and conditions provided herein, will not engage in, instigate or condone any strike or work stoppage of members of the bargaining unit. For the duration of this contract, the District, in consideration of the terms and conditions provided herein, will not authorize or permit any lockout of members of the bargaining unit covered by this contract.

4.3 The Union and District agree to exchange relevant information related to members of the bargaining unit.

4.4 The parties to the Agreement shall not interpret or apply this Agreement, any of its terms, or the work rules, which implement this Agreement in a manner that is arbitrary, capricious, or discriminatory.

4.5 The parties shall administer this Agreement, all its terms, and the work rules which implement this Agreement with uniform application and effect. The parties shall treat all bargaining unit members equitably in the interpretation of this Agreement, its terms, and the work rules which implement this Agreement.

6.8 **Emergency coverage plans**

6.8.1 Teachers, through the Union Building Committee, are encouraged to work collaboratively with site administration to develop a mutually acceptable site plan which adequately handles situations where emergency class coverage is a need. Definition of emergency, equitable rotation of responsibility, and substitute compensation paid to the individual or school shall be among the items considered by the UBC. The District shall provide to such schools an amount equivalent to the substitute's pay for purposes of compensation. Past practices shall prevail until a mutually acceptable site plan is developed.

6.9 **Suspected child abuse reporting requirements**

6.9.1 No later than the end of the first week of school, or upon initial employment or annual reemployment, the District shall provide each teacher with a copy of the current law and procedures of the District regarding the reporting of child abuse and any other pertinent materials that the District may have available on how to recognize child abuse.

6.9.2 When a teacher notifies his/her immediate supervisor of an actual or potential case of child abuse, the supervisor shall provide assistance to that teacher in his/her fulfillment of legal responsibilities.

6.9.3 The District shall respect and maintain the confidentiality of all information on child abuse which a teacher reports to the appropriate authorities.

6.9.4 The District shall provide legal defense assistance to a teacher who is sued as a result of his/her reporting of a child abuse instance.

7. Days and Hours of Employment for TK-12 Teachers

7.1 Work year for teachers regularly assigned for the full year:

7.1.1 The length of the work year for all teachers shall be 181 days of service, except that department heads and deans/head counselors shall have 186 days of service.

7.1.2 **Staff Development Buy-Back Days** – Effective July 1, 2000, the length of the work year for all teachers shall be 184 days of service, except that department heads and deans/head counselors shall have 189 days of service.

7.1.2.1 The 184 day work calendar is dependent upon the funding provisions of Education Code Section 44579.1.

7.1.2.2 In the event that the current State funding level for three (3) days/year of staff development activities for classroom teachers is rescinded, the TK-12 teacher salary schedule and work year shall revert to 181 days. If said funding is reduced, the TK-12 teacher work year and salary schedule shall be modified proportionately.

7.1.3 A teacher required to do work beyond his/her service calendar shall be paid at his/her *per diem* rate of pay.

7.2 **Work day for teachers regularly assigned for the full year:**

7.2.1 The length of the teacher work day, including preparation time and time regularly required before and after school, exclusive of the duty-free lunch period, shall be based on a work week of seven (7) hours per day or thirty-five hours per five (5) day week. Teachers may work an approved schedule which includes time expended outside the assigned site. Such time approved away from the site shall be considered time worked for purposes of this article.

7.2.1.1 **The teacher instructional day within the work day shall be:**

7.2.1.1.1 five (5) periods daily for the High Schools and Middle Schools except for those schools operating with block schedules where teachers will have the equivalent of five (5) daily periods scheduled within the workweek;

7.2.1.1.2 three hundred minutes (300) for grades 4 and 5

7.2.1.1.3 two hundred eighty (280) minutes for grades TK through 3

7.2.1.1.4 TK/Kindergarten teachers will be provided the same supervision relief as accorded other elementary school teachers.

7.2.1.2 All teachers regularly assigned to a school shall be at their respective classrooms or other places of service at least fifteen (15) minutes but not more than thirty (30) minutes before the regular opening of school as communicated by the administrator. The UBC, following consultation with the faculty, may designate additional before or after school time within the workweek described above.

7.2.1.2.1 At sites where common planning time is built into the schedule, the minimum report time referred to in Section 7.2.1.2 shall be five (5) to ten (10) minutes. Common planning time shall be used for the following types of activities: team planning, student study teams, parent conferences, curriculum development, faculty meetings and other professional activities, such as instructional coaching and additional site-based professional development.

7.2.2 Teachers shall be provided a duty-free lunch period, equivalent in length to the lunch period of the teachers' students, exclusive of passing periods, or thirty (30) consecutive minutes, whichever is longer.

7.2.3 Every good faith effort will be made to schedule all IEP and IFSP conferences during the seven hour workday.

7.2.4 **Site-based Meetings**

7.2.4.1 Planned Meeting Time: Planned meeting time is essential to teacher effectiveness and student success. Teachers may be required to attend no more than two (2) faculty meetings per month, such time to be considered part of the work week described above. In addition, staff will meet within the work day to:

7.2.4.1.1 Improve curriculum, instruction, and assessment in all classrooms (e.g., Instructional Leadership Teams, Grade Level Teams, and Department Teams).

7.2.4.1.2 Support teachers through opportunities for their professional growth (e.g., site-based and other non-District-wide professional development).

7.2.4.2 Site administration shall have the right to convene meetings necessitated by health and safety emergencies at reasonable times and will notify staff as soon as possible.

7.2.5 The site administrator of each school may require teachers to perform related duties on a reasonable and equitably distributed basis among teachers, such time to be considered part of the work week described above. Such duties may include after school parent or student events, athletic events, and activities.

7.2.6 **Preparation time within the workday for classroom teachers**

7.2.6.1 Whenever the term "preparation time" or "preparation period" is used, it is to mean the time within the workday of teachers set aside for planning, grading papers, contacting parents and other instructional tasks to be determined by the teacher.

7.2.6.1.1 **Secondary** – Within the workday, high school and middle school teachers shall have a duty-free preparation period equal in length to a teaching period. The specific schedule for the work day shall be set by the site administrator.

7.2.6.1.2 Middle Schools and High Schools shall be encouraged to provide consultation periods for Special Education teachers, equal in length to a teaching period, to be derived from increased site allocations and increased Central Office support for sites to attend to duties including but not limited to the following:

7.2.6.1.2.1 Student Instructional Needs (e.g., secure materials, communicate with parents/guardians, tutor and advise students).

7.2.6.1.2.2 File Maintenance (e.g., IEP, SEIS, meet and discuss IEP goals/objectives with general education teachers).

7.2.6.1.2.3 Scheduling and facilitating IEP meetings and ensuring paper work is complete.

7.2.6.1.2.4 Assessment (e.g., prepare assessment plans, inform team members of due dates, ensure compliance with legal deadlines).

7.2.6.1.2.5 Support paraprofessionals (e.g., organize schedules, provide training, and provide appropriate access to the current IEPs and goals).

7.2.6.1.3 **TK/Elementary** – Within the work day, TK-5 teachers shall have one hundred fifty (150) minutes of duty free preparation time during the work week, in blocks no smaller than twenty (20) minutes. The specific schedule for the TK-5 preparation time shall be determined by the site administrator and the UBC.

7.2.6.1.3.1 Site-based meetings shall not exceed six (6) hours per month for all TK-5 teachers, exclusive of faculty meetings but including at least two (2) hours per month for grade level planning time. These six (6) hours shall be considered part of the work week described above. Teachers shall provide input and suggestions into the agenda for one (1) such hour of grade-level planning time based on the site's academic goals.

7.2.6.1.4 **Teachers Who Co-Teach** – Using resources made available by the Weighted Student Formula or non-general fund sources, high and middle school sites are encouraged to provide teachers in co-teaching assignments with concurrent preparation time to the extent feasible. Every good faith effort shall be made for co-teaching assignments to be by mutual agreement of the teachers and administrator(s) involved.

7.2.6.1.5 **Relief Time** - Using resources made available by the Weighted Student Formula or non-general fund sources, sites are encouraged to provide additional preparation time in the form of relief time for teachers within the instructional day. Relief time, as distinguished from preparation time, is the time provided elementary school teachers during the instructional day when teachers, who may be subject specialists, teach art, music, or physical education, for example, assume responsibility for student instruction.

7.2.6.2 **Preparation time within the workday for non-classroom teachers**

7.2.6.2.1 Within the work day, high school and middle school teachers, not meeting regularly scheduled classes for five (5) periods a day, shall have preparation time during the school day. Within the work day, elementary school teachers not meeting regularly scheduled classes during the instructional day shall have preparation time during the school day. Central and site administrators are responsible for establishing procedures and constructing schedules for non-classroom regularly scheduled teachers in a manner which shall reflect the need for preparation appropriate to the tasks of each position.

7.2.7 Time for common planning time, site-based meetings, after school parent events, student events, and all other meetings shall be considered part of the workweek described above. This time shall be scheduled with the concurrence of the UBC, except in case of emergency. Site administrations and UBC's are encouraged to complete the year's schedule within the first two weeks of the school year.

7.2.8 Every good faith effort shall be made to assign no more than three (3) subject matter preparations per day to teachers regularly assigned to middle and high schools. Multiple preparations required in core programs in middle schools should be taken into consideration.

7.2.9 The District shall provide two (2) additional conference/preparation periods to each comprehensive high school for Advanced Placement (AP) classes, plus an additional conference period based on a fixed $600 per exam taken at each school the prior year. This funding shall be used to provide one (1) additional conference/preparation period for each teacher of AP classes with classes of twenty-five (25) students or more. Teachers of AP classes with fewer than twenty-five (5) students shall receive an annual stipend of $3000. Teachers of AP classes may make recommendations to the principal for allocating AP additional conference/preparation periods.

8. Parent-Teacher Conferences

8.1 Elementary

8.1.1 There shall be five (5) mandated minimum days during the fall semester and five (5) mandated minimum days during the spring semester. The regular instructional day shall be shortened by sixty (60) minutes for each of the ten (10) days designated for parent conferences, and state mandated requirements defining a minimum day shall be met.

8.1.2 These minimum days require extended instructional minutes on other days throughout the school year to meet the state mandated annual instructional minutes to receive state apportionment money.

8.1.3 Situations differ from site to site in terms of staff preference and program requirements. Decisions on how to make up the minutes for minimum days are best determined on a site-by-site basis and shall become a part of the shared decision making process involving the site administration and UBC. Each plan must be approved by the District for conformance with minimum instructional requirements and compatibility with bus schedules. A copy of the plan, including UBC sign-off, shall be sent to the union.

8.2 Small necessary high schools

8.2.1 Two conference days shall be provided at each of the following time periods:

8.2.1.1 mid Fall semester

8.2.1.2 end of Fall semester

25.15 **Home Visits**

25.15.1 Home visits shall only be performed under the following circumstances:

25.15.1.1 Unit member shall receive a stipend of $40 for each home visit performed outside the unit member's regularly scheduled work hours.

25.15.1.2 Mileage reimbursement at the current Internal Revenue Code rate shall be paid to unit members.

25.15.1.3 A unit member may request accompaniment by another authorized individual for a home visit. The district office shall make every effort to fulfill this request. In the event that another authorized individual is not available, then the home visit shall be rescheduled to a time when the second authorized individual is available. If the second authorized individual is a unit member, that individual shall also receive the $40 home visit stipend.

25.15.2 Effective with the ratification of the agreement, EED staff shall be notified of state or federal requirements for home visits prior to any regulatory requirement to perform them.

25.15.3 The District shall assume all liability related to home visits by all unit members to the extent required by law.

25.15.4 Personnel records that are required by Community Care Licensing for licensing purposes, shall be maintained securely and locked at the EED sites and only be made available for compliance review purposes. These files shall only contain records required by Community Care Licensing. They shall exclude job ratings and evaluations and shall not constitute a waiver of any rights related to a unit member's personnel file established in the Education Code.

25.16 EED shall report to the Union on a monthly basis student enrollment, number of classes, and number of EED schools.

26. Day-to-Day Substitute Teachers

26.1 **Hours of employment**

26.1.1 A substitute teacher shall report to a school site at the same time a regularly assigned teacher is required to report provided that the substitute teacher is given timely notification.

26.1.2 With the permission of the principal or his/her designee a substitute teacher not returning to the school the next day may leave the school site immediately upon the dismissal of the students in his/her classes.

26.1.3 A substitute teacher in the Early Education Department shall be paid for time served beyond eight (8) hours when the service is required and directed by the site administrator.

26.1.4 A substitute teaching assignment at an Early Education Department site shall be for no less than three and one-half (3.5) hours.

26.1.5 A substitute teacher working in the Early Education Department shall not be required to remain with the children after 6:00 P.M. unless no regular staff member is available to close the Center for the day. In that case the substitute teacher will call the Site administrator, who will arrange to have the substitute teacher relieved as soon as possible.

26.1.6 Within the work day, a substitute teacher assigned to teach in high school or middle school shall have a duty-free preparation period equal in length to a teaching period. Preparation time shall be expended at the assigned work site except as provided for in Section 26.1.2.

26.1.7 A substitute teacher shall not be required to perform a field-trip assignment unless informed of the assignment and the availability of others to assist in supervision before accepting the assignment. Authorized and approved field trips are covered by District liability insurance.

26.1.8 A substitute teacher working at least a half day assignment shall be provided a duty-free lunch period, equivalent in length to the lunch period of the teacher's students, exclusive of passing periods, or thirty (30) consecutive minutes, whichever is longer.

26.1.9 A substitute teaching assignment at McAuley Adolescent Care Unit or successor shall be for not less than four (4) hours.

26.2 **Daily working conditions**

26.2.1 A substitute teacher shall be provided the lesson plans, seating charts, uniform school site schedules, emergency procedures, and any other essential material at each site, including, but not limited to, names and extension phone numbers of personnel on site.

26.2.2 Each site shall provide each substitute teacher keys to classrooms(s), restrooms and elevators and other appropriate technology where it is available (e.g. computers). Substitute teacher time sheets will not be signed and returned to the teacher without the return of said keys. Each site shall have a sign-in/sign-out sheet for keys and a key drop-off box.

26.2.3 A substitute teacher shall be assigned the duties which would have been the routine responsibility of the permanent teacher for whom the substitute teacher is teaching. Before-school yard duty on the first day of an assignment will not be required in order to give the substitute teacher time to prepare for classes.

26.2.4 A substitute teacher shall not be required to attend faculty meetings unless so directed by the principal or site administrator and provided that the substitute teacher is returning the following day for the same assignment.

26.2.5 Assigning of report card grades in TK-12 or carrying out formal assessment of children in EED shall not be required of a substitute teacher before the substitute teacher has served at least twenty five (25) days with the class to be graded.

26.2.6 At the end of the assignment a substitute teacher shall prepare a report in writing including the following: a report on what was accomplished in class, a description of problems that occurred and the resolutions of the problems, a lesson plan for the next day and other information that may be required by the principal or site administrator.

26.2.7 A substitute teacher shall to the best of his/her professional abilities teach the lessons scheduled for the classes to which he/she has been assigned, correct classroom assignments and homework received as time permits and perform other duties properly assigned by the principal or site administrator.

26.2.8 **Medical services** — No substitute teacher, except qualified public health nurses, shall be required to dispense, administer, or supervise the taking of medication by a student, or to perform medical procedures other than first aid.

26.2.9 In accordance with Education Code section 49001, a substitute teacher may use an amount of force that is reasonable and necessary to quell a disturbance threatening physical injury to persons or damage to property for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within control of the pupil.

26.2.10 A substitute teacher has the right to receive prompt assistance from the administration, upon request, when a student becomes a disruption in the classroom and/or threatens the safety of the teachers and others.

26.3 **Daily assignment procedures**

26.3.1 **Substitute Committee** — In an effort to improve communication and collaborative problem solving, the District and the Union shall establish a committee of substitute teachers to meet with District representatives on a monthly basis. The Substitute Committee shall meet to establish a mutually agreeable evaluation procedure for substitutes and recommend a procedure to the parties for inclusion in the contract. The recommendations shall address procedure and criteria, not content.

26.3.2 A substitute teacher shall have the right without penalty to declare time(s) and/or days during which he/she is unavailable for work.

26.3.3 Substitute teachers will not be penalized for refusing any assignments but shall be expected to complete no fewer than 36 assignments per fiscal year and no fewer than 12 assignments per semester in order to maintain active status. The foregoing requirements shall not apply to classified unit members who serve as substitute teachers in the Early Education Department. Substitutes who complete 36 assignments in the fall semester shall be deemed to have met the requirement to remain in active status for the current year and the following year. Assignments include summer school. Substitutes not completing the required number of assignments both per semester and per year may submit a letter to the Human Resources supervisor of substitutes requesting a continuation of active status and outlining the reasons for failing to complete the requisite number of assignments. The District shall reply to the request not later than 15 work days following the receipt of the request.

26.3.3.1 Retired teacher substitutes will not be penalized for refusing any assignments but shall be expected to complete no fewer than ten (10) assignments per fiscal year. Assignments include summer school. Substitutes not completing the required number of assignments may submit a letter to Human Resources supervisor of substitutes requesting a continuation of active status and outlining the reasons for failing to complete the requisite number of assignments. The District shall reply to the request not later than fifteen (15) work days following the receipt of the request.

26.3.4 Whenever possible, substitute teachers will be notified of an assignment at least one and one-half (1.5) hours before the starting time of the assigned school. No substitute teacher shall be penalized for reporting late if he/she were not called at least 1 and one-half (1.5) hours before the start of said assignment.

26.3.5 A substitute teacher shall be able to scan available job assignments whether he/she calls in or is called by the system.

26.3.6 Whenever possible, a substitute teacher's preference of school assignment will be honored.

26.3.7 A core or QTEA substitute teacher who is unable to work at any time shall make himshelf/herself unavailable for an assignment through the Smartfinder system. This shall also apply to all other substitute teachers who are unable to work for five (5) or more consecutive workdays.

26.3.8 Appointment to substitute positions shall be made in compliance with Education Code section 44956 and 44957, when applicable, thereby requiring laid off teachers to be appointed to substitute positions by seniority.

26.4 Substitute teachers who meet the following criteria shall be given priority assignment for jobs assigned by the substitute teacher office:

26.4.1 300 or more days in the last five years of substitute teacher service as defined in Section 3.11, or a combination of substitute, Emergency teacher or Temporary teaching service; and

26.4.2 credential authorizing service for the position; and

26.4.3 no unsatisfactory evaluation; and

26.4.4 the teacher has appropriate qualifications; and

26.4.5 a written statement on file with the Human Resources Department stating his/her desire to be placed on the list.

26.4.5.1 The District will make a good faith effort to establish priority status within thirty (30) calendar days following the beginning of the school year and the substitute management system will be appropriately programmed.

26.4.6 Whenever possible, substitute teachers shall be assigned to teach in the field(s) for which they hold credentials.

26.4.7 When substitute teachers are sent by the School District in error to a school, the substitute teacher will be assigned equivalent teaching duties at that school or a nearby school. Full salary will be paid for this service.

26.4.8 During the course of any school year substitutes working 24 or more days in the previous two months with no unsatisfactory evaluations shall achieve priority status for the remainder of that school year.

26.5 **Employee travel**

26.5.1 Upon being offered an assignment involving travel between two (2) or more work sites, a substitute teacher will be informed of the travel requirements.

26.5.2 The travel reimbursement for the substitute teacher shall be at the same rate as that of the teacher being replaced.

26.5.3 A substitute teacher who is required to travel pursuant to the above shall be provided the same preparation period, lunch and relief time as provided for the teacher being replaced.

26.5.4 A substitute teacher shall have the right to use school parking lots on the same basis as the teacher being replaced.

26.5.5 A substitute teacher assigned to work at Log Cabin High School in La Honda shall be entitled to mileage and payment of a seven and one-half percent (7.5%) salary differential.

26.6 **In-service education**

26.6.1 All District in-service workshops will be open to substitute teachers on a space available basis.

26.6.2 One day of paid in-service shall be offered each school year specifically designed to meet the needs of day-to-day substitute teachers new to or recently employed by the District. This in-service shall be offered on the first regular district staff development day of each school year. The Union and the District shall agree on procedures for implementation of this article.

26.7 **Core Substitutes**

26.7.1 As soon as administratively feasible after the start of the Fall semester, but in no case later than fifteen (15) days of the start of the school year, the District shall notify the remaining core substitutes to serve in positions as designated by the District, retroactive to the beginning of the school year. The core substitute position shall be eliminated through attrition.

26.7.1.1 Core substitute teachers shall be paid in accordance with Article 11, Salaries, Increments, and Classification Changes of this agreement.

26.7.1.2 Core Substitute teachers shall receive benefits in accordance with the Article 12, Fringe Benefits, of this agreement.

26.7.1.3 Core substitutes shall have priority consideration (i.e. the right to an interview before the position is filled) for vacancies that occur during the course of the academic school year.

26.7.1.4 Core substitute teachers shall receive retiree health benefits if they retire during the term of this contract (on or before June 30, 2017) in accordance with section 22.4, Retiree Health Benefits, of this agreement.

26.7.3 Up to five additional (beyond those established by this article) temporary core substitute positions may be created and filled by teachers who lack the requisite credentials or authorizations as required by the California Commission on Teacher Credentialing.

26.7.3.1 These teachers shall maintain all consolidation rights they held prior to serving as a core substitute and

26.7.3.2 The Union and the District may agree to increase any number of temporary additional core substitute positions.

26.8 **Classification as a Forty-Day substitute**

26.8.1 Substitute teachers serving more than forty (40) consecutive days in the same position with no more than two (2) authorized absences shall be classified as Forty-Day substitutes for the semester. See Article 3.11.3.

26.8.2 If the regularly assigned teacher returns prior to the end of the semester, the substitute teacher will retain his/her Forty-Day status to the end of the semester and shall serve in positions as assigned by the District.

26.8.3 If the days referred to in Section 26.8.1 span the Fall and Spring semester, the substitute teacher shall be classified as a Forty-Day substitute retroactive from the first day in the assignment to the end of the Spring semester with the provisions of Section 26.8.2 applying.

26.8.4 Substitute teachers with regular credentials assigned to positions where it is known or it can be reasonably assumed that the regularly assigned teacher will not return or no specially credentialed teacher (such as bilingual and/or special education credentials) can be found, shall be classified as Forty-Day substitutes on the first day of assignment, except when there are forty (40) or fewer days remaining in the school year.

26.8.4.1 If the regularly assigned teacher returns or teachers with the required special credentials become available, the substitute shall retain his/her Forty-Day status to the end of the semester and shall serve in positions as assigned by the District.

26.9 **Cases of alleged child abuse**

26.9.1 In cases of alleged child abuse the substitute teacher shall be made aware that a report has been filed as soon as possible.

26.9.1.1 The District shall not wait for the conclusion of the police investigation before beginning its own review.

26.9.1.2 The District shall advise the substitute teacher of his/her employment status within three (3) working days of receiving written notification from the appropriate law enforcement agency.

26.10 The District shall provide and distribute handbooks to each substitute teacher. The Union shall have the right to provide input to the development of the handbook.

26.11 **Salary rates** — See Appendix B.

26.12 **Health Benefits**

26.12.1 Substitute teachers who have rendered a minimum of sixty days (60) of service for the year immediately preceding the year of eligibility shall be eligible for QTEA substitute teacher status with District provided employee-only health and dental benefits.

26.12.1.1 The District shall allocate 40 substitute teacher positions that are eligible for this benefit provision. Eighty-five thousand dollars ($85,000) shall be used for this purpose and additional funding shall be provided through QTEA revenues. All QTEA substitutes shall be assigned to hard-to-staff schools. On any day that no hard-to-staff school assignment is available for a QTEA substitute, that QTEA substitute may select a substitute assignment at a non-hard-to-staff school for that day.

26.12.1.2 A day of service, as used herein to determine eligibility, shall mean any day of assigned substitute service of more than four (4) hours.

26.12.2 To maintain eligibility, qualifying QTEA substitute teachers shall meet the following criteria:

26.12.2.1 During the first semester of District provided benefits, the substitute teacher shall average at least 16 days of service per month for the months of September, October, and November.

26.12.2.2 To maintain eligibility during the second semester of District provided benefits, the substitute shall average at least sixteen (16) days of service per month for the months of March, April and May.

26.12.2.3 Failure to achieve the average days of service specified in Sections 26.11.2.1 and 26.11.2.2 above shall result in the automatic cancellation of District premium payments at the end of each three month period in which said average is not achieved, or at the end of any month in which the number of cumulative days served would preclude achievement of the average days specified for the three month period.

26.12.2.4 Failure to achieve a minimum of seventy-one (71) days of service during the first semester shall result in the automatic cancellation of District premium payments at the end of January.

26.12.2.5 Failure to achieve a minimum of one hundred-sixty (160) days of service for the school year shall result in the automatic cancellation of District premium payments at the end of June.

26.12.2.6 Different assignments rendered on the same day of service shall be counted as one (1) day of substitute service.

26.12.2.7 For the first year of entry into this program, the substitute teacher's coverage shall begin on October 1st.

26.12.2.8 A retired District employee who already receives a District paid medical insurance contribution and who works as a substitute teacher shall not be eligible for the coverage described herein.

33.3.2 The librarian's work day shall not start more than one hour earlier nor end more than one hour later than the work day of the majority of the unit members assigned to the site.

33.3.3 In the case of an alternate work schedule, the librarian shall not be assigned additional responsibilities.

33.3.4 If a staff meeting conflicts with the alternate work schedule, then the librarian shall have the discretion whether to attend the meeting.

33.3.5 Any schedule created pursuant to this article shall be presented to the Union Building Representative for review.

34. Home Bound, Hospital/Agency and Special Assignment Teachers

34.1 Regularly assigned teachers of home bound children who serve twenty (20) hours per week by action of the Board of Education shall be placed on the salary schedule for teachers. Those who serve fewer than twenty (20) hours per week shall be paid the hourly rate in accordance with the hourly rate for teachers who work in the Home Bound Program. (See Appendix B)

34.2 Part-time temporary Special Assignment Teachers are defined as those hourly non-permanent Hospital/Agency teachers scheduled for twenty (20) hours per week throughout the school year identified by PERB #SF-UM-334 (R184A) dated April 30, 1984.

34.3 Part-time temporary Special Assignment Teachers working in hospitals or agencies shall be placed on the appropriate Teacher's Salary Schedule at Rating 1 based upon a 5/7 work day. The maximum rating shall be 10.

34.4 Temporary Special Assignment Teachers shall receive fringe benefits in accordance with Article 12, Fringe Benefits.

34.5 Increment credit will be earned for a school year, by serving seventy-five percent (75%) of the authorized number of hours.

35. Summer School, Saturday School, Evening School Programs, Pre-K Summer Program, *et al.*

35.1 Priority consideration shall be given to qualified current teachers with satisfactory or better evaluations when selecting teachers for these programs.

35.2 **Timelines for summer school and Pre-K summer program teachers' selection and notification:**

35.2.1 Current teachers shall be informed by April 1st regarding the Summer School openings known at that time. Current teachers in the Early Education Department shall be informed by April 1st regarding the Pre-K summer program openings known at that time. Applications for these vacancies shall be filed no later than May 1st.

35.2.2 Applicants for summer school employment shall be notified of their employment status in writing by May 15th.

35.2.3 Applicants for Pre-K summer program employment in the initial summer session shall be notified of their tentative employment status in writing by May 15th. Initial and continued employment in the Pre-K summer program are subject to adequate enrollment and funding.

35.3 The Union and District mutually agree to discuss any proposed changes in existing practices regarding timelines for notification, application, and selection of Summer School, Saturday school, Evening School, or Pre-K summer program teachers.

35.4 Teachers shall be paid pursuant to Appendix B.11.

35.5 Teachers shall be issued supplemental pay warrants for regular service in these programs.

36. Teacher Interns

36.1 Teacher interns shall be members of the bargaining unit.

36.2 Teacher interns shall be placed on the Teachers' Salary Schedule. Occupational experience may be recognized for advanced placement on the salary schedule.

36.3 Pursuant to Education Code Section 44325, teacher interns shall:

36.3.1 possess a baccalaureate degree conferred by an accredited institute of post-secondary education;

36.3.2 successfully pass the state basic skills proficiency test administered under the provisions of California Education Code 44252 and 44252.5;

36.3.3 successfully pass the appropriate subject matter examination administered by the commission of preparation and licensing in the subject areas in which the teacher intern is authorized to teach; and

36.3.4 have an academic major or minor in the subject area in which the teacher intern is authorized to teach.

36.4 Teacher intern provisions shall be governed pursuant to California Education Code 44326 and subsequent modifications and other program requirements.

36.5 The above sections are included for informational purposes and do not negate the District's rights under other provisions of the Education Code.

36.6 With respect to District operated programs, the District shall not utilize teacher interns (as defined by Ed. Code Sections 44325 and 44326) until the voluntary transfer process of Article 15, Staffing and Assignment, is completed.

37. Contract Language Review Committee

The parties may form a committee composed of two (2) District and two (2) Union representatives to identify obsolete language in the certificated and classified contracts for removal. Any removal of language from the contracts shall be by mutual agreement between the parties. Union representatives on the committee shall be granted release time, if required, without loss of compensation to attend committee meetings.

38. Itinerant Teachers

Schedules of regularly assigned teachers who are assigned to and travel to more than one school or student home on a given day shall be arranged so that no teacher shall be required without his/her consent to engage in inter-school or inter-home (for home bound teachers) travel of more than thirty-five (35) miles. The District will notify such teachers of a change of school as soon as possible, normally within ten (10) work days. To allow for travel, itinerant teachers will not be assigned non-teaching duties.

EXHIBIT L

SFUSD SAN FRANCISCO PUBLIC SCHOOLS

2016-2017

JULY 2016 0

M	T	W	T	F
				1
4	5	6	7	8
11	12	13	14	15
18	19	20	21	22
25	26	27	28	29

Jul 4 – Independence Day (Holiday)

AUGUST 2016 13

M	T	W	T	F
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30	31		

Aug 9-11 – Professional Development Day (TK-12)
Aug 12 – Teacher Work Day
Aug 15 – 1st Day of Instruction

SEPTEMBER 2016 21

M	T	W	T	F
			1	2
5	6	7	8	9
12	13	14	15	16
19	20	21	22	23
26	27	28	29	30

Sep 5 – Labor Day (Holiday)

OCTOBER 2016 20

M	T	W	T	F
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
31				

Oct 10 – Columbus/Indigenous People's Day/El Dia De La Raza (Holiday)

NOVEMBER 2016 18

M	T	W	T	F
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30		

Nov 11 – Veterans Day (Holiday)
Nov 23 – Paraprofessional Paid Floating Holiday
Nov 23-25 – Thanksgiving Recess

DECEMBER 2016 12

M	T	W	T	F
			1	2
5	6	7	8	9
12	13	14	15	16
19	20	21	22	23
26	27	28	29	30

Dec 16 – End of the Fall Semester
Dec. 19-30 – Winter Break

JANUARY 2017 19

M	T	W	T	F
2	3	4	5	6
9	10	11	12	13
16	17	18	19	20
23	24	25	26	27
30	31			

Jan 2 – New Year's Day (Holiday)
Jan 16 – Martin Luther King (Holiday)
Jan 27 – Lunar New Year Observance (School sites and EES Closed – District offices – Open) – Paraprofessional Paid Floating Holiday

FEBRUARY 2017 19

M	T	W	T	F
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28			

Feb 20 – Presidents' Day (Holiday)

MARCH 2017 18

M	T	W	T	F
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	31

Mar 27-31 – Spring Break
Mar 31 – Cesar Chavez Day Observance (School sites and EES Closed – District offices open) – Paraprofessional Paid Floating Holiday

APRIL 2017 20

M	T	W	T	F
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28

MAY 2017 20

M	T	W	T	F
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30	31		

May 26 – End of the Spring Semester
May 29 – Memorial Day (Holiday)

JUNE 2017 0

M	T	W	T	F
			1	2
5	6	7	8	9
12	13	14	15	16
19	20	21	22	23
26	27	28	29	30

Instructional Days by Month

Jul	0	Jan	19
Aug	13	Feb	19
Sept	21	Mar	18
Oct	20	Apr	20
Nov	18	May	20
Dec	12	Jun	0

Fall Semester – 84 days
Spring Semester – 96
Total Instructional Days – 180
Total Work Day – 1
Professional Development Days – 3
Total Service Days - 184

Legend

	Recess/Break
	Holiday
	Staff Development Day(s)
	1st & last day of school
	Teacher work day
	School Site Holidays

EXHIBIT M

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

UNITED ADMINISTRATORS OF SAN FRANCISCO
AMERICAN FEDERATION OF SCHOOL ADMINISTRATORS, AFL/CIO, LOCAL 3

AND

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

July 1, 2013 – June 30, 2016
(Extended to June 30, 2018)

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CALENDAR/WORK YEAR

C.1 Members of the bargaining unit will work the following number of days each school year. This work calendar includes three days funded by the District which parallels 3 professional development days for teachers funded by the State.

C.1.1	Principal	2014-2017
	(1) High School & Small/Necessary	215 days
	(2) Middle School & K8	210 days
	(3) Elementary School	208 days
C.1.2	Assistant Principal	
	(1) High School	210 days
	(2) Middle School & K8	205 days
	(3) Elementary School	203 days
C.1.3	Early Education School Site Administrator	225 days
C.1.4.	Program Administrator	211 days
C.1.5	Supervisor	224 days
C.1.6	Administrative Intern	196 days

C.2 Required Service Days before Schools Open and After They Close

C.2.1 Supervisory employees will be notified by approximately mid-June of each school year of the required starting date for all supervisory employees to report for work prior to the opening of schools for the next school year.

C.2.2 The required starting date shall not be more than twelve (12) working days prior to the opening of schools (teacher report day) unless directed by the Superintendent. Total workdays will remain the same as detailed in Appendix C.1.

C.2.3 The first five (5) working days immediately following the close of school at the end of the school year shall be required service days for all supervisory employees. With the advance approval of his/her management supervisor, a unit member may be allowed to utilize a portion of said working days for other assignments.

C.2.4 Upon prior written notice, except in an emergency circumstance, the District may designate that a workday (or workdays) be reserved for a specific function.

C.3 Supervisory Employees at PreK-12 Sites on a Traditional Calendar

C.3.1 For PreK-12 sites operating on a traditional calendar, site personnel will normally serve on:

C.3.1.1 The days schools are in session;

C.3.1.2 Those days designated prior to the opening of school (per Appendix C.2.2) and,

C.3.1.3 The five (5) days immediately following the close of school (per Appendix C.2.3)

C.3.1.4 Upon prior written notice, except in emergency circumstances, the District may designate that a workday (or workdays) be reserved for a specific function (per Appendix C.2.4).

C.3.2 Service days required by Appendix C.1 in addition to those specified in Appendix C.3.1 shall be served on work days determined by the employee

C.3.2.1 The determination of the days to be served by an Assistant Principal during the term of this agreement shall be at the direction of his/her supervising Principal.

C.4 Other Supervisory Employees

C.4.1 All other supervisory employees shall work on:

C.4.1.1 Those days designated prior to the opening of school (per Appendix C.2.2);

C.4.1.2 The five (5) days immediately following the close of school (per Appendix C.2.3);

C.4.1.2 Additional workdays during the school year as are necessary to complete the balance of the service days required by Appendix C.1, said additional workdays to be scheduled by the employee, and approved by the employee's supervisor.

C.4.1.3 Upon prior written notice, except in emergency circumstances, the District may designate that a workday (or workdays) be reserved for a specific function. (per Appendix C.2.4)

C.5 General Provisions

C.5.1 Employees who are required by the Superintendent, per written request, to serve specified days in addition to those designated in Appendix C.1 shall receive their per diem rate of pay for each such additional day served.

C.5.2 As an integral part of a typical supervisory classification, some functions necessitate evening, weekend and/or holiday service. Illustrative examples of such functions shall include, but in no way are limited to, athletic events, student social and co-curricular activities, parent/PTA programs and meetings, back-to-school nights, school board meetings, etc. Said service, to the extent it normally is associated with the employee's supervisory classification, shall be rendered by the supervisory employee in addition to the requirements of Appendix C.1.

C.5.2.1 In appropriate and/or unusual circumstances, a supervisory employee may request of the Superintendent, or his/her designee, that other service rendered on evening, weekends, and/or holidays be credited in fulfillment of the work year required in C.1.

C.5.2.2 In appropriate and/or unusual circumstances, service rendered on weekends or holidays may be credited in the fulfillment of the work year required in Appendix C.1, above. The approval of this credit shall be at the discretion of the Superintendent or designee.

C.5.3 Each UASF member shall submit his/her individual service calendar to his/her immediate supervisor within 30 days of the administrator's report date.

EXHIBIT N

EGEA

COLLECTIVE BARGAINING CONTRACT

2015-2016

ELK GROVE UNIFIED SCHOOL DISTRICT

BOARD OF EDUCATION

Beth Albiani
Nancy Chaires Espinoza
Carmine S. Forcina
Chet Madison, Sr.
Dr. Crystal Martinez-Alire
Anthony ("Tony") Perez
Bobbie Singh-Allen

ADMINISTRATION

Christopher R. Hoffman

ELK GROVE EDUCATION ASSOCIATION

OFFICERS

Kathleen Tijan, President
Cheryl Hollis, Lead Association Director
Scott Scidmohr, Lead Association Director
Rick Stancil, Vice President

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ARTICLE 9

Calendar

9.1 In a traditional/modified traditional calendar work year, the teacher work year will be 184 teacher work days with 180 student instructional days. One full teacher work day will be dedicated to district professional development.

9.2 The year-round calendar shall include 175 work days with 171 student instructional days. The configuration of the time will be arranged in such a fashion as to maximize the educational advantage to students. Instructional time will be available to local schools to use for concentrated efforts in basic skill training, including but not limited to mathematics instruction, training, language instruction, testing skills, and reading instruction. The District shall provide assistance in curriculum materials to minimize the preparation responsibility for the classroom teacher. Before a decision is made concerning the appropriate instructional program, a collaborative effort will be made with local staffs. One full teacher work day will be dedicated to district professional development. If a professional development day cannot be scheduled immediately before or after a track change day, then affected off-track teachers will be offered an alternative staff development day which is immediately before or after a track change day.

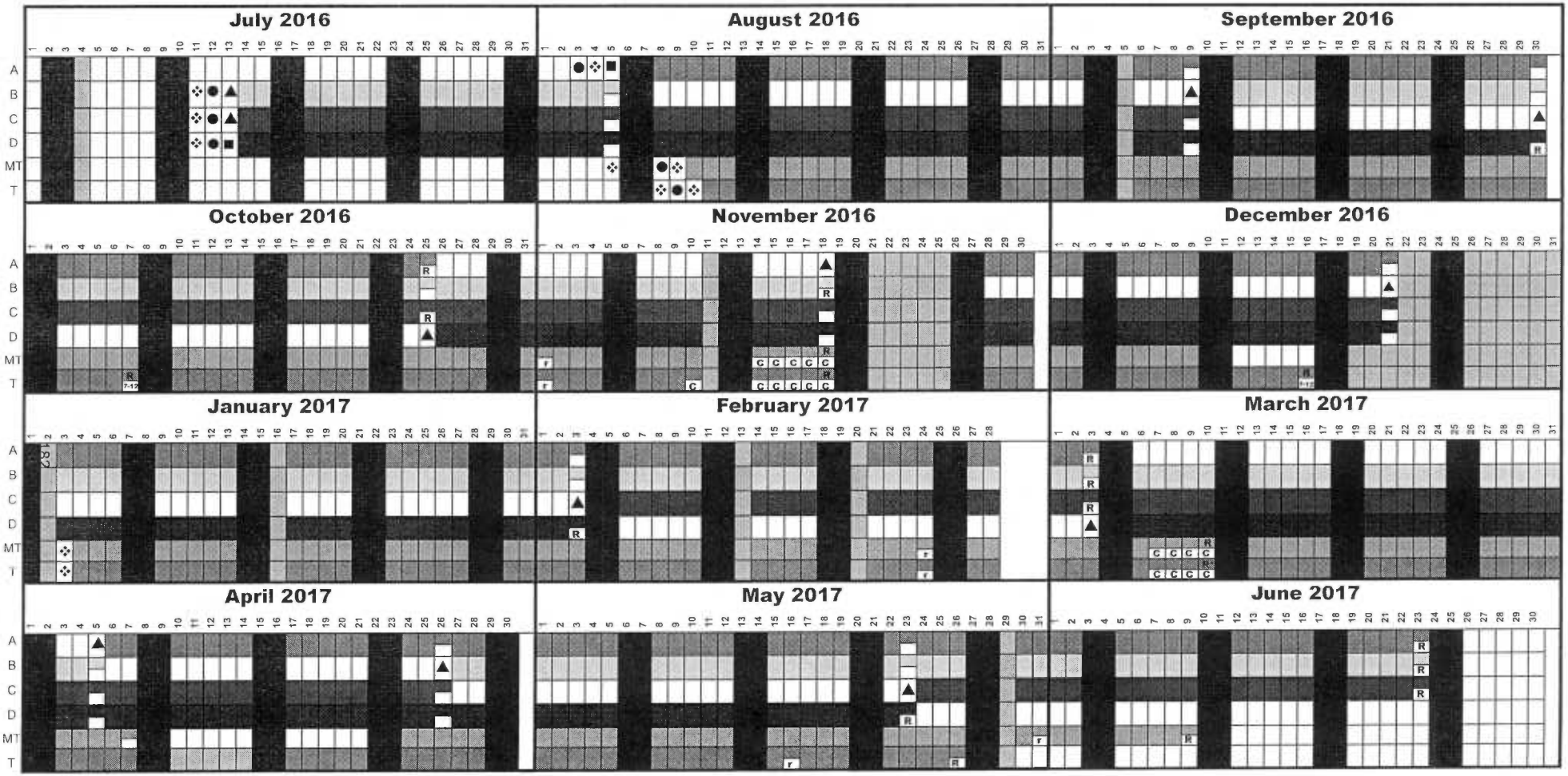
9.3 Teachers shall not be required to perform services for the Board, including but not limited to attendance at Board workshops, tours, or civic meetings, for more than three school days for year round and four days for traditional/modified traditional adjacent to the school year.

9.4 The parties agree to develop school calendars for 2014-2015, 2015-2016 and 2016-2017 by February 3, 2014.

EXHIBIT O

ELK GROVE UNIFIED SCHOOL DISTRICT

2016-2017 SCHOOL YEAR CALENDAR



PARENT KEY

- A Track
- B Track
- C Track
- D Track
- Modified Trad.
- Traditional
- = Holiday
- = Minimum Day
- R = Report Card
- C = K-6 Conference
- r = K-6 Report Card Prep Day
- R* = K-12 Report Cards

Year-round Holidays and Highlights

July 4, Independence Day
July 14, First day of school, Tracks B, C, D
Aug. 8, First day of school, Track A
Sept. 5, Labor Day
Nov. 11, Veteran's Day
Nov. 21-25, Thanksgiving Break
Dec. 21 - Jan. 2, Winter Break
Jan. 16, Martin Luther King, Jr. Day
Feb. 13, Lincoln's Birthday
Feb. 20, Washington's Birthday
May 24, Last day of school, Track D
May 29, Memorial Day
June 23, Last day of school, Tracks A, B, C
*observed

Modified and Traditional Holidays and Highlights

July 4, Independence Day
Aug. 10, Mod. Trad. First day of school
Aug. 11, Trad. First day of school
Sept. 5, Labor Day
Nov. 11, Veteran's Day
Nov. 21-25, Thanksgiving Break
Winter Break - see reverse side
Jan. 16, Martin Luther King, Jr. Day
Feb. 13, Lincoln's Birthday
Feb. 20, Washington's Birthday
April 10-14, Spring Break, Traditional
May 29, Memorial Day
May 26, Last day of school - Trad.
June 9, Last day of school - Modified

STAFF KEY

- = Preservice Day
- = Professional Learning Day
- = Full work day
- = Half work day

NOTE: Schools on a block schedule may have different days for report cards and minimum days

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **United Educators of San Francisco, et al. v. CUIAB**
No.: **S235903**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 5, 2016, I served the attached:

1. **California Unemployment Insurance Appeals Board's Opening Brief on the Merits**
2. **Motion for Judicial Notice**

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

John R. Yeh
Burke Williams & Sorenson, LLP
1503 Grant Road, Suite 200
Mountain View, CA 94040-3270

Stewart Weinberg
Weinberg, Roger & Rosenfeld
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 5, 2016, at San Francisco, California.

Anh Ho
Declarant

Signature

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41650393.doc