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UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976 (H.R. 10210)

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RUSSELL B. LONG, *Chairman*

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[1] Based on maximum duration of benefits (26 weeks in most States for regular program). Persons with less substantial work history may qualify for shorter durations.

[2] Repayable loans from general revenues are available to cover shortages in these accounts.

I. Description of the Present Unemployment Insurance Program

Unemployment insurance is a Federal-State system designed to provide temporary wage loss compensation to workers as protection against the economic hazards of unemployment. Funds accumulated from payroll taxes permit payment of benefits to unemployed insured workers.

THE STATUTES

The unemployment insurance system in this country is the product of Federal and State legislation. About 87 percent of wage and salary workers are covered by the Federal-State system established by the Social Security Act. The Federal taxing provisions are in the Federal Unemployment Tax Act, chapter 23 of the Internal Revenue Code (FUTA). Railroad workers are covered by a separate Federal program. Veterans with recent service in the Armed Forces and civilian Federal employees are covered by a Federal program, chapter 85, title 5, United States Code, with the States paying benefits as agents of the Federal Government.

The Federal provisions in the Social Security Act and the Federal Unemployment Tax Act establish the framework of the system. If a State law meets minimum Federal requirements, (1) employers receive a 2.7-percent credit against the 3.2-percent Federal payroll tax, and (2) the State is entitled to Federal grants to cover all the necessary costs of administering the program.

Section 3304 of the Internal Revenue Code of 1954 provides that the Secretary of Labor shall approve a State law if under the State law:

(1) Compensation is paid through public employment offices or other approved agencies;

(2) All of the funds collected under the State program are deposited in the Federal Unemployment Trust Fund (title IX of the Social Security Act prescribes the distribution of the tax among the various accounts of the trust fund);

(3) All of the money withdrawn from the unemployment fund is used to pay unemployment compensation or to refund amounts erroneously paid into the Fund;

(4) Compensation is not denied to anyone who refuses to accept work because the job is vacant as the direct result of a labor dispute, or because the wages, hours or conditions of work are substandard, or if as a condition of employment, the individual would have to join a company union or resign from or refrain from joining a labor union;

(5) Compensation is paid to employees of FUTA tax-exempt nonprofit organizations who employ 4 or more workers in each of 20 weeks of the calendar year and of State hospitals and institutions of higher education (with specific limitations on benefit entitlement for teachers, researchers, and administrators in institutions of higher education);

(6) Compensation is not payable in 2 successive benefit years to an individual who has not worked in covered employment after the beginning of the first benefit year;

(7) Compensation is not denied to anyone solely because he is taking part in an approved training program;

(8) Compensation is not denied or reduced because an individual's claim for benefits was filed in another State or Canada:

(9) The only reasons for cancellation of wage credits or total benefit rights are discharge for work-connected misconduct, fraud or receipt of disqualifying income;

(10) Extended compensation is payable under the provisions of the Extended Unemployment Compensation Act of 1970;

(11) The State participates in arrangements for combining wages earned in more than one State for eligibility and benefit purposes:

(12) Each political subdivision of the State may elect to cover employees (not otherwise covered under State law) of hospitals and institutions of higher education operated by the subdivision;

(13) Reduced rates are permitted employers only on the basis of their experience with respect to unemployment; and

(14) Nonprofit organizations are permitted to finance benefit costs by the reimbursement method.

An employer is subject to the Federal unemployment tax if, during the current or preceding calendar year, he employed one or more individuals in each of at least 20 calendar weeks or if he paid wages of $1,500 or more during any calendar quarter of either such year.

Taxable wages are defined as all remuneration from employment in cash or in kind with certain exceptions. The exceptions include earnings in excess of $4,200 in a year, payments related to retirement, disability, hospital insurance, et cetera.

Employment is defined as service performed within the United States, on or in connection with an American vessel or aircraft, and service performed outside the United States for an American employer. This service, however, is subject to a long list of exceptions which generally coincide with the provision of law relating to the definition of employment for purposes of the old-age, survivors and disability insurance program (title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954). Major exceptions are agricultural and domestic employment and most employment for State and local governments.

Title III of the Social Security Act provides for payments from the Federal unemployment fund to the States to meet the necessary cost of administering the unemployment compensation programs in the States and the costs of operating their public employment offices. Under this title, the grants are restricted to those States that have been certified by the Secretary of Labor as providing:

(1) Methods of administration (including a State merit system) which will insure full payment of unemployment compensation when due;

(2) Unemployment compensation payment through public employment offices or through other approved agencies;

(3) For fair hearings to individuals whose claims for unemployment compensation have been denied;

(4) For the payment of all funds collected to the Federal Unemployment Trust Fund:

(5) That all of the money withdrawn from the fund will be used either to pay unemployment compensation benefits, exclusive of administrative expenses or to refund amounts erroneously paid into the fund; except that, if the State law provides for the collection of employee payments, amounts equal to such collections may be used to provide disability payments;

(6) For making the reports required by the Secretary of Labor;

(7) For providing information to Federal agencies administering public work programs or assistance through public employment:

(8) For limiting expenditures to the purposes and amounts found necessary by the Secretary of Labor: and

(9) For repayment of any funds the Secretary of Labor determines were not spent for unemployment compensation purposes or exceeded the amounts necessary for proper administration of the State unemployment compensation law.

FINANCING THE PROGRAM

Under the provisions of the Internal Revenue Code, a tax is levied on covered employers at a current rate of 3.2 percent on wages up to $4,200 a year paid to an employee. The law, however, provides a credit against Federal tax liability of 2.7 percent to employers who pay State taxes under an approved State unemployment compensation program. This credit is allowed regardless of the tax paid to the State by the employer. Because all of the States now have an approved unemployment compensation program, the effective Federal tax is 0.5 percent. This Federal tax is used to pay all of the administrative costs, both State and Federal, associated with the unemployment compensation programs, to provide 50 percent of the benefits paid under the Federal-State Extended Unemployment Compensation Act of 1970, to pay the costs of benefits under the Emergency Unemployment Compensation Act of 1974, and to maintain a loan fund from which an individual State may borrow (title XII of the Social Security Act) whenever it lacks funds to pay the unemployment compensation benefits due for a month. In order to assure that a State will repay any loans it secures from the fund, the law provides that when a State has an outstanding loan balance on January 1 for 2 consecutive years, the full amount of the loan must be repaid by November 10 of the second year or the Federal tax on employers in that State will be increased for that year and further increased for each subsequent year that the loan has not been repaid. Under a provision of Public Law 94-45 a 3-year (1975, 1976, and 1977) suspension of the increases in tax rates is permitted for a State which the Secretary finds has taken appropriate steps (a) to restore the fiscal soundness of its program and (b) to provide for repayment of outstanding loans within a reasonable period of time.

All States levy taxes on employers within the State. Three States (Alabama, Alaska, and New Jersey) also collect contributions from employees. These taxes are deposited by the State to its account in the unemployment trust fund in the Federal Treasury, and withdrawn as needed to pay benefits. On December 31, 1975, the total reserve of the

37 States which had not exhausted their reserves was $4.4 billion. The other 15 States were supplementing their State unemployment tax collections with loans from the Federal account in order to meet benefit payments. As of August 15, 1976, the number of States exhausting their reserves had increased to 21, which at that time had borrowed $3.1 billion.

Standard rates

The standard rate of contribution under all but eight State laws is 2.7 percent. In New Jersey, the standard rate is 2.8 percent; Hawaii, Ohio, and Nevada, 3; and Montana, 3.1. In Nevada the 3 percent rate applies only to unrated employers. In Idaho the standard rate is 2.1 percent if the ratio of the unemployment fund to the total payroll for the fiscal year is 4.75 percent or more; when the ratio falls below this point, the standard rate varies between 2.3 and 3.3 percent. Kansas has no standard contribution rate, although employers not eligible for an experience rate, and not considered as newly covered, pay at the maximum rate.

Federal requirements for experience rating

The Federal law initially allowed employers additional credit for a lowered rate of contribution if the rates were based on not less than 3 years of "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk." In 1954 the 3-year requirement was relaxed and States were permitted to assign a reduced rate, based on their "experience," to new and newly covered employers who had at least 1 year of experience immediately preceding the computation date. Since 1970, States may also grant reduced rates (but not less than 1 percent) for newly covered employers.

State requirements for experience rating

All State laws, except Puerto Rico, provide for a system of experience rating by which individual employers' contribution rates are varied from the standard rate on the basis of their experience with the amount of unemployment encountered by their employees.

In most States 3 years of experience with unemployment means more than 3 years of coverage and contribution experience. Factors affecting the time required to become a "qualified" employer include (1) the coverage provisions of the State law ("at any time" vs. 20 weeks); (2) in States using benefits or benefit derivatives in the experience-rating formula, the type of base period and benefit year and the lag between these two periods, which determine how soon a new employer may be charged for benefits; (3) the type of formula used for rate determinations; (4) the length of the period between the date as of which rate computations are made and the effective date for rates.

Taxable wage base

Twenty-two States have adopted a higher tax base than the $4,200 now provided in the Federal Unemployment Tax Act. In all States an employer pays a tax on wages paid to each worker within a calendar year up to the amount specified in State law. In addition, most of the States provide an automatic adjustment of the wage base if the Federal law is amended to apply to a higher wage base than specified under State law.

As a result of the many variables in State taxable wage base and tax rates, benefit formulas and economic conditions, actual tax rates vary greatly among the States and between individual employers within a State. In 1976 the estimated average tax rate for all the States was 2.5 percent of taxable wages, ranging from a high of 4.7 percent in Massachusetts to a low of 0.6 percent in Texas, both on a taxable wage base of $4,200. Tax rates as a percentage of total wages ranged from a high of 3 percent in Puerto Rico to 0.3 percent in Texas. The national average tax rate, as a percentage of total wages was 1.2 percent.

COVERAGE

The Federal Unemployment Tax Act applies to employers who employ one or more employees in covered employment in at least 20 weeks in the current or preceding calendar year or who pay wages of $1,500 or more during any calendar quarter of the current or preceding calendar year. State legislatures tend to cover employers or employment subject to the Federal tax because, while there is no compulsion to do so, failure to do so is of no advantage to the State and a disadvantage to the employers involved. While States generally cover all employment which is subject to the Federal tax, they also cover some employment which is exempt from the tax.

Although the extent of State coverage is greatly influenced by the Federal statute, each State is, with a single exception, free to determine the employers who are liable for contributions and the workers who accrue rights under the laws. The sole exception is the Federal requirement that States provide coverage for employees of nonprofit organizations and of State hospitals and institutions of higher learning even though such employment is exempt from FUTA. Coverage is generally defined in terms of (a) the size of the employing unit's payroll or the number of days or weeks worked during a calendar year, (b) the employment relationship between the workers and the employer, and (c) the place where the worker is employed. Coverage under the laws is limited by exclusion of certain types of employment. In most States, however, coverage can be extended to excluded workers under provisions which permit voluntary election of coverage by employers.

Thirty-one States have adopted the Federal definition of employer: that is, a quarterly payroll of $1,500 in the calendar year or preceding calendar year or one worker in 20 weeks. Eight States provide the broadest possible coverage by including all employers who have any covered service in their employ. The other States have requirements of less than 20 weeks or payrolls other than $1,500 in a calendar quarter.

EXCLUSIONS FROM COVERAGE

The following types of employment are generally exempt from coverage under FUTA, although certain States have provided coverage for some of the excluded services.

(1) *Agriculture labor.*—State laws generally exclude agricultural labor from coverage, except in five States.

(2) *Domestic service.*—Four States cover personal or domestic service in private homes, college clubs, or fraternities. The remaining

States exclude domestic service in private homes and most of them exclude college clubs, fraternities, and sororities.

(3) *Service for relatives.*—All States exclude service for an employer by his spouse or minor child and, except in New York, service of an individual in the employ of his son or daughter.

(4) *Exempt nonprofit organizations, State hospitals, and institutions of higher education.*—Although the 1970 amendments provided coverage of certain services performed for nonprofit organizations and for State hospitals and institutions of higher education, the amendments permit the States to exclude certain services from State coverage. Services performed for a church, convention, or association of churches, or an organization operated primarily for religious purposes may be exempt. Also the State may exempt services performed by a duly ordained, commissioned, or licensed minister or a member of a religious order; in the employ of a school which is not an institution of higher education; by the beneficiaries of the program in a facility conducting a program of rehabilitation for persons whose earning capacity is impaired or in a Government sponsored work-relief or work-training program; or by inmates of correctional institutions employed in a hospital connected with the institution.

(5) *Service of students and spouses of students.*—Prior to the 1970 amendments, service in the employ of a school, college or university by a student enrolled and regularly attending classes at such school was excluded from the FUTA definition of employment. The 1970 amendments retained this exclusion and also excluded service performed after December 31, 1969, by a student's spouse for the school, college or university at which the student is enrolled and regularly attending classes, provided the spouse's employment is under a program designed to give financial assistance to the student, and the spouse is advised that the employment is under such student-assistance program and is not covered by any program for unemployment insurance. Also excluded after December 31, 1969, is service performed for an employer other than a school, college, or university by a full-time student under the age of 22 in a work-study program provided that the service is an integral part of an educational program.

(6) *Service of patients for hospitals.*—The 1970 amendments excluded from the FUTA definition of employment service performed for a hospital after December 31, 1969, by patients of the hospital. Such service may be excluded from coverage under the State law whether it is performed for a hospital which is operated for profit or for a State hospital which must be covered under the State law.

(7) *Service for Federal instrumentalities.*—An amendment to the FUTA, effective with respect to services performed after 1961, permits States to cover Federal instrumentalities which are neither wholly nor partially owned by the United States, nor exempt from the tax imposed under section 3301 of the Internal Revenue Code by virtue of any other provision of law which specifically refers to such section of the Code in granting such exemptions. All States except New Jersey have provisions in their laws that permit the coverage of service performed for such wholly privately owned Federal instrumentalities.

(8) *Service for State and local governments.*—Although the Federal act requires that certain service for State hospitals and State in-

stitutions of higher education be covered under the State law, it continues to exclude from coverage other service performed for State and local governments or their instrumentalities.

All States cover at least those categories of workers required to be covered under the Federal law and most States provide some form of coverage for other State and local government workers. About one-half of the States provide mandatory coverage for all State employees, and permit election of coverage by municipal corporations or other local government subdivisions. Several States, in addition to covering their own government workers, also provide mandatory coverage for special groups of workers employed by their instrumentalities or political subdivisions.

(*9*) *Maritime workers.*—The FUTA and most State laws initially excluded maritime workers, principally because it was thought that the Constitution prevented the States from covering such workers. Supreme Court decisions in *Standard Dredging Corporation* v. *Murphy* and *International Elevator Company* v. *Murphy*, 319 U.S. 306 (1943), were interpreted to the effect that there is no such bar. In 1946 the FUTA was amended to permit any State from which the operations of an American vessel operating on navigable waters within and without the United States are ordinarily regularly supervised, managed, directed, and controlled, to require contributions to its unemployment fund under its State unemployment compensation law. Most States now have such coverage.

(*10*) *Coverage of service by reason of Federal coverage.*—Most States have a provision that any service covered by the FUTA is employment under the State law. This provision would permit immediate coverage of excluded workers if the Federal act were amended to make their employment subject to the Federal tax. Many States have added another provision that automatically covers any service which the Federal law requires to be covered.

(*11*) *Voluntary coverage of excluded employments.*—In all States except Alabama, Massachusetts, and New York, employers, with the approval of the State agency, may elect to cover most types of employment which are exempt under their laws. The Massachusetts law, however, does permit services for nonprofit organizations to be covered on an elective basis and the New York law permits employers to elect coverage of agricultural workers under certain conditions.

(*12*) *Self-employment.*—Employment, for purposes of unemployment insurance coverage, is employment of workers who work for others for wages; it does not include self-employment. One exception has been incorporated in the California law. An employer of covered workers in a nonseasonal industry may apply for coverage of his own services: if his election is approved, his wages for purposes of contributions and benefits are deemed to be $2,748 a quarter, and his contribution rate is fixed at 1.25 percent of wages.

BENEFIT RIGHTS

There are no Federal standards for benefits, qualifying requirements, benefit amounts, or duration of regular benefits. Hence there is no common pattern of benefit provisions comparable to that in cover-

age and financing. The States have developed diverse and complex formulas for determining workers' benefit rights.

Under all State unemployment insurance laws, a worker's benefit rights depend on his experience in covered employment in a past period of time, called the base period. The period during which the weekly rate and the duration of benefits determined for a given worker apply to him is called his benefit year.

The qualifying wage or employment provisions attempt to measure the worker's attachment to the labor force. To qualify for benefits as an insured worker, a claimant must have earned a specified amount of wages or must have worked a certain number of weeks or calendar quarters in covered employment within the base period, or must have met some combination of wage and employment requirements. He must also be free from disqualification for causes which vary among the States. All but a few States require a claimant to serve a waiting period before his unemployment may be compensable.

All States determine an amount payable for a week for total unemployment as defined in the State law. Usually a week of total unemployment is a week in which the claimant performs no work and receives no pay. In a few States, specified small amounts of odd-job earnings are disregarded in determining a week of unemployment. In most States a worker is partially unemployed in a week of less than full-time work when he earns less than his weekly benefit amount. The benefit payment for such a week is the difference between the weekly benefit amount and the part-time earnings, usually with a small allowance as a financial inducement to take part-time work.

The maximum amount of benefits which a claimant may receive in a benefit year is expressed in terms of dollar amounts, usually equal to a specified number of weeks of benefits for total unemployment. A partially unemployed worker may thus draw benefits for a greater number of weeks. In several States all eligible claimants have the same potential weeks of benefits; in the other States, potential duration of benefits varies with the claimant's wages or employment in the base period, up to a specified number of weeks of benefits for total unemployment.

Qualifying wages and employment

All States require that an individual must have earned a specified amount of wages or must have worked for a certain period of time within his base period, or both, to qualify for benefits. The purpose of such qualifying requirements is to restrict benefits to covered workers who are genuinely attached to the labor force.

(*1*) *Multiple of the weekly benefit or high quarter wages.*—Some States express their earnings requirement in terms of a specified multiple of the weekly benefit amount. Such States have a weekly benefit formula based on high-quarter wages. Most of the States with this type of qualifying requirement add a specific requirement of wages in at least two quarters which applies especially to workers with large high-quarter earnings and maximum weekly benefits. Many of the States with a high-quarter formula have an additional requirement of a specified minimum amount of earnings in the high quarter. Such provisions tend to eliminate from benefits part-time and low-paid workers whose average weekly earnings might be less than the State's minimum benefit.

(2) *Flat qualifying amount.*—States with a flat minimum qualifying amount include most States with an annual-wage formula for determining the weekly benefit and some States with a high-quarter wage benefit formula.

In all these States any worker earning the specified amount or more within the base period is entitled to some benefits. Of the States with a flat qualifying amount and a high-quarter formula, about half require wages in more than one quarter to qualify for any benefits. Others do not require any wages in a quarter other than the high quarter to qualify for benefits.

(3) *Weeks of employment.*—More than one-fourth of the States require that an individual must have worked a specified number of weeks with at least a specified weekly wage.

(4) *Requalifying requirements.*—All States that have a lag between the base period and benefit year place limitations on the use of lag-period wages for the purpose of qualifying for benefits in the second benefit year. The purpose of these special provisions is to prevent benefit entitlement in 2 successive benefit years following a single separation from work.

Waiting period

The waiting period is 1 week of total or partial unemployment in which the worker must have been otherwise eligible for benefits. All except 10 States require a waiting period of 1 week of total unemployment before benefits are payable.

Benefit eligiblity and disqualification

All State laws provide that, to receive benefits, a claimant must be able to work, must be seeking work and must be available for work. Also he must be free from disqualification for such acts as voluntary leaving without good cause, discharge for misconduct connected with the work, and refusal of suitable work. The purpose of these provisions is to limit payments to workers unemployed primarily as a result of economic causes.

In all States, claimants who are held ineligible for benefits because of inability to work, unavailability for work, refusal of suitable work, or disqualification, are entitled to a notice of determination and an appeal from the determination.

Benefit computation

(1) *Weekly benefit amount.*—All States except New York measure unemployment in terms of weeks. The majority of States determine eligibility for unemployment benefits on the basis of the calendar week (Sunday through the following Saturday); the rest pay benefits on the basis of a flexible week, which is a period of 7 consecutive days beginning with the first day for which the claimant becomes eligible for the payment of unemployment benefits. In New York, unemployment is measured in days and benefits are paid for each accumulation of "effective days" within a week.

(2) *Formulas for computing weekly benefits.*—Under all State laws a weekly benefit amount, that is, the amount payable for a week of total unemployment, varies with the worker's past wages within certain minimum and maximum limits. The period of past wages used

and the formulas for computing benefits from these past wages vary greatly among the States. In most of the States the formula is designed to compensate for a fraction of the full-time weekly wage; i.e., for a fraction of wage loss, within the limits of minimum and maximum benefit amounts. Several States provide additional allowances for certain types of dependents. Most of the States use a formula which bases benefits on wages in that quarter of the base period in which wages were highest. This calendar quarter has been selected as the period which most nearly reflects full-time work. A worker's weekly benefit rate, intended to represent a certain proportion of average weekly wages in the higher quarter, is computed directly from these wages. In 13 States the fraction of high-quarter wages is 1/26. Between the minimum and maximum benefit amounts, this fraction gives workers with 13 full weeks of employment in the high quarter 50 percent of their full-time wages. Some States provide a variable fraction of wages which gives a higher percentage to lower-paid workers than to those with higher earnings levels.

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WEEKLY STATE UNEMPLOYMENT COMPENSATION BENEFITS FOR TOTAL UNEMPLOYMENT

State	Weekly benefit amount [1]			Required total earnings in base year [2]		Minimum work in base year (weeks) [3]
	Minimum	Maximum	Average (calendar year 1975)	For minimum benefit	For maximum benefit	
Alabama	$15	$90	$61	$522	$3,491	20
Alaska	[1] 23	[1] 120	74	750	8,500	20
Arizona	15	[4] 85	69	562	2,906	20
Arkansas	15	100	59	450	3,169	20
California	30	104	68	750	3,308	
Colorado	25	114	81	750	3,420	
Connecticut	[1] 20	[1] 165	76	600	4,400	2Q
Delaware	20	125	73	720	4,500	
District of Columbia	[1] 14	139	93	450	4,761	2Q
Florida	10	82	62	400	3,240	20
Georgia	27	[4] 90	61	972	3,240	20
Hawaii	5	112	78	150	3,360	14
Idaho	17	99	65	520	3,185	20
Illinois	15	[1] 135	78	1,000	3,168	20
Indiana	35	115	64	500	2,850	20
Iowa	10	116	74	600	2,410	20
Kansas	25	101	65	750	3,030	20
Kentucky	12	87	64	344	2,736	20
Louisiana	10	90	62	300	2,700	
Maine	17	119	57	900	1,977	2Q
Maryland	[1] 13	89	73	360	3,168	2Q
Massachusetts	[1] 20	[1] 152	73	1,200	3,926	
Michigan	[1] 18	[1] 136	81	350	3,150	14
Minnesota	18	113	69	648	4,050	18
Mississippi	10	80	48	360	2,880	2Q
Missouri	15	85	66	450	2,550	20
Montana	12	94	58	455	3,653	20
Nebraska	12	80	65	600	2,100	20
Nevada	16	94	71	528	3,488	
New Hampshire	14	95	61	600	7,800	2Q
New Jersey	20	96	76	600	2,850	20
New Mexico	16	78	55	501	2,503	20
New York	20	95	73	600	3,780	20
North Carolina	15	105	59	565	4,076	20
North Dakota	15	107	61	600	4,280	20

See footnotes at end of table.

WEEKLY STATE UNEMPLOYMENT COMPENSATION BENEFITS FOR TOTAL UNEMPLOYMENT—Continued

State	Weekly benefit amount[1]			Required total earnings in base year[2]		Minimum work in base year (weeks)[3]
	Minimum	Maximum	Average (calendar year 1975)	For minimum benefit	For maximum benefit	
Ohio	[1] $16	[1] $150	$79	$400	$5,960	20
Oklahoma	16	93	56	500	3,588	20
Oregon	28	102	66	700	8,120	18
Pennsylvania	[1] 18	[1] 133	81	440	4,920	20
Rhode Island	[1] 31	120	68	920	3,620	20
South Carolina	10	103	62	300	3,978	20
South Dakota	19	89	59	590	2,826	20
Tennessee	14	85	57	504	3,060	20
Texas	15	63	54	500	2,325	20
Utah	10	110	69	700	2,954	19
Vermont	15	96	67	600	3,820	20
Virginia	20	103	66	720	3,708	20
Washington	17	102	71	1,550	2,619	[4] 16
West Virginia	14	128	59	700	13,250	
Wisconsin	23	122	80	748	4,114	17
Wyoming	10	95	64	800	2,350	20
Puerto Rico	7	60	40	150	1,800	20

[1] Amounts include dependents' allowances in 11 States which provide such allowances (in the case of minimum benefits the table assumes 1 dependent). For a worker with no dependents, the maximum weekly benefits in these States are: Alaska: $90; Connecticut: $110; Illinois: $106; Indiana: $69; Massachusetts: $101; Michigan: $97; Ohio: $95; Pennsylvania: $125; and Rhode Island: $100.

[2] In some States larger total earnings may be required in order for the benefits to be paid for the maximum number of weeks. See table 3.

[3] Number of weeks of work in base year required to qualify for minimum benefits. "2Q" denotes that State directly or indirectly requires work in at least 2 quarters of the base year.

[4] Alternative requirement is 600 hours of employment.

Note: Data in table correct as of August 1976.

Duration of benefits

(*1*) *Uniform duration of benefits.*—Nine State laws have uniform duration and allow potential benefits equal to the same multiple of the weekly benefit amount (20 weeks in Puerto Rico, 30 weeks in Pennsylvania, and 26 weeks in the other seven States) to all claimants who meet the qualifying-wage requirement.

(2) *Formulas for variable duration.*—The other State laws provide a maximum potential duration of benefits in a benefit year equal to a multiple of the weekly benefit (26 to 39 weeks of benefits for total unemployment), but have another limitation on annual benefits. For example, benefits payable may be limited to a specified percentage of total base-period earnings or the limit may be based on the number of weeks worked in the base period.

(3) *Minimum weeks of benefits.*—In four States with variable duration and a high-quarter benefit formula, a minimum number of weeks duration (10 to 15) is specified in the law. In other States the minimum potential annual benefits result from the minimum qualifying wages and the duration fraction or from a schedule.

(4) *Maximum weeks of benefits.*—Maximum weeks of benefits vary from 20 to 39 weeks, most frequently 26 weeks.

In two States, duration may be extended for those claimants who are taking training to increase their employment opportunities, in each case for up to an additional 18 weeks. In another State, benefits under the State's extended benefits program may be paid to claimants during periods of retraining.

DURATION (IN WEEKS) OF REGULAR UNEMPLOYMENT BENEFITS[1]

State	Minimum potential duration	Maximum potential duration	Earnings in base year required for maximum benefits[2]
Alabama	11	26	$7,019
Alaska	14	28	8,500
Arizona	12	26	6,629
Arkansas	10	26	7,797
California	12	26	5,406
Colorado	7	26	11,752
Connecticut	26	26	3,813
Delaware	17	26	6,498
District of Columbia	17	34	9,452
Florida	10	26	8,425
Georgia	9	26	9,358
Hawaii	26	26	3,360
Idaho	10	26	8,281
Illinois	26	26	3,012
Indiana	4	26	7,176
Iowa	10	39	9,048
Kansas	10	26	7,875
Kentucky	15	26	6,785
Louisiana	12	28	6,298
Maine	11	26	6,161

See footnotes at end of table.

DURATION (IN WEEKS) OF REGULAR UNEMPLOYMENT BENEFITS [1]—Continued

State	Minimum potential duration	Maximum potential duration	Earnings in base year required for mimauxm benefits [2]
Maryland	26	26	$3,168
Massachusetts	9	30	8,414
Michigan	11	26	5,600
Minnesota	13	26	8,325
Mississippi	12	26	6,237
Missouri	8	26	6,630
Montana	13	26	3,653
Nebraska	17	26	6,180
Nevada	11	26	7,329
New Hampshire	26	26	7,800
New Jersey	15	26	4,988
New Mexico	18	30	3,898
New York	26	26	3,780
North Carolina	13	26	8,190
North Dakota	18	26	7,490
Ohio	20	26	4,888
Oklahoma	10	26	7,251
Oregon	9	26	8,120
Pennsylvania	30	30	4,920
Rhode Island	12	26	7,602
South Carolina	10	26	8,031
South Dakota	10	26	6,939
Tennessee	12	26	6,629
Texas	9	26	6,063
Utah	10	36	9,352
Vermont	26	26	3,820
Virginia	12	26	8,034
Washington	8	30	9,179
West Virginia	26	26	13,250
Wisconsin	1	34	10,406
Wyoming	11	26	7,917
Puerto Rico	20	20	1,800

[1] Based on benefits for total unemployment. Amounts payable can be stretched out over a longer period in the case of partial unemployment.

[2] Based on maximum weekly benefit amount paid for maximum number of weeks.

Note: Data in table correct as of August 1976.

II. Federal-State Extended Unemployment Compensation Act of 1970

The Employment Security Amendments of 1970 (Public Law 91–373) established a permanent program to pay extended benefits during periods of high unemployment to workers who exhaust their basic entitlement to regular State unemployment compensation. As a condition of Federal approval of the State's unemployment insurance program, States were required to establish the new program by January 1, 1972, and all States have done so. The Federal Government and the States each pay 50 percent of the cost of benefits under this program.

These extended benefits are paid to workers only during an "extended benefit" period. Such a period can exist either on a national or State basis by the triggering of either the national or the State "on" indicator.

National "on" indicator.—There is a national "on" indicator when the seasonally adjusted rate of insured unemployment for the whole Nation equals or exceeds 4.5 percent in each of the 3 most recent calendar months.

State "on" indicator.—There is a State "on" indicator when the rate of insured unemployment for the State is at least 4 percent but only if it equals or exceeds, during a moving 13-week period, 120 percent of the average rate for the corresponding 13-week period in the preceding 2 calendar years.

Temporary provisions.—The permanent law provisions governing the State and national "on" and "off" indicators have been suspended frequently. Under the terms of the current temporary provisions, States may elect (until December 31, 1976) to have the national indicators based on an insured unemployment rate of 4 percent rather than 4.5 percent. Also, until March 31, 1977, each State may elect to base its indicator solely on the 4 percent insured unemployment rate factor without regard to whether the rate is 20 percent higher than the corresponding rate in the 2 prior years. As a practical matter, the national rate is expected to remain above the permanent law national indicator rate of 4.5 percent through the end of 1977.

Extended benefit period.—An extended benefit period in a State begins after there is either a State or national "on" indicator, and continues, until the trigger conditions are no longer met, but the minimum period is 13 weeks.

Benefits.—During either a national or State extended benefit period, the State is required to provide each eligible claimant with extended compensation at the individual's regular weekly benefit amount. Benefits under the Federal-State program are limited to not more than 13 weeks per individual.

III. Emergency Unemployment Compensation Act of 1974

Public Law 93–572 (the Emergency Unemployment Compensation Act of 1974) created a new temporary emergency unemployment compensation program. As modified by subsequent legislation, this program provides a third tier of protection for workers in States with

high unemployment levels who exhaust their benefits under the regular State program and the Federal-State Extended Unemployment Compensation Act.

Compensation under the program is payable in a State having an agreement with the Secretary and experiencing the required unemployment levels, for weeks of unemployment beginning after 1974. Once triggered, the period during which emergency compensation can be paid in the State will remain in effect for at least 26 weeks, but no benefits are payable after March 31, 1977. The cost of the emergency benefits payments will be met by repayable advances from Federal general revenues to the extended unemployment compensation account in the Federal Unemployment Trust Fund.

To be eligible for compensation under the Emergency Unemployment Compensation Act, an individual must have exhausted all rights to regular unemployment insurance benefits and to extended benefits. In States with an insured unemployment rate of 6 percent or more an eligible individual is entitled potentially to emergency benefits for up to the number of weeks of his total regular benefit entitlement, but not more than 26 weeks. In States with an insured unemployment rate of less than 6 percent, emergency benefit entitlement is limited to one-half of regular program entitlement, a maximum of 13 weeks. The program terminates (subject to the 26-week minimum duration) when the State insured unemployment rate falls below 5 percent. The weekly benefit amount is the same as for State regular and Federal-State extended compensation.

If an individual is drawing benefits when the insured unemployment rate drops below 6 percent, or below 5 percent, and the changes would affect his entitlement, a special provision assures that he will receive at least 13 weeks of additional benefits unless his entitlement would have ended sooner even if the rate had not declined.

An individual who applies for benefits under the Emergency Unemployment Compensation Act of 1974 is required as a condition of eligibility to be either participating in or to have applied for a job-training program, if the Secretary of Labor has determined that the individual's occupational skills need upgrading or broadening.

The emergency unemployment compensation program goes into effect in a State only when extended unemployment benefits are also payable in the State. However, the extended program is currently "triggered on" in all States since the mandatory national "on" indicator of 4.5 percent has been exceeded, and this situation is expected to continue well beyond the March 31, 1977, expiration date of the emergency benefits program.

STATE INSURED UNEMPLOYMENT RATES FOR EXTENDED/ EMERGENCY BENEFITS

Below 5 percent (regular and extended benefits only, 39 week maximum)	5 to 5.9 percent (emergency benefits up to 52d week)	6 percent and over (emergency benefits up to 65th week)
Colorado	Alabama	Alaska
Delaware [1]	Arizona	California
District of Columbia	Arkansas	Connecticut
Florida [1]	Montana	Hawaii
Georgia [1]	Oregon	Illinois
Idaho [1]		Maine
Indiana		Massachusetts
Iowa [1]		Michigan
Kansas		Nevada
Kentucky [1]		New Jersey
Louisiana		New York
Maryland [1]		Pennsylvania
Minnesota [1]		Puerto Rico
Mississippi		Rhode Island
Missouri [1]		Vermont
Montana [1]		Washington
Nebraska		
New Hampshire		
New Mexico [1]		
North Carolina [1]		
North Dakota [1]		
Ohio		
Oklahoma		
South Carolina [1]		
South Dakota		
Tennessee [1]		
Texas		
Utah [1]		
Virginia		
West Virginia [1]		
Wisconsin [1]		
Wyoming		

[1] Some emergency benefits currently payable in State because of 26 week minimum duration of emergency benefit period and/or provisions assuring individuals additional benefits when rates decline during their entitlement.

Note: Situation as of August 30, 1976 based on insured unemployment rates as of August 14, 1976.

IV. Special Unemployment Assistance

A special, temporary, general fund program originated by the Committee on Labor and Public Welfare provides benefits comparable in amount to unemployment compensation benefits to individuals who are not eligible for regular unemployment benefits but who would have been eligible if their prior employment had been covered under the regular program. This program was enacted in 1974 and is scheduled to expire at the end of 1976. Many of the beneficiaries of this special assistance program qualify under it on the basis of employment which would be covered under the regular unemployment compensation program starting in 1978 under H.R. 10210.

B. Unemployment Compensation Amendments of 1976 (H.R. 10210)
Description of the House-Passed Bill

H.R. 10210 as Passed by the House of Representatives

I. Summary of Major Provisions

H.R. 10210 was passed by the House of Representatives on July 20, 1976. It would require States to extend unemployment compensation protection to certain categories of individuals now covered only at State option 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 which are summarized below and are described in detail in succeeding parts of this document.

A. Coverage Provisions

Farm workers.—The bill would, in effect, require 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. Aliens who are admitted to the United States on a temporary basis to perform contract agricultural labor under the provisions of the Immigration and Nationality Act would not be covered until January 1, 1980. When farm labor is supplied by a crew leader, the farm operator would be treated as the employer unless (1) the crew leader is registered under the Farm Labor Contractor Registration Act, or (2) the crew operates or maintains tractors, harvesting equipment, crop-dusting equipment, or similar mechanized equipment.

The States would not be required to provide the new coverage until January 1, 1978. However, if a State should provide the required new coverage at an earlier date, the cost of any unemployment compensation benefits paid after January 1, 1978, on the basis of the earlier coverage would be paid with Federal funds from general revenues.

The Department of Labor estimates that $220 million in additional unemployment compensation would be paid in fiscal 1979 under this provision.

Household workers.—The bill would, in effect, require 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 States would not be required to provide the extended coverage until January 1, 1978. However, if a State provided the required new coverage at an earlier date, the cost of any unemployment compensation payments after January 1, 1978, resulting from the earlier coverage would be paid with Federal funds from general revenues.

The Department of Labor estimates that $180 million in additional benefits would be paid in fiscal 1979 under this provision.

Employees of State and local governments.—The bill would require the States to provide unemployment compensation coverage to all employees of State and local governments. Exceptions, however, would be allowed for:

(1) Elected officials or officials appointed for a specific term or on a part-time basis;

(2) Members of a legislative body or the judiciary;

(3) Members of the State National Guard or Air National Guard;

(4) Emergency employees hired in case of disaster; and

(5) Inmates in custodial or penal institutions.

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 State laws would be required to contain a provision prohibiting the payment of benefits to teachers and professional employees of schools during vacation periods and until 1980 would be allowed to provide a similar prohibition for nonprofessional employees of schools. 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 $210 million in additional unemployment compensation would be paid in fiscal 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 to school employees mentioned in connection with employees of State and local governments would 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 ending with the earlier of (1) December 31, 1982, or (2) the end

of the year in which all of the advances to the extended unemployment compensation account have been repaid.

The Department of Labor estimates that enactment of this provision would result in $0.8 billion of additional Federal taxes being paid in fiscal 1979.

Federal reimbursements to the States.—The bill would make two 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 Department of Labor estimates that enactment of these provisions would reduce Federal payments to the States by $8 million for fiscal 1979.

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.

CETA employees.—The bill would authorize 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 provision would be effective October 1976.

The Department of Labor estimates that enactment of this provision would cost $11 million for 1977.

C. Other Provisions

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

The new triggers would be:

A seasonally adjusted national uninsured 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 perma-

nent basis. This requirement has been suspended throughout most of the period since enactment of the extended benefits program.

Disqualification for pregnancy.—The bill would prevent the States from disqualifying a woman 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 requirement would be effective for years after 1977.

Appeals by Federal employees.—The bill would permit unemployed former employees of the Federal Government to use the unemployment compensation appeals process of the State under whose laws their benefits are determined.

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.

II. Coverage Provisions of H.R. 10210

H.R. 10210 as passed by the House of Representatives 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 House bill, agricultural and domestic work would be covered through the traditional approach of making the Federal unemployment tax applicable to such employment. Employment for State and local governments and employment for nonprofit elementary and secondary schools, however, 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 program. (The credit is equal to 2.7 percent out of the total Federal unemployment tax of 3.2 percent.) States would also lose Federal funding for the costs of administering their unemployment programs.

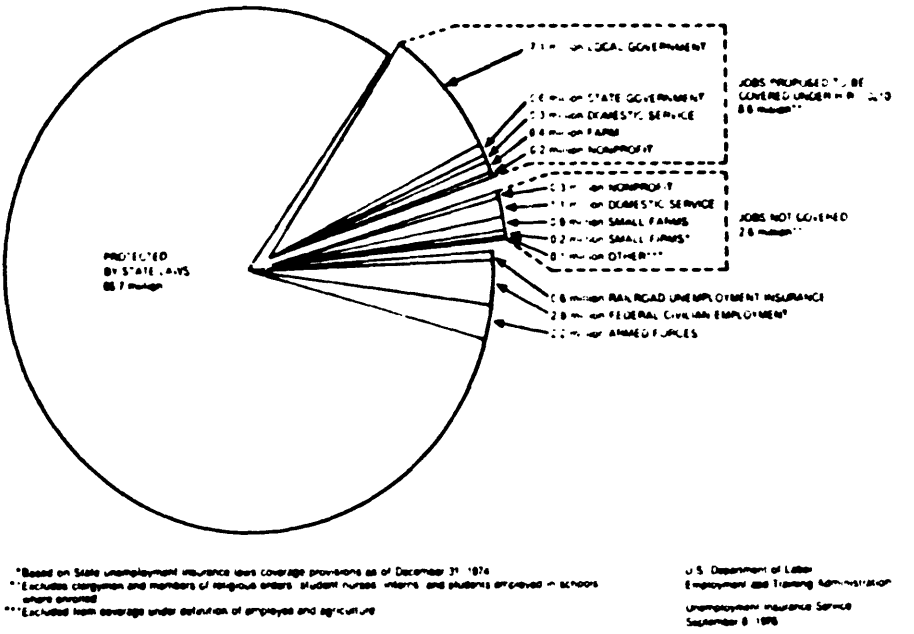
UNEMPLOYMENT COMPENSATION COVERAGE UNDER PRESENT LAW AND H.R. 10210 [1]

	Employment	
	Numbers (in thousands)	Percent of total
Total	83,609	100
Covered under present law	72,385	87
Under State programs	66,700	
Federal employees/military	5,093	
Railroad	592	
Added to coverage under H.R. 10210	8,634	10
Farm workers	380	
State government	600	
Local government	7,100	
Domestics	308	
Nonprofit organizations	242	
Virgin Islands	4	
Remaining uncovered under H.R. 10210	2,590	3
Small firms	200	
Small farms	906	
Domestics	1,060	
Nonprofit organizations	324	
Other	100	

[1] Based on most recent available data (1974) modified to reflect some extensions of coverage since that time, notably, coverage of farm employment in California.

Present and Proposed Unemployment Insurance Coverage of Wage and Salary Employment Under H.R. 10210

CALENDAR YEAR 1974



A. Farm Workers

Although Federal law does not require coverage of agricultural employment under the unemployment compensation program, the laws of four jurisdictions (District of Columbia, Minnesota, Hawaii, and Puerto Rico) provide unemployment compensation for agricultural employment. In addition, California law authorizes coverage for agricultural employment starting January 1, 1976 but the provision has been temporarily suspended until termination of the Special Unemployment Assistance (SUA) program (see above, p. 21) which provides benefits funded from Federal general revenues and which provides benefits on a somewhat different basis from the regular unemployment program.

Comparison of Agricultural Coverage Provisions

Provision	*Definition of employer for coverage purposes*
H.R. 10210	Four or more workers in 20 weeks or payroll of $10,000 in any quarter.
California [1]	One or more workers and payroll of $100 per quarter.
District of Columbia	One or more workers at any time.
Hawaii	Twenty or more workers in 20 weeks.
Minnesota	Four or more workers in 20 weeks.
Puerto Rico	One or more workers at any time.
Title II of Social Security Act	Any farm employer but only with respect to employees who work 20 or more days per year or earn $150 or more annually.

[1] Benefit provisions suspended at present because of Special Unemployment Assistance program.

Definition of employer.—The number of jobs which would be covered if unemployment compensation is extended to agricultural employment depends on the definition of employer. If employer were defined as an individual who hires one or more workers in each of 20 weeks in a year or who pays wages of $1,500 in any calendar quarter about 34 percent of the farm employers and 98 percent of workers would be covered. This is the definition which now applies to nonfarm employment. Under the definition contained in the House bill as it was reported by the Ways and Means Committee—four or more employees in each of 20 weeks in a year or wages of $5,000 or more in any calendar quarter—about 7 percent of the employers and 61 percent of the employees would be covered. A House floor amendment modified the definition in the House bill to four or more workers in each of 20 weeks or wages of $10,000 or more in a calendar quarter. Under this definition, about 6 percent of farm employers and 59 percent of farm employees would be covered.

EXTENT OF AGRICULTURAL COVERAGE UNDER THREE DEFINITIONS OF EMPLOYMENT

	Total farm employment	H.R. 10210	Alternative definitions	
		4 or more workers in 20 weeks or $10,000 in any quarter	4 or more workers in 20 weeks or $5,000 in any quarter [1]	1 or more workers in 20 weeks or $1,500 in any quarter [2]
Agricultural employers: [3]				
Number	986,000	60,700	69,000	332,840
Percent	100	6	7	34
Average employment: [3]				
Number	1,158,900	683,200	710,100	1,134,873
Percent	100	59	61	98

[1] This definition was included in the bill H.R. 10210 as reported by the Ways and Means Committee. The definition now in the bill was substituted by a House floor amendment.

[2] This is the definition of employment now used for non-farm employment.

[3] Estimates as of 1977.

Crew leaders.—A persistent problem in the past in devising proposed coverage for agricultural workers has been how to best insure the payment of contributions and reporting of necessary information for the payment of benefits to eligible farmworkers employed by crew leaders. This problem is particularly difficult with respect to crew leaders who are employers of migratory workers. When this problem was faced some years ago in connection with title II of the Social Security Act, the law was written to specify that the crew leader would be responsible for collecting the employee tax and for paying the employer tax. The high geographic mobility of crew leaders made enforcement difficult. When the Administration sent its 1975 proposal for covering farmworkers under unemployment compensation, it suggested that the farm operator be considered the employer for purposes of paying unemployment compensation taxes. An exception was proposed for mechanical harvesting crews, crop dusters, et cetera, who supply mechanical equipment along with the crews to operate and maintain the equipment, in which case, the "crew leader" would be the employer.

Under the House-passed bill, the crew leader would be considered the employer and thus be responsible for paying the unemployment tax and submitting the required reports if he was involved in providing the service of mechanized equipment—crop dusting, mechanized harvesting, et cetera—or if he was 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—the House bill would generally make the crew leader the employer. The bill provides, however, that the farm operator would be considered as 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.

Noncoverage of aliens.—The House bill would exempt from unemployment compensation coverage certain aliens who are brought into the United States on a temporary basis to work during peak agricultural crop seasons. This exemption from coverage would expire January 1, 1980. The House report indicates that the temporary nature of this provision arises from concern that employers would be encouraged to hire aliens rather than domestic workers because of the alien exemption from the unemployment tax. Under the social security program such aliens are also exempt from the 11.7 percent FICA tax.

Cost of agricultural coverage.—H.R. 10210 would extend coverage under State unemployment compensation programs to 327,000 farm workers who are not now covered. Employment would be covered effective January 1, 1978. If a State elects to pay benefits on the basis of employment prior to that date which is not covered under present law, the cost of benefits paid starting January 1978 on the basis of that employment will be paid from Federal general revenues. (Until July 1, 1978, the bill also provides for Federal payment of the cost of benefits based on employment during the first 6 months of 1978.)

This provision is expected to require Federal general revenue expenditures of $160 million in fiscal year 1978 and $30 million in fiscal year 1979.

ESTIMATED BENEFIT PAYMENTS TO AGRICULTURAL WORKERS RESULTING FROM H.R. 10210

[In millions]

Fiscal year	Total benefits [1]	Amount reimbursed from Federal general revenues [2]
1978	$220	$160
1979	220	30
1980	220	0
1981	220	0

[1] Includes regular and extended benefits.
[2] Under special provision described above where States provide benefits on the basis of employment prior to July 1, 1978.

B. State and Local Government Employees

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, 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. Nine States, Connecticut, Florida, Hawaii, Iowa, Michigan, Minnesota, Montana, Ohio, and Oregon require coverage of both State and local government employment. The House bill would require coverage of all State and local employees. The following tables show the extent of coverage under State law as shown by a 1973 study.

PERCENTAGE OF STATE AND LOCAL GOVERNMENTAL EMPLOYEES COVERED BY STATE UNEMPLOYMENT PROGRAMS (OCTOBER 1973) [1]

	State employees	Local employees
Total	76	22
Alabama	50	1
Alaska	24	6
Arizona	100	6
Arkansas	100	0
California	100	19

See footnotes at end of table.

PERCENTAGE OF STATE AND LOCAL GOVERNMENTAL EMPLOYEES COVERED BY STATE UNEMPLOYMENT PROGRAMS (OCTOBER 1973) [1]—Continued

	State employees	Local employees
Colorado	58	0
Connecticut	100	100
Delaware	100	16
District of Columbia	100	NA
Florida	100	100
Georgia	50	1
Hawaii	100	100
Idaho	100	13
Illinois	100	0
Indiana	50	5
Iowa	100	1
Kansas	43	1
Kentucky	44	0
Louisiana	100	1
Maine	38	0
Maryland	65	1
Massachusetts	56	0
Michigan	100	100
Minnesota	100	100
Mississippi	41	[2]
Missouri	49	0
Montana	100	[2]
Nebraska	100	[2]
Nevada	41	1
New Hampshire	100	3
New Jersey	34	0
New Mexico	39	0
New York	100	3
North Carolina	52	0
North Dakota	42	3
Ohio	100	100
Oklahoma	100	0
Oregon	100	100
Pennsylvania	100	[2]
Rhode Island	100	3
South Carolina	44	0
South Dakota	100	0
Tennessee	48	[2]
Texas	100	[2]
Utah	100	8

See footnotes at end of table.

PERCENTAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES COVERED BY STATE UNEMPLOYMENT PROGRAMS (OCTOBER 1973) [1]—Continued

	State employees	Local employees
Vermont	34	0
Virginia	100	0
Washington	100	5
West Virginia	33	(2)
Wisconsin	100	90
Wyoming	35	5

[1] Where 100 percent coverage is indicated, substantially all employees are covered although some positions (e.g. elected officials) may be excluded.
[2] Less than 0.05 percent.

COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES UNDER PRESENT STATE LAW [1]

State agencies		Local units of government	
Required [3]	Permitted	Required	Permitted
		Alabama [3]	
	Alaska		Alaska
Arizona			Arizona
Arkansas			
California		California [3]	California
Colorado			Colorado
Connecticut		Connecticut	
Delaware			Delaware
	District of Columbia		
Florida		Florida	
Hawaii		Hawaii	
Idaho		Idaho [3]	
Illinois			
		Indiana [3]	
Iowa		Iowa	
			Kansas
	Kentucky		
Louisiana			Louisiana
Maryland [3]	Maryland		Maryland
	Massachusetts [3]		
Michigan		Michigan [3]	
Minnesota		Minnesota	

See footnotes at end of table.

COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES UNDER PRESENT STATE LAW [1]—Continued

State agencies		Local units of government	
Required [2]	Permitted	Required	Permitted
	Missouri		Missouri
Montana		Montana	
Nebraska			Nebraska
	Nevada		Nevada
New Hampshire			New Hampshire
New Jersey [3]			
New York		New York [3]	New York
	North Dakota		North Dakota
Ohio		Ohio	
Oklahoma			
Oregon		Oregon	
Pennsylvania			Pennsylvania [3]
Puerto Rico [3]		Puerto Rico [3]	
Rhode Island			Rhode Island
South Dakota			South Dakota
	Tennessee		Tennessee
Texas			Texas
Utah			Utah
			Vermont
Virginia			Virginia
Washington		Washington [3]	Washington
Wisconsin		Wisconsin [3]	Wisconsin
	Wyoming		Wyoming

[1] Certain positions (e.g. elective officials) may not be covered. In addition, some States not shown as specifically providing for coverage of State or local employment have provisions in State law generally permitting noncovered employers to elect coverage and some State and local employment may be covered under such provisions.

[2] In addition to coverage of employment for State hospitals and institutions of higher education which is provided in all States as required by Federal law.

[3] Limited to certain agencies or localities.

Provisions of House bill.—Under H.R. 10210, 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 0.5 to 3.2 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, members of the legislature or judiciary, officials appointed for specific statutory terms or to part-time positions, 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 would have to 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 House bill would continue to exempt State and local employment from the Federal tax but 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. An opinion prepared for the committee by the Congressional Research Service, however, holds that it is an open question whether those provisions would be found constitutional. Both opinions are printed as an appendix to this document.

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 pro-

gram 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.

Administrative and extended benefit costs.—Under existing law, the Federal accounts in the trust fund provide full payment of the administrative costs of operating State unemployment compensation programs and also pay 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 Federal funding is provided from the Federal unemployment payroll tax, but it applies not only to those whose employment was subject to that tax but also to those whose employment, although covered under State law, was exempt from the Federal tax. Thus, the costs of administering benefits for former State and local government employees and one-half of the cost of extended benefits for them are funded in this way. The House bill includes a provision which would eliminate Federal funding for these costs. It is estimated that the annual administrative costs applicable to State and local employees under H.R. 10210 will be $4.3 million in fiscal 1978 and will rise to $11.6 million by fiscal year 1981.

Under H.R. 10210, the cost of extended benefits for State and local government employers is expected to reach a level of approximately $10 million by 1980. Under this provision, this amount would be fully charged to State and local employers.

Costs of State and local coverage.—The provisions of H.R. 10210 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.) 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 described above where States provide benefits on the basis of employment prior to July 1, 1978.

C. Nonprofit Organizations

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. H.R. 10210 would repeal this exclusion, thus requiring coverage for such schools on the same basis as it is required for other nonprofit entities.

The Department of Labor estimates that $10 million in additional benefits would be payable as a result of this provision in each of the fiscal years 1978–81. 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.

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.

D. Domestic Service Workers

At present, the coverage of domestic service in private households under the unemployment compensation program depends on the provisions of State law. 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 a quarterly payroll of $500 are covered.

H.R. 10210 would require the States to provide coverage when the employer has a payroll of $600 or more in a calendar quarter. This would provide coverage for about one-quarter (300,000) of all domestic service jobs. The House report indicates that the $600 quarter amount was arrived at as a means of excluding from coverage the householder who employed primarily one person for 1 day a week.

Domestic workers have been excluded from unemployment coverage in the past mainly because of anticipated administrative problems. Supporters of extending coverage point out that the experience of the States which have covered domestic workers, and experience under title II of the Social Security Act, demonstrate that the administrative problems are manageable. Under title II, domestic service for any employer is subject to coverage if the person employed is paid $50 or more in the calendar quarter. Total domestic employment is estimated at 1.2 million of which only about 26,000 are now covered. H.R. 10210 would extend coverage to an additional 264,000 domestic workers bringing coverage to about 24 percent of all domestic employment.

ESTIMATED UNEMPLOYMENT BENEFIT PAYMENTS BASED ON DOMESTIC EMPLOYMENT COVERED BY H.R. 10210

[Dollars in millions]

Fiscal year	Total benefit payments	Amount reimbursed from Federal general funds [1]
1978	$180	$130
1979	180	20
1980	180	0
1981	180	0

[1] Coverage is effective for employment after 1977, but Federal fund reimbursement is available under the bill if States elect to provide benefits starting January 1978, on the basis of employment prior to 1978 (Federal fund reimbursement is also provided for benefits paid prior to July 1, 1978, on the basis of employment in the first 6 months of 1978).

E. Inclusion of Virgin Islands in the Federal-State Unemployment Insurance System

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 H.R. 10210 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 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.

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 H.R. 10210. As of July 1976, the Virgin Islands system has borrowed $5.6 million under the authority of Public Law 94–45.

III. Financing Provisions of H.R. 10210

A. Increases in the Unemployment Taxes

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 tax credit by reason of their participation in an approved State program. Thus, the Federal tax in all States amounts to 0.5 percent of the first $4,200 of wages. The proceeds from this Federal tax are used to meet the costs of administering the unemployment compensation program—including both Federal and State costs—most of the cost of administering public employment services, half of the cost of benefit payments under the extended benefit program (for workers exhausting their regular benefits), and all of the cost of the temporary emergency benefit program (for workers exhausting both regular and extended benefits).

The cost of regular State benefits and half the cost of extended benefits are met from the proceeds of State unemployment taxes. The tax base to which State taxes apply is effectively required to be at least as high as the Federal base of $4,200, but 22 States now have bases which exceed that level. The tax rate applied in each State may vary from year to year according to conditions and may vary among different employers according to experience rating factors which are designed to allow employers a lower tax if their employees do not experience much unemployment. Because of the heavy use of unemployment benefits during the recent recessionary period, the average State tax rate has increased from 1.9 percent in 1974 to an estimated 2.5 percent in 1976. Among the States, the estimated average tax rate applied to taxable wages varies from 0.6 percent in Texas to 4.1 percent in Massachusetts. The tax base and average tax rate applicable in each State is shown in the table which follows.

AVERAGE EMPLOYER CONTRIBUTION RATES, BY STATE—RATES SHOWN AS PERCENTAGE OF TAXABLE AND TOTAL WAGES

State	Tax base, $4,200 except as shown	1976 estimated		1975 estimated		1974 actual	
		Taxable	Total	Taxable	Total	Taxable	Total
Total		2.5	1.2	2.0	0.9	1.91	0.90
Alabama	$4,800(1/76)	1.8	1.0	1.0	.5	1.08	.55
Alaska	10,000(1/74)	3.7	2.6	3.0	2.1	2.60	1.86
Arizona	6,000(1/76)	1.9	.9	1.4	.7	1.40	.70
Arkansas	6,000(1/77)	1.8	1.0	1.6	.9	1.50	.86
California	7,000(1/76)	3.6	2.1	3.1	1.3	2.66	1.22
Colorado		1.9	.9	.5	.2	.39	.19
Connecticut	6,000(1/75)	3.0	1.6	2.7	1.5	2.86	1.23
Delaware		2.5	1.1	2.2	1.0	2.35	.99
District of Columbia		2.7	1.0	1.4	.6	1.33	.57
Florida		2.1	1.0	1.1	.5	.69	.38
Georgia	6,000(1/76)	1.8	1.2	.9	.4	.88	.47
Hawaii	7,800(1/76)	3.0	2.0	2.6	1.8	1.90	1.30
Idaho	7,800(1/76)	1.7	1.2	2.3	1.2	2.30	1.20
Illinois		1.9	.8	1.1	.5	1.87	.81
Indiana		1.8	.8	1.1	.5	1.10	.47
Iowa	6,000(1/76)	2.3	1.4	1.1	.5	.98	.47
Kansas		2.3	1.1	2.2	1.1	2.02	1.04
Kentucky		2.5	1.2	1.5	.8	2.10	1.10
Louisiana		1.9	1.0	2.1	1.1	1.49	.83
Maine		3.1	1.6	2.8	1.5	2.60	1.48
Maryland		2.0	1.0	1.3	.6	1.83	.86
Massachusetts		4.1	1.8	3.8	1.7	3.45	1.63

Michigan	5,400(1/76)	3.7	1.9	2.8	1.1	2.53	1.02
Minnesota	6,200(1/76)	1.8	1.0	1.7	.8	1.78	.86
Mississippi		2.2	1.2	.8	.4	1.20	.70
Missouri	4,500(1/76)	2.8	1.2	1.6	.7	1.63	.72
Montana	4,800(4/75)	2.2	1.2	1.8	.9	1.70	.90
Nebraska		2.6	1.2	1.1	.5	1.17	.57
Nevada	6,100(1/76)	3.2	2.1	2.6	1.5	2.76	1.45
New Hampshire		2.5	1.2	1.8	.9	1.33	.68
New Jersey	5,400(1/76)	3.4	1.7	3.2	1.4	3.47	1.48
New Mexico		1.9	1.0	1.9	1.0	1.60	.87
New York		3.5	1.3	2.9	1.2	2.86	1.21
North Carolina		1.4	.6	1.1	.6	1.10	.54
North Dakota		2.2	1.0	2.2	1.0	2.20	1.02
Ohio		2.3	1.0	1.3	.6	1.37	.60
Oklahoma		1.7	.8	1.2	.6	1.20	.60
Oregon	7,000(1/76)	3.3	2.1	2.0	1.0	2.05	1.13
Pennsylvania		2.9	1.1	2.7	1.1	2.54	1.06
Puerto Rico	(1)	3.0	3.0	3.0	3.0	2.83	2.67
Rhode Island	4,800(1/75)	3.9	2.0	3.9	2.1	2.92	1.50
South Carolina		2.1	1.1	.9	.5	1.04	.70
South Dakota		1.0	.6	.8	.4	.87	.49
Tennessee		1.6	.8	1.6	.8	1.61	.82
Texas		.6	.3	.4	.2	.40	.20
Utah	8,000(1/77)	1.7	1.0	1.7	.8	1.70	.86
Vermont		2.3	1.2	2.3	1.2	2.19	1.19
Virginia		1.2	.6	.3	.1	.33	.17
Washington	7,200(1/76)	3.0	1.8	3.0	1.8	3.00	1.76
West Virginia		1.9	.8	1.2	.5	1.20	.50
Wisconsin	6,000(1/77)	2.1	1.0	1.7	.7	1.52	.70
Wyoming		2.2	1.0	1.7	.8	1.10	.60

[1] All wages.

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The need for additional financing.—If the State tax revenues prove insufficient to meet benefit obligations in times of high unemployment, States are permitted to borrow the necessary funds from the Federal accounts in the trust fund. If the Federal accounts have insufficient funds to meet State borrowing requests and to cover the Federal responsibility for paying half the cost of extended benefits and all the costs of emergency benefits, authority is available for repayable advances from the general funds of the Treasury into the Federal accounts of the trust fund. Because of the heavy demands on the unemployment compensation system made by the high levels of unemployment in the past few years and by the enactment of temporary legislation providing benefits for up to 65 weeks duration, the unemployment payroll taxes—both Federal and State—have proven unable to meet expenses. As of the beginning of fiscal year 1977, advances from the general fund will amount to about $10.9 billion which is estimated to increase to $14.5 billion by the end of fiscal year 1978. Advances have been made to 21 States and total $3.1 billion.

ADVANCES TO STATES FROM FEDERAL UNEMPLOYMENT ACCOUNT

[In millions of dollars per calendar year]

States	1972	1973	1974	1975	1976 through Aug. 15, 1976	Total
Connecticut	31.8	21.7	8.5	[1] 190.2	91.0	343.2
Washington		40.7	3.4	50.0	55.3	149.4
Vermont			5.3	23.0	6.5	34.8
New Jersey				352.2	145.0	497.2
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	12.0	47.0
Minnesota				47.0	76.0	123.0
Maine				2.4	12.5	14.9
Pennsylvania				173.8	255.8	429.6
Delaware				6.5	7.0	13.5
District of Columbia				7.0	22.6	29.6
Alabama				10.0	20.0	30.0
Illinois				68.8	307.0	375.8
Arkansas					20.0	20.0
Hawaii					22.5	22.5
Nevada					7.6	7.6
Oregon					18.5	18.5
Maryland					36.1	36.1
Montana					1.4	1.4
Total	31.8	62.4	17.2	1,477.7	1,506.8	3,095.9

[1] Actual loans received	$203.0
Less repayment through reduced employer credits	(12.8)
Total	190.2

Provisions in House bill.—H.R. 10210 would increase the gross Federal unemployment tax rate from 3.2 percent to 3.4 percent while leaving the tax credit at 2.7 percent. This raises the net Federal tax by 0.2 percent, that is, from the present level of 0.5 to a new level of 0.7 percent. This increased tax rate would take effect in January 1977 and would continue in effect through 1982 after which the existing 0.5 percent net tax rate would again become applicable. (H.R. 10210 provides that the tax rate will revert to 0.5 percent at an earlier date if the advances from the general fund have been repaid; it is not anticipated that this will be possible, however.)

The increase in the net Federal tax rate will affect only the amounts collected by the Federal trust fund accounts. H.R. 10210 also increases the amount of annual earnings subject to taxation from $4,200 to $6,000. This increase is effective January 1978 and would affect both Federal and State taxes. Since States have the ability to adjust their tax rates within the overall base, the exact impact of the increase on State revenues is difficult to estimate. The following table, however, presents the estimated effect on both State and Federal unemployment revenues under the provisions in the House bill.

IMPACT OF TAX PROVISIONS OF H.R. 10210

[In billions of dollars]

Fiscal year	Increased revenue under H.R. 10210			Amount owed general fund	
	Federal				
	From higher tax rate [1]	From higher wage base [1]	State	Total	Attributable to State loans
1977	0.3	.....	.....	13.6	3.8
1978	.5	0.2	0.6	13.5	3.9
1979	.8	.5	2.0	11.9	3.7
1980	.8	.5	3.0	10.0	3.4
1981	.8	.5	3.2	8.0	2.9

[1] Revenues shown as attributable to tax rate increase are those which would result if there were no increase in the wage base. Revenues attributable to the wage base increase would be somewhat smaller if there were no concurrent increase in the tax rate.

B. Timing of Loans to States

When States find it necessary to borrow from the Federal accounts in the trust funds to meet their unemployment benefit obligations, present law requires that the funds borrowed for any month be applied for in the preceding month. H.R. 10210 includes a provision which would permit States to apply for loans covering a 3-month period.

C. Determining Responsibility for Benefits to Former Federal Employees

When unemployment benefits are paid by a State to a former member of the armed services or Federal employee, the costs of the bene-

fits attributable to Federal employment are paid for from Federal general revenues and the costs, if any, resulting from non-Federal employment are paid from State fund. Under present law, the amount of Federal reimbursement is determined by computing the amount of benefits actually paid over and above the compensation which would have been paid if his Federal employment had not been used in computing his benefits. H.R. 10210 would provide instead that the Federal and State portions of the cost of benefits will be based on the relative Federal and non-Federal wages of the individual during the base period on which his unemployment compensation is computed. Thus, if an individual had $4,000 of wages in his base period and $1,000 of these wages came from a Federal agency employer, 25 percent of his unemployment benefits would be paid for from Federal general revenues.

The Department of Labor estimates that this change would have no significant effect on the Federal payments to the States but would be a significant administrative improvement.

D. Funding of Benefits for Public Service Employment Participants

Individuals placed in public service employment funded through the Comprehensive Employment and Training Act (CETA) must be provided the same unemployment compensation protection that is provided to regular employees of the governmental unit which hires them. The costs of providing such unemployment compensation coverage to these individuals is now met out of the CETA grant funds. Effective October 1, 1976, H.R. 10210 would provide for funding unemployment compensation for CETA participants as though they were Federal employees under the procedures described in section C above. In effect, this provision indirectly increases the CETA authorization by transferring some of the costs of public service employment under that program to the Federal unemployment benefits account.

Estimated Federal Payments for Benefits to CETA Participants

[In millions]

Fiscal year:	*Federal payments*
1977	$11
1978	1
1979	1
1980	1
1981	1

IV. Extended Benefit Triggers

The Federal-State Extended Unemployment Compensation Act of 1970 provides for the payment of additional weeks of benefits to individuals who exhaust their benefit entitlement under the regular State programs. The additional entitlement is in the same weekly amount as the regular entitlement and continues for half as long as the regular entitlement. Thus, an individual entitled to the maximum duration of 26 weeks of regular benefits could receive up to 13 additional weeks of extended benefits. Half the funding of the extended benefits comes from State unemployment taxes and half comes from the Federal tax.

Change in national trigger.—Benefits under the extended benefit program are payable only in periods of high unemployment. Permanent law makes the program effective in all States when the national insured unemployment rate on a seasonally adjusted basis reaches 4.5 percent for 3 consecutive months, and the program continues in effect until that rate declines below 4.5 percent for 3 consecutive months. (A temporary provision which expires December 31, 1976 permits States to participate in the extended benefit program as though the national trigger rate were 4 percent rather than 4.5 percent.) H.R. 10210 would modify the permanent law by providing that the program will be in effect in all States when the seasonally adjusted 4.5 percent national insured unemployment rate for a given week and the 12 previous weeks averages 4.5 percent or more and will cease to be in effect when that rate for a given week and the 12 prior weeks averages less than 4.5 percent.

The Department of Labor believes that this change from 3 consecutive months to a moving 13 week average would tend to make the program somewhat more responsive to changes in the national economy in that it would trigger on or off more quickly in response to very sharp changes in national insured unemployment rates. It is expected, however, that under either present law or the revised provision in H.R. 10210 the program would remain in effect through at least the end of the 1977 calendar year.

NATIONAL INSURED UNEMPLOYMENT RATE

[In percent]

Month	1971	1972	1973	1974	1975	1976
January		4.09	2.87	3.18	5.96	5.70
February		4.25	2.91	3.38	6.68	5.47
March		4.32	2.94	3.59	7.30	5.26
April		3.98	2.79	3.69	7.83	5.19
May		4.00	2.81	3.69	8.07	5.32
June		3.92	2.81	3.65	7.93	5.47
July		3.91	2.72	3.58	7.57	5.49
August		3.52	2.75	3.51	7.28	.....
September	4.85	3.54	2.78	3.72	7.28	.....
October	4.85	3.37	2.74	4.00	6.99	.....
November	4.64	3.34	2.83	4.52	6.46	.....
December	4.30	3.23	2.95	5.26	6.04	.....

Change in the State trigger.—From December 1971 to November 1974, the national insured unemployment rate was below the permanent law 4.5 percent rate which triggers the extended benefit program into operation in all States. When the national trigger is "off," States participate in the program only if the State trigger requirements are met. Under permanent law, the extended unemployment compensation program becomes effective in a State when two requirements are met. The rate of insured unemployment in the State (not seasonally adjusted) must reach a level of 4 percent or more averaged over a

13-week period and the rate for that 13-week period must be at least 20 percent higher than the average of the State insured unemployment rate in the same 13-week period of the preceding 2 years.

When a State experiences a prolonged period of high unemployment, the "20 percent higher" requirement becomes very difficult to meet even if there is a very high level of unemployment in the State. Thus, for much of the period since the extended unemployment compensation program was enacted in 1970, the second part of the trigger requirement (an insured unemployment rate 20 percent above the rate prevailing in the 2 prior years) has been suspended. The table which follows shows the various temporary provisions of law which have been enacted to suspend this requirement.

TEMPORARY LEGISLATION SUSPENDING 120-PERCENT REQUIREMENT IN STATE EXTENDED TRIGGERS

Date	Law	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.

H.R. 10210 would modify the State trigger requirements for extended unemployment benefits by substituting a seasonally adjusted State insured unemployment rate of 4 percent as the trigger factor instead of the unadjusted factor now used. The "20 percent higher" requirement would be eliminated permanently under the House bill. The change would become effective as of January 1977; however, it would not have any impact until much later since the national trigger is expected to be "on" at least through the end of 1977.

STATE EXTENDED BENEFIT INDICATORS [1] (AS OF JULY 31, 1976)

State	13-week insured unemployment rate (unadjusted)	Percent of comparable period in prior 2 years
Alabama	5.25	105
Alaska	7.30	105
Arizona	5.24	95
Arkansas	5.20	91
California [2]	6.48	102
Colorado [3]	3.34	124
Connecticut	7.09	115
Delaware [2]	4.73	105
District of Columbia	3.47	99
Florida	4.61	108
Georgia	4.22	95
Hawaii	6.04	124
Idaho	4.44	107
Illinois	6.07	130
Indiana	2.67	62
Iowa	3.31	130
Kansas	3.02	105
Kentucky	4.34	93
Louisiana	3.59	91
Maine	6.65	98
Maryland	4.01	93
Massachusetts	6.51	84
Michigan [4]	6.63	75
Minnesota	3.59	93
Mississippi	3.92	91
Missouri	4.33	92
Montana	5.01	108
Nebraska	2.55	90
Nevada	6.12	101
New Hampshire	3.32	72

See footnotes at end of table.

STATE EXTENDED BENEFIT INDICATORS [1] (AS OF JULY 31, 1976)—Continued

State	13-week insured unemployment rate (unadjusted)	Percent of comparable period in prior 2 years
New Jersey	7.68	94
New Mexico	4.65	96
New York	6.66	103
North Carolina	3.90	89
North Dakota	2.33	103
Ohio	3.19	81
Oklahoma	4.12	112
Oregon	5.78	95
Pennsylvania	6.38	105
Puerto Rico	17.07	115
Rhode Island	7.51	85
South Carolina	4.50	85
South Dakota	2.04	101
Tennessee	4.67	93
Texas	1.87	95
Utah	3.63	95
Vermont	6.44	90
Virginia	2.18	84
Washington	8.05	96
West Virginia	4.23	96
Wisconsin	3.88	96
Wyoming	1.69	112

[1] Extended benefits are now payable in all States on the basis of national insured unemployment rates (seasonally adjusted) which are: May, 5.32 percent; June, 5.47 percent; July, 5.49 percent.
[2] As of July 24, 1976.
[3] As of June 26, 1976.
[4] As of July 17, 1976.

Impact of State trigger change in H.R. 10210.—A simulation study conducted by the Department of Labor compared the impact of the current law State trigger mechanism (4 percent unadjusted insured unemployment and 120 percent of the rate prevailing in the comparable weeks of the 2 prior years) and the H.R. 10210 mechanism (4-percent seasonally adjusted insured unemployment). These factors were applied to the years 1957–73. The table which follows shows the average number of weeks during which each State would have been triggered "on" under the two alternative criteria in each of those years. The table also shows the impact of simply eliminating the "20 percent higher" requirement while continuing to use an unadjusted 4 percent trigger. The results shown in the table do not take into account the impact of the national trigger.

NUMBER OF WEEKS OF EXTENDED BENEFITS EACH YEAR UNDER ALTERNATIVE STATE TRIGGERS [1]

State	H.R. 10210: 4.0% seasonally adjusted	4.0% not adjusted	Current law: 4.0% not adjusted and 120% of prior 2 years
Alabama	19.8	21.5	7.1
Alaska	48.6	43.3	8.1
Arizona	13.5	12.7	5.9
Arkansas	27.9	26.8	8.9
California	37.4	38.6	12.5
Colorado	0	3.5	1.8
Connecticut	18.0	20.1	10.5
Delaware	4.6	8.4	3.9
District of Columbia	0	0	0
Florida	6.9	6.0	4.6
Georgia	9.8	10.5	4.9
Hawaii	8.4	10.2	6.9
Idaho	32.1	23.9	8.2
Illinois	6.2	8.2	5.9
Indiana	7.0	9.9	6.6
Iowa	.8	4.8	3.2
Kansas	5.4	9.3	4.5
Kentucky	24.4	25.4	6.7
Louisiana	19.5	19.2	8.9
Maine	36.2	31.5	11.9
Maryland	17.5	16.3	7.8
Massachusetts	33.4	33.3	12.2
Michigan	25.5	26.8	11.4
Minnesota	15.8	17.1	6.5
Mississippi	22.9	20.6	5.5
Missouri	11.4	14.2	5.5
Montana	34.1	26.4	8.5
Nebraska	0	6.5	2.3
Nevada	40.3	30.8	11.5
New Hampshire	15.5	15.7	5.6
New Jersey	36.8	37.1	10.4
New Mexico	12.8	16.6	7.1
New York	29.7	27.7	8.6
North Carolina	14.9	14.6	4.7
North Dakota	27.1	24.1	5.9

See footnotes at end of table.

NUMBER OF WEEKS OF EXTENDED BENEFITS EACH YEAR UNDER ALTERNATIVE STATE TRIGGERS [1]—Continued

State	H.R. 10210: 4.0% seasonally adjusted	4.0% not adjusted	Current law: 4.0% not adjusted and 120% of prior 2 years
Ohio	10.7	12.7	7.1
Oklahoma	18.9	18.8	8.0
Oregon	34.9	29.7	10.9
Pennsylvania	28.8	30.0	11.0
Puerto Rico	39.1	42.6	9.7
Rhode Island	35.9	35.8	11.4
South Carolina	6.6	7.3	4.1
South Dakota	0	11.2	3.1
Tennessee	23.1	23.6	6.1
Texas	1.1	1.7	1.7
Utah	7.9	17.4	3.5
Vermont	31.4	27.0	11.5
Virginia	.8	2.2	2.2
Washington	41.5	40.6	11.9
West Virginia	25.4	29.2	7.8
Wisconsin	6.9	10.4	6.9
Wyoming	11.2	13.0	4.5
Average of all States	19.0	19.5	7.0

[1] As determined by Labor Department simulation study based on data from 1957–1973.

COST OF CHANGE IN STATE TRIGGERS UNDER H.R. 10210

Fiscal year	Additional benefits (millions)
1977	$0
1978	0
1979	300
1980	300
1981	300

V. Provisions Related to Benefit Eligibility

A. Disqualification for Pregnancy

In order to qualify for unemployment compensation benefits, a worker must be able to work, be seeking employment, and be available for employment. In a number of States, an individual whose unemployment is related to pregnancy is barred from receiving any unemployment benefits. In 1975 the Supreme Court found a provision of this type in the Utah unemployment compensation statute to be unconstitutional. The Utah requirement had disqualified workers for a period of 18 weeks (12 weeks before birth through 6 weeks after

birth). The Court stated that "a conclusive presumption of incapacity during so long a period before and after childbirth is constitutionally invalid." A number of other States have similar provisions although most appear to involve somewhat shorter periods of disqualification.

The House bill includes a provision which would prohibit States from continuing to enforce any provision which denies unemployment compensation benefits solely on the basis of pregnancy (or recency of pregnancy). Pregnant individuals would, however, continue to be required to meet generally applicable criteria of availability for work and ability to work. The text of the 1975 Supreme Court decision is printed as appendix C. The following table presents the most recent available information concerning State unemployment compensation provisions disqualifying individuals on the basis of pregnancy.

STATE PROVISIONS LIMITING UNEMPLOYMENT BENEFITS ON THE BASIS OF PREGNANCY

State	Benefits generally unavailable	
	Before birth	After birth
Alabama	Duration of unemployment.	Until application for reinstatement to job.
Arkansas	...do	Until individual has worked 30 days.
Delaware	If unable to work	Until doctor certifies ability to work.
Indiana	Duration of unemployment.[1]	Duration of unemployment.[1]
Maryland	While physically unable to work.	While physically unable to work.
Minnesota	Duration of unemployment.[1]	Until individual has worked 6 weeks.[1]
Montana	2 months unless individual can prove ability to work.	2 months unless individual can prove ability to work.
Nevada	Duration of unemployment.	Until proof of ability to work.
New Jersey	4 weeks	4 weeks.
Ohio	Duration of unemployment.	Until medical evidence of ability to work.
Oregon	do	Until administrator finds able to work.
Tennessee	...do	21 days after able to work.
West Virginia	do.[2]	Until individual has worked 30 days.[2]

[1] Applies only if individual voluntarily quit employment.

[2] If laid off and medical evidence of ability to work is presented, disqualification limited to 6 weeks before and after birth.

B. Finality of Federal Agency Findings

State unemployment compensation agencies are required to grant an impartial hearing to persons whose claims for unemployment benefits are denied. In any case where all or part of the employment on which benefits are to be based was with a Federal agency, however, the findings of that agency are not subject to review by a State agency hearing officer insofar as they concern: the fact of Federal employment, the period of Federal service and amount of Federal wages, or the reasons for terminating Federal employment. While a hearing is not permitted on these issues at the State agency level, individuals disputing these issues are entitled to a comparable hearing within the Federal agency involved.

The House bill would allow these issues to be decided by the State agency hearing officer.

C. Denial of Unemployment Compensation to Athletes and Illegal Aliens

A floor amendment to H.R. 10210 in the House of Representatives added a provision which would require that all State unemployment compensation programs include prohibitions against the payment of benefits to athletes during the off season and to illegal aliens.

Professional athletes.—The bill would prohibit the payment of benefits to a professional athlete during periods between two successive sports seasons if the athlete had been professionally participating in such sports during the previous season and there is reasonable assurance that he will participate in such sports during the following season. The provision is intended to deny benefits to professional athletes in the off season.

Illegal aliens.—The bill also prohibits payment of benefits to an alien not lawfully admitted into the United States. The provision is intended to deny benefits to these individuals because they cannot be legally available for work.

VI. National Commission on Unemployment Compensation

Description and purpose of the Commission.—The House bill establishes a National Commission on Unemployment Compensation for the purpose of undertaking a comprehensive examination of the present unemployment compensation system and developing appropriate recommendations for further changes. The Commission would be comprised of three members appointed by the President Pro Tempore of the Senate, three members by the Speaker of the House of Representatives, and seven by the President. Selection of members of the Commission would be aimed at assuring balanced representation of interested groups.

The Commission would be authorized to appoint such staff as it requires and to contract for necessary consultant services. The final report of the Commission would have to be sent to the President and to Congress by January 1, 1979, and the Commission would terminate 90 days after the report is submitted.

Agenda items for the Commission.—H.R. 10210 specifies a number of matters which the Commission would be charged with studying.

The bill states that its study shall include, without being limited to, the following items:

(1) Examination of the adequacy, and economic and administrative impacts, of the changes made by H.R. 10210 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; and (B) the adequacy of present statutory requirements and administrative procedures designed to protect the programs against such fraud and abuse;

(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 and statistics;

(10) Identification of any weaknesses in such method and any problem which results from the operation of such method; and

(11) Formulation of any necessary or appropriate new techniques for the collection and analysis of such information and statistics.

VII. Overall Impact of H.R. 10210 on Costs, Revenues, and Coverage

In the past few years, high levels of unemployment have placed heavy demands on the Federal-State Unemployment Compensation system. In addition to the substantially increased payments under the permanent programs of regular and extended unemployment compensation, the temporary emergency benefits program enacted in 1974 has also required substantial funding. As a result, some 20 States have exhausted their reserves and the Federal accounts in the trust fund which are required to provide loans to the States and to pay part of the cost of extended benefits and all of the costs of emergency benefits have also been exhausted. Thus, the provisions for borrowing from the general revenues of the Treasury have come into play so that by the end of fiscal year 1977, the Unemployment Trust Fund will owe the Treasury an estimated $13.9 billion (including $3.8 billion owed by the States and $10.1 billion related to the Federal share of extended and emergency benefits).

H.R. 10210, by raising the net Federal tax rate and the Federal-State tax base, will increase the revenues of the system. At the same time, however, the additional coverage provided under H.R. 10210 would increase benefit payments under the system. The net result under Labor Department estimates would be a reduction in the total deficit of the system by 1981 from the $13.1 billion projected under current law to $8 billion under H.R. 10210. Of this total $5.1 billion reduction in the projected deficit of the system, $4.9 billion is related to an improvement in the status of the Federal trust fund accounts.

The following charts and tables present additional detail concerning the overall impact of H.R. 10210 on the coverage and financing of the Unemployment Compensation programs. The estimates in these materials were prepared by the Department of Labor using the assumptions which are described below.

Assumptions for cost and revenue projections.

(1) Increase in average weekly benefit amount is 5 percent per year.

(2) Increase in total wages is based on covered employment increasing at 2 percent per year and the Consumer Price Index increasing as follows:

	Fiscal year—				
	1977	1978	1979	1980	1981
CPI increase (percent)....	5.6	5.6	5.1	4.1	2.9

(3) The national unemployment rate [1] is as follows:

	Fiscal year—				
	1977	1978	1979	1980	1981
Unemployment (percent).	7.0	6.4	5.6	5.0	4.9

Assumptions for estimated repayment of State loans.

(1) Repayments by the States do not begin until 1979.

(2) The average tax rate for all States is 2.7 percent.

(3) The additional Federal rates under the loan repayment provisions are 0.3 percent in 1979, 0.6 percent in 1980, and 0.9 percent in 1981.

(4) Consumer Price Index estimates used for projection of total wages in "key" loan States come from OMB *Mid-Session Review of the 1977 Budget.*

(5) The building of trust fund levels is based on the annual computation of revenue less both cost and loan repayments for the fiscal years 1979–81.

(6) For the fiscal years 1977 and 1978, the addition to the cumulative balance is 30 percent of the difference between revenue and cost.

(7) Of the eight States which account for 89 percent of current loans outstanding, two will be at a taxable wage base of $6,000 or above in 1979 and two will be above $4,200 without H.R. 10210.

[1] Total unemployment rather than insured unemployment.

REVENUES AND EXPENDITURES UNDER PRESENT LAW AND H.R. 10210: FISCAL YEARS 1977–81 [1]

[Billions]

Revenues	1977		1978		1979		1980		1981	
	Present law	H.R. 10210	Present law	H.R. 10210	Present law	H.R. 10210	Present law	H.R. 10210	Present law	H.R. 10210
Revenues	9.8	10.1	10.7	12.0	10.8	14.1	11.1	15.4	11.8	16.3
State taxes	8.2	8.2	9.0	9.6	9.1	11.1	9.3	12.3	10.0	13.2
Federal taxes	1.6	1.9	1.7	2.4	1.7	3.0	1.8	3.1	1.8	3.1
Expenditures	14.3	14.3	11.6	12.0	9.6	10.3	9.5	10.2	10.3	11.0
Regular benefits	8.8	8.8	8.5	8.8	7.9	8.3	7.9	8.3	8.6	9.0
Extended/emergency benefits	4.2	4.2	1.8	1.9	.4	.8	.4	.7	.5	.8
Administrative costs	1.3	1.3	1.3	1.3	1.3	1.2	1.2	1.2	1.2	1.2

[1] Estimates based on OMB assumptions underlying mid-session review of 1977 budget, see p. 59 for details. Data in table includes only revenues from unemployment payroll taxes and benefits financed through such taxes. Not included are benefits financed through reimbursement from Federal or State/local reimbursement (i.e. benefits for former Federal employees and servicemen, benefits paid under start-up provisions of H.R. 10210 for which Federal general revenue funding is provided (see table on p. 62), or benefits for State and local employees and employees of non-profit institutions which are paid for through reimbursement rather than payroll taxes.)

AMOUNT OWED TO GENERAL FUND OF THE TREASURY BY THE UNEMPLOYMENT TRUST FUND[1]

[In billions of dollars]

	Amount owed as of Sept. 30											
	1976		1977		1978		1979		1980		1981	
	Present law	H.R. 10210	Present law	H.R. 10210	Present law	H.R. 10210	Present law	H.R. 10210	Present law	H.R. 10210	Present law	H.R. 10210
Total	10.9	10.9	13.9	13.6	14.5	13.5	14.3	11.9	13.7	10.0	13.1	8.0
Attributable to State loans	3.2	3.2	3.8	3.8	3.9	3.9	3.8	3.7	3.5	3.4	3.1	2.9
Attributable to Federal responsibilities	7.7	7.7	10.1	9.8	10.6	9.6	10.5	8.2	10.2	6.6	10.0	5.1

ADDITIONAL COVERAGE AND BENEFITS UNDER H.R. 10210

[Dollar amounts in millions]

Category of employment	Employment first covered by H.R. 10210 (thousands)[1]	Costs of additional benefit payments			
		Fiscal year 1978		Fiscal year 1979	
		Total benefits	Federal subsidy[2]	Total benefits	Federal subsidy[2]
Agricultural	327	$220	$160	$220	$30
Domestic	264	180	130	180	20
Nonprofit schools	300	10	8	10	.....
State and local government	8,250	200	190	210	50
Total	9,141	610	488	620	100

[1] Based on projected 1977 employment levels.

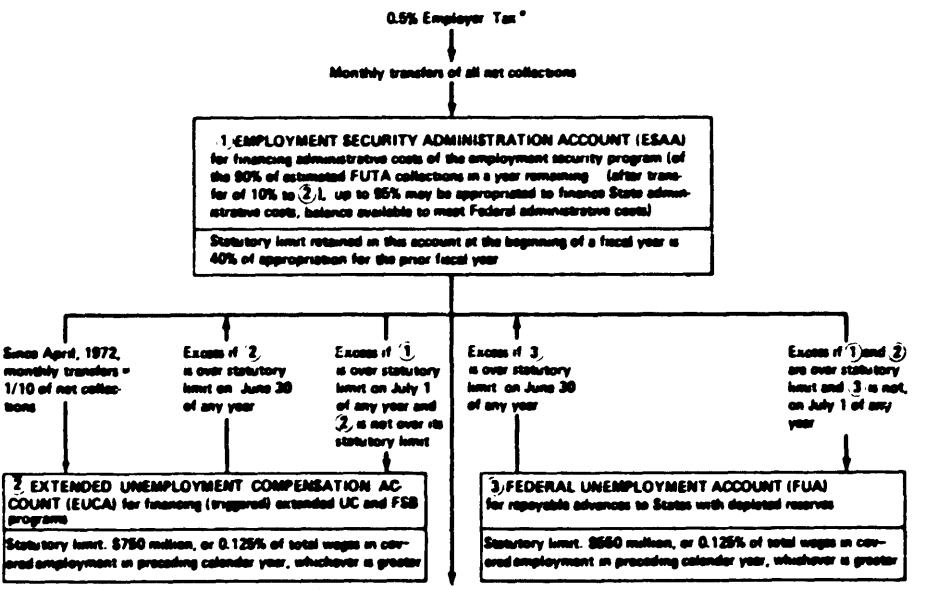
[2] The Federal subsidy arises from a provision authorizing general revenues reimbursement to the States for benefits paid in fiscal years 1978 and 1979 to the extent such benefits are based on wages prior to Jan. 1, 1978 (and for some benefits based on wages during January–June 1978).

C. Additional Materials Related to Unemployment Compensation Program

SELECTED UNEMPLOYMENT COMPENSATION STATISTICS, FISCAL YEARS 1974–77

Item	Fiscal year— 1974 (actual)	1975 (actual)	1976 (preliminary)	Transition quarter (estimate)	1977 (estimate)
Labor force (thousands)	90,008	91,876	93,597	94,800	96,000
Covered employment (millions) (calendar year)	66.7	65.6	66.9	.....	68.3
Total covered wages (millions) (calendar year)	$558.2	$583.8	$633.9	.....	$685.2
Total taxable wages (millions) (calendar year)	$265.5	$280.8	$295.4	.....	$312.2
FUTA revenue (millions)	$1,454	$1,354	$1,531	$300	$1,600
State tax revenue (millions)	$5,263	$5,299	$6,404	$1,400	$8,200
Total unemployment rate (percent)	4.9	7.2	8.0	7.1	6.5
Insured unemployment rate (percent)	3.0	5.1	4.9	4.2	4.0
Benefit payments (billions):					
Regular UI benefits	$4.8	$9.8	$11.1	$1.8	$8.8
Extended benefits	.3	1.2	2.9	.8	3.1
Emergency benefits	...	.5	3.3	.7	1.1

Flow of FUTA Funds Under Existing Federal Statutes



U.S. Department of Labor
Manpower Administration
April 8, 1975

* Effective tax, after 2.7 percent is offset against 3.2 percent Federal unemployment tax.

STATE UNEMPLOYMENT FINANCIAL DATA: CALENDAR YEAR 1975

[Thousands of dollars]

State	State taxes collected	Interest credited to trust fund	Benefit payments: Regular State benefits	Benefit payments: State share of extended benefits	Reserves as of Dec. 31, 1975
Total	5,227,130	380,426	11,754,685	1,249,150	[1]4,351,538
Alabama	38,372	3,079	147,142	13,382	(2)
Alaska	53,646	3,094	28,709	1,091	75,364
Arizona	27,002	6,151	109,226	14,205	67,569
Arkansas	31,804	1,556	90,741	8,037	1,578
California	802,308	43,835	1,310,136	139,646	545,694
Colorado	14,022	3,856	69,549	5,923	46,505
Connecticut	14,940	53	298,345	37,521	(2)
Delaware	16,931	818	47,681	4,658	(2)
District of Columbia	19,461	1,026	56,444	3,639	(2)
Florida	92,512	10,719	307,726	41,460	80,711
Georgia	49,518	19,043	221,524	28,857	268,413
Hawaii	39,370	485	47,184	4,356	5,378
Idaho	19,177	2,943	25,792	1,654	53,598
Illinois	175,645	14,582	673,612	60,971	(2)
Indiana	74,553	14,621	244,825	26,977	198,208

See footnotes at end of table.

STATE UNEMPLOYMENT FINANCIAL DATA: CALENDAR YEAR 1975—Continued

[Thousands of dollars]

State	State taxes collected	Interest credited to trust fund	Benefit payments		Reserves as of Dec. 31, 1975
			Regular State benefits	State share of extended benefits	
Iowa	33,642	5,157	92,788	7,506	63,215
Kansas	51,274	7,394	58,074	4,719	135,299
Kentucky	55,267	9,332	137,816	11,606	137,435
Louisiana	105,489	7,488	106,540	7,569	141,255
Maine	29,762	599	53,029	5,302	(3)
Maryland	60,750	4,886	180,905	15,579	29,849
Massachusetts	269,997	1,628	476,884	49,573	(3)
Michigan	283,801	4,267	835,930	132,475	(3)
Minnesota	84,920	1,034	175,392	17,785	(3)
Mississippi	18,435	5,781	57,543	5,301	89,786
Missouri	89,523	9,344	225,707	23,401	94,893
Montana	12,688	650	24,234	1,873	7,689
Nebraska	18,137	2,313	46,781	4,434	28,698
Nevada	31,285	671	47,354	5,655	3,856
New Hamsphire	15,333	2,183	44,462	1,819	28,766
New Jersey	374,803	41	651,407	98,957	(3)
New Mexico	19,616	2,088	26,809	3,567	33,361
New York	651,628	50,111	1,254,189	161,046	574,197
North Carolina	75,295	23,519	300,648	24,748	342,031
North Dakota	11,768	1,117	11,007	477	22,633

Ohio	180,545	28,311	634,241	57,763	294,228
Oklahoma	33,355	2,480	65,177	6,697	27,164
Oregon	61,888	3,254	138,851	11,801	23,499
Pennsylvania	401,423	11,098	970,603	62,540	(2)
Puerto Rico	76,075	133	102,535	14,212	(2)
Rhode Island	64,433	6	88,393	12,142	(2)
South Carolina	31,058	7,907	157,022	14,052	95,073
South Dakota	3,942	1,154	9,424	569	19,509
Tennessee	76,828	14,018	193,668	18,446	199,720
Texas	60,257	15,758	175,391	20,200	230,602
Utah	21,269	2,289	40,573	3,702	32,152
Vermont	11,472	4	28,446	3,319	(2)
Virginia	15,202	9,700	138,105	9,652	123,497
Washington	162,916	118	199,536	20,324	(2)
West Vriginia	23,578	5,124	60,317	4,599	78,377
Wisconsin	106,355	12,027	259,864	13,058	120,851
Wyoming	7,859	1,582	6,405	303	30,885

[1] Represents total reserves of the 37 States which had not exhausted their reserves as of Dec. 31, 1976.
[2] State has borrowed from Federal accounts to meet benefit obligations.

STATE UNEMPLOYMENT: CLAIMS DATA FOR REGULAR PROGRAM: CALENDAR YEAR 1975

State	Number of beneficiaries		Average duration of regular benefits (weeks)	Percent of beneficiaries exhausting regular benefits
	Total during year [1]	Average number per week		
Total	11,160,042	3,991,518	15.7	37.8
Alabama	193,230	58,252	12.9	32.3
Alaska	26,622	7,035	14.6	22.2
Arizona	95,477	38,644	16.8	50.4
Arkansas	112,841	41,204	14.3	34.8
California	1,267,665	421,433	15.6	37.5
Colorado	53,857	25,132	16.1	59.2
Connecticut	253,264	83,971	16.6	33.8
Delaware	34,349	11,366	18.9	38.1
District of Columbia	35,949	13,539	19.4	45.8
Florida	324,456	129,553	15.5	59.1
Georgia	317,707	84,198	12.3	41.8
Hawaii	41,920	14,460	16.2	37.9
Idaho	36,805	11,591	11.5	31.9
Illinois	574,829	216,752	15.4	39.9
Indiana	282,699	86,487	13.9	40.1
Iowa	94,589	29,191	13.7	44.7
Kansas	70,840	20,711	13.3	36.4
Kentucky	160,856	49,866	14.0	31.6
Louisiana	120,044	43,493	15.0	36.9
Maine	86,178	23,223	11.9	37.9
Maryland	168,303	61,484	15.2	35.9
Massachusetts	360,395	155,694	18.5	41.0
Michigan	681,730	255,339	16.2	39.4
Minnesota	175,936	60,117	15.0	50.9
Mississippi	90,482	29,876	13.4	30.1
Missouri	238,288	84,527	15.2	38.3
Montana	29,540	10,245	14.5	38.6
Nebraska	53,958	16,402	14.0	44.7
Nevada	43,963	14,002	15.6	43.5
New Hampshire	67,269	16,762	11.1	10.7
New Jersey	475,986	178,813	18.6	43.4
New Mexico	31,890	14,734	17.8	36.6
New York	883,251	394,117	20.7	42.4
North Carolina	450,229	114,777	12.0	24.4
North Dakota	14,041	4,879	13.9	26.7

See footnote at end of table.

STATE UNEMPLOYMENT: CLAIMS DATA FOR REGULAR PROGRAM: CALENDAR YEAR 1975—Continued

State	Number of beneficiaries		Average duration of regular benefits (weeks)	Percent of beneficiaries exhausting regular benefits
	Total during year[1]	Average number per week		
Ohio	542,357	189,250	15.2	32.3
Oklahoma	81,229	29,134	14.8	47.4
Oregon	149,212	54,704	14.8	28.9
Pennsylvania	721,903	285,216	18.2	29.0
Puerto Rico	138,817	73,661	17.7	67.0
Rhode Island	78,432	29,954	17.6	44.7
South Carolina	228,049	60,556	11.5	25.9
South Dakota	14,023	4,573	12.5	30.2
Tennessee	237,783	85,665	14.5	34.1
Texas	254,475	81,433	13.3	47.3
Utah	47,231	16,069	14.0	36.6
Vermont	24,949	10,750	18.1	36.8
Virginia	180,987	47,801	11.9	27.7
Washington	197,433	83,768	15.9	41.3
West Virginia	82,864	25,813	12.7	22.5
Wisconsin	221,436	89,020	15.7	29.2
Wyoming	9,424	2,278	10.6	31.3

[1] Based on number of "first weeks" claimed during year. This tends to understate the number of beneficiaries since it does not include those who came on the benefit rolls in the preceding year.

FEDERAL-STATE EXTENDED BENEFIT PROGRAM DATA: CALENDAR YEAR 1975

State	Total number of beneficiaires during year [1]	Total benefit payments (thousands)
Total	3,891,374	$2,558,724
Alabama	50,673	26,760
Alaska	3,781	2,402
Arizona	40,030	28,410
Arkansas	30,829	16,074
California	458,474	279,294
Colorado	22,257	11,918
Connecticut	87,817	76,474
Delaware	12,921	9,268
District of Columbia	14,476	11,028
Florida	175,348	82,920
Georgia	130,002	58,384
Hawaii	12,209	9,220
Idaho	9,445	3,440
Illinois	199,407	121,941
Indiana	123,289	54,069
Iowa	29,093	15,012
Kansas	19,769	9,439
Kentucky	40,634	23,212
Louisiana	38,213	18,952
Maine	29,428	9,884
Maryland	82,296	31,296
Massachusetts	167,264	115,325
Michigan	288,904	242,236
Minnesota	44,551	36,369
Mississippi	27,901	10,602
Missouri	87,683	46,802
Montana	9,250	4,027
Nebraska	17,459	8,868
Nevada	17,903	11,310
New Hampshire	7,359	3,638
New Jersey	153,865	197,924
New Mexico	9,443	7,134
New York	429,079	326,420
North Carolina	100,804	49,496
North Dakota	2,351	954

See footnote at end of table.

FEDERAL-STATE EXTENDED BENEFIT PROGRAM DATA: CALENDAR YEAR 1975—Continued

State	Total number of beneficiaires during year [1]	Total benefit payments (tnousands)
Ohio	147,347	119,065
Oklahoma	28,860	13,757
Oregon	39,165	23,603
Pennsylvania	211,508	159,443
Puerto Rico	85,586	28,357
Rhode Island	38,470	24,619
South Carolina	40,175	27,104
South Dakota	3,247	1,171
Tennessee	87,512	36,892
Texas	102,750	40,417
Utah	10,862	7,677
Vermont	10,138	7,321
Virginia	32,396	19,304
Washington	78,141	44,516
West Virginia	17,956	11,272
Wisconsin	27,603	33,095
Wyoming	666	616

[1] Based on number of "first weeks" claimed during year. This tends to understate the number of beneficiaries since it does not include those who came on the benefit rolls in the preceding year.

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974
DATA: CALENDAR YEAR 1975

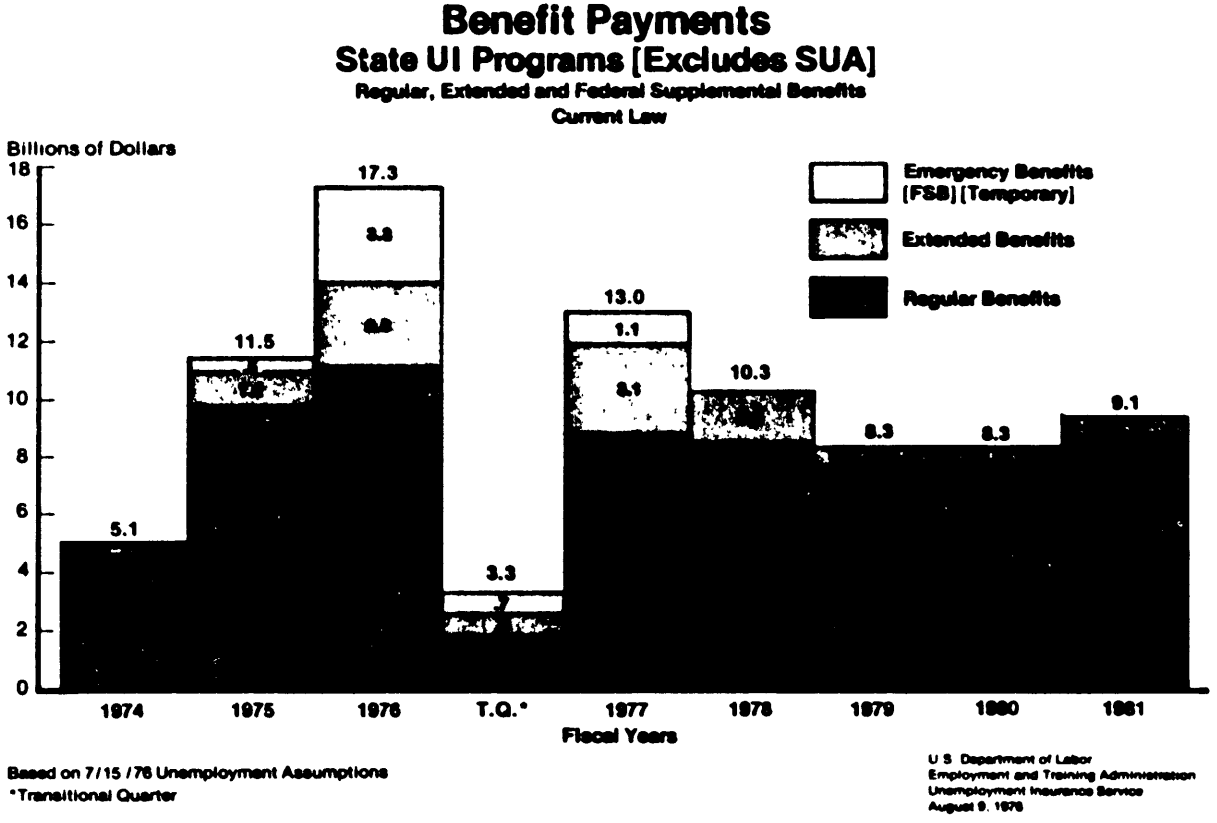
	Beneficiaries during year [1]	Total benefit payments (thousands)	Number exhausting benefits
Totals	2,764,215	$2,246,588	1,270,913
Alabama	25,681	18,727	7,088
Alaska	1,549	1,770	309
Arizona	25,089	13,815	13,117
Arkansas	17,152	10,203	5,019
California	350,267	203,080	204,719
Colorado	9,055	6,530	1,133
Connecticut	48,686	28,897	4,783
Delaware	5,972	3,909	1,505
District of Columbia	12,638	16,398	4,221
Florida	107,064	47,820	65,080
Georgia	71,868	48,937	23,144
Hawaii	5,999	7,837	1,875
Idaho	4,197	1,974	1,623
Illinois	94,117	57,662	40,750
Indiana	53,279	41,448	32,924
Iowa	20,267	9,434	8,166
Kansas	9,383	5,701	2,714
Kentucky	20,485	14,840	7,089
Louisiana	18,187	11,034	11,260
Maine	20,345	8,202	9,207
Maryland	23,383	14,173	19,432
Massachusetts	225,727	222,077	63,738
Michigan	243,235	220,244	146,778
Minnesota	33,453	25,776	13,729
Mississippi	14,211	6,276	3,808
Missouri	45,917	35,293	16,640
Montana	5,182	2,352	3,022
Nebraska	7,651	5,568	5,224
Nevada	10,302	9,121	9,132
New Hampshire	787	534	25
New Jersey	184,968	196,922	126,960
New Mexico	4,759	3,044	2,522
New York	354,087	424,116	112,390
North Carolina	34,519	28,808	9,766
North Dakota	734	336	315

See footnote at end of table.

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974
DATA: CALENDAR YEAR 1975—Continued

	Beneficiaries during year [1]	Total benefit payments (thousands)	Number exhausting benefits
Ohio	80,530	$73,054	14,888
Oklahoma	14,193	11,133	4,260
Oregon	22,746	18,071	10,110
Pennsylvania	132,094	122,293	38,410
Rhode Island	67,714	55,615	63,806
South Carolina	25,608	14,698	15,889
South Dakota	1,747	835	971
Tennessee	44,460	25,487	18,936
Texas	45,401	35,961	17,291
Utah	8,707	6,179	4,288
Vermont	7,937	6,213	4,365
Virginia	1,334	9,120	43
Washington	89,255	64,766	51,855
West Virginia	8,000	5,008	1,221
Wisconsin	38,411	22,940	12,105
Wyoming	389	150	3
Puerto Rico	65,494	22,204	33,265

[1] Based on number of "first weeks" claimed during year.

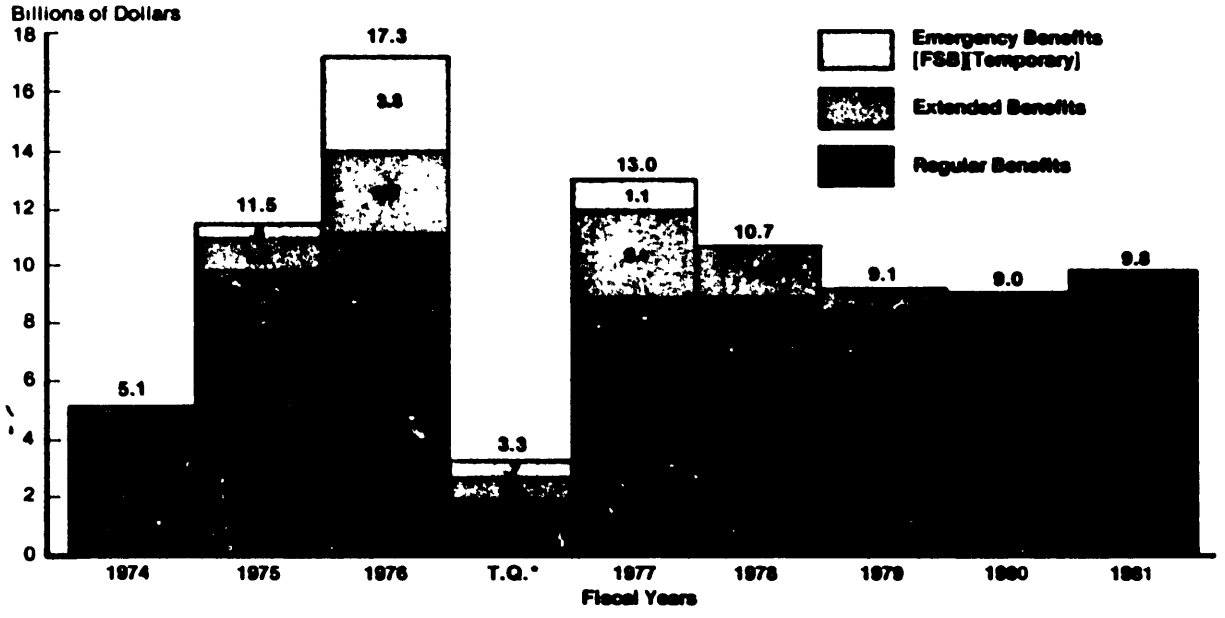


Staff note: SUA (special unemployment assistance) is a temporary general fund program of benefits for unemployed persons not covered by the regular unemployment compensation programs. FSB (Federal supplemental benefits) is the popular name given by the Department of Labor to the program established by the Emergency Unemployment Compensation Act of 1974.

Benefit Payments

State UI Programs [Excludes SUA]

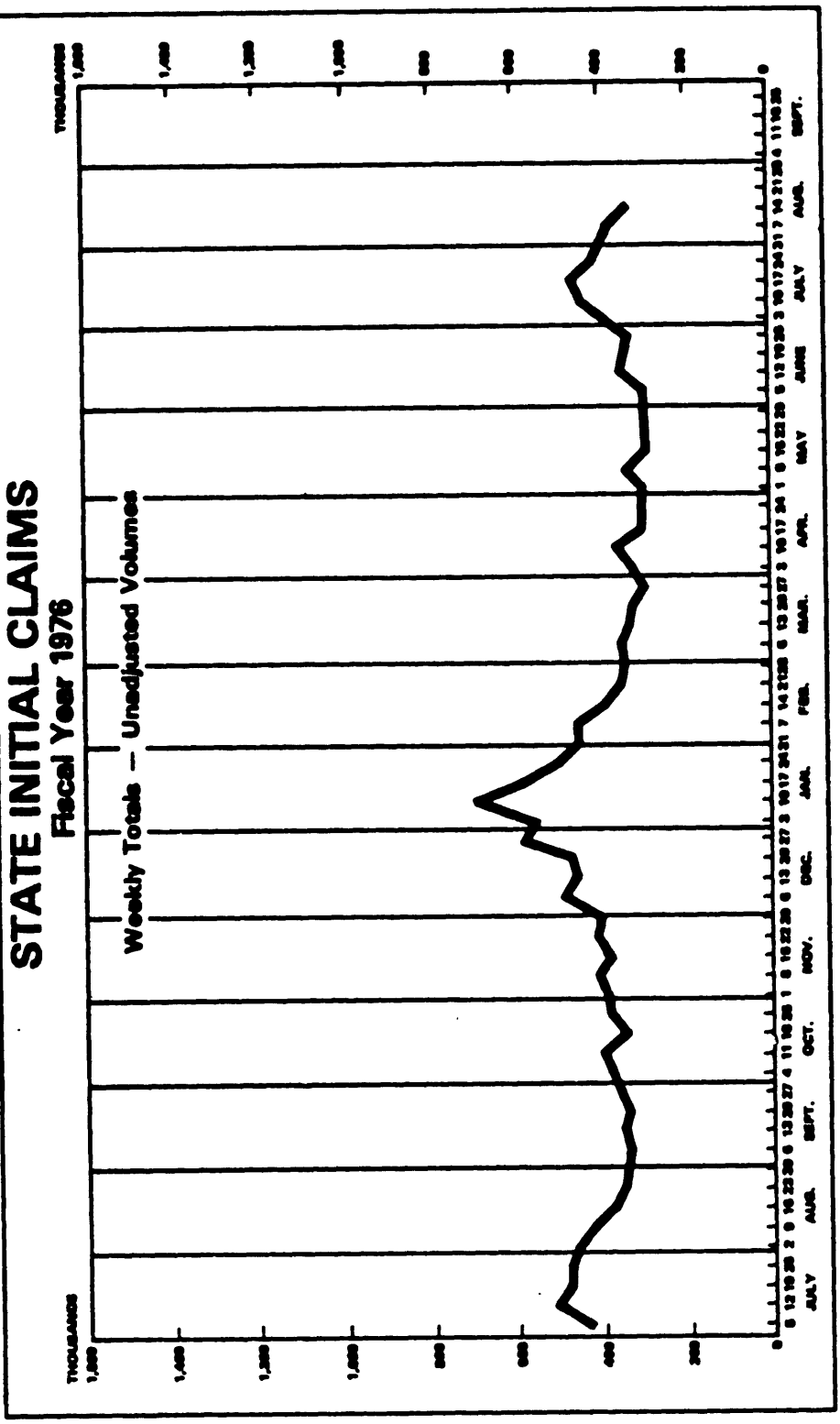
Regular, Extended and Federal Supplemental Benefits
Under HR 10210, U.C. Amendments of 1976, as passed by the House, 7/20/76

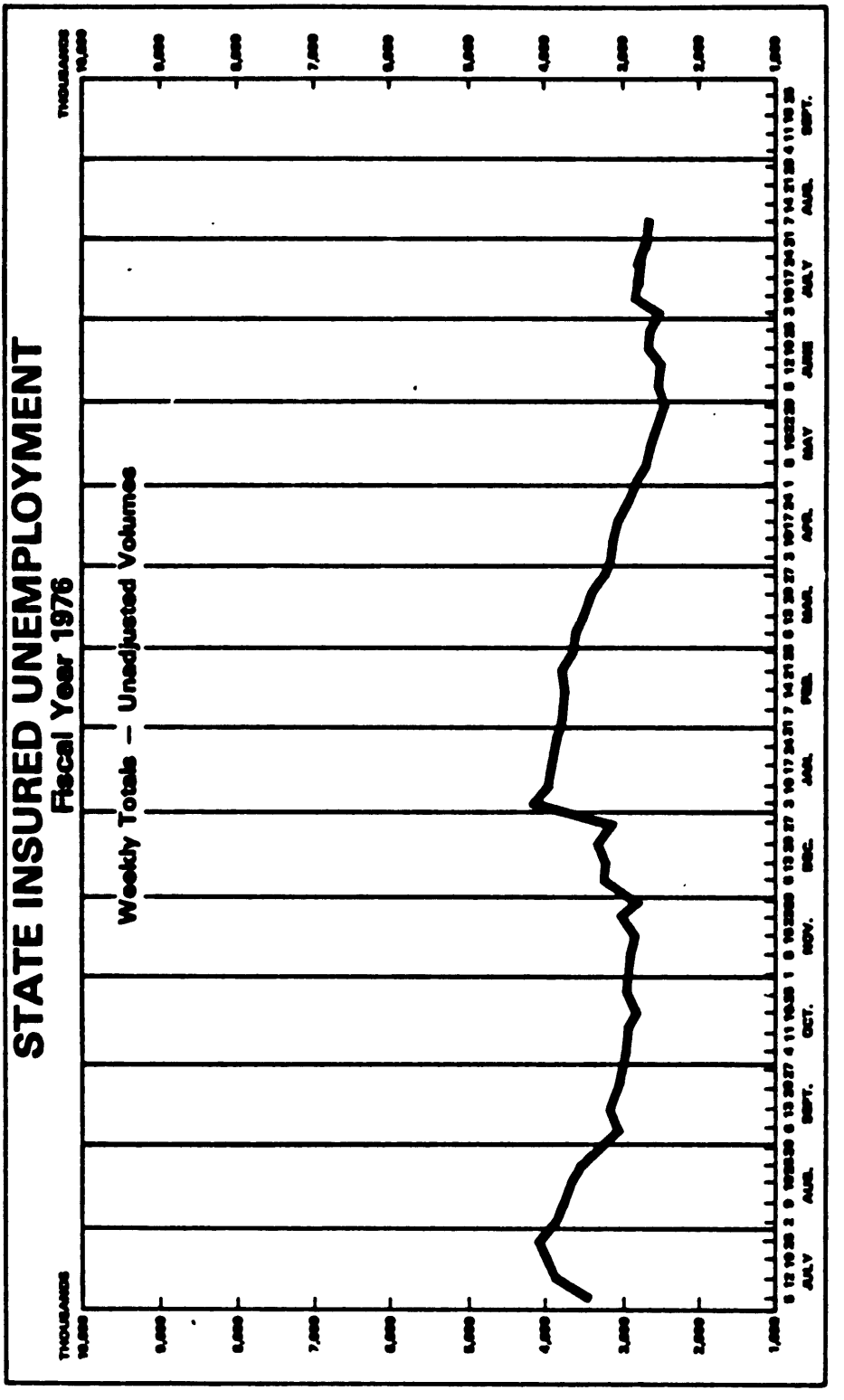


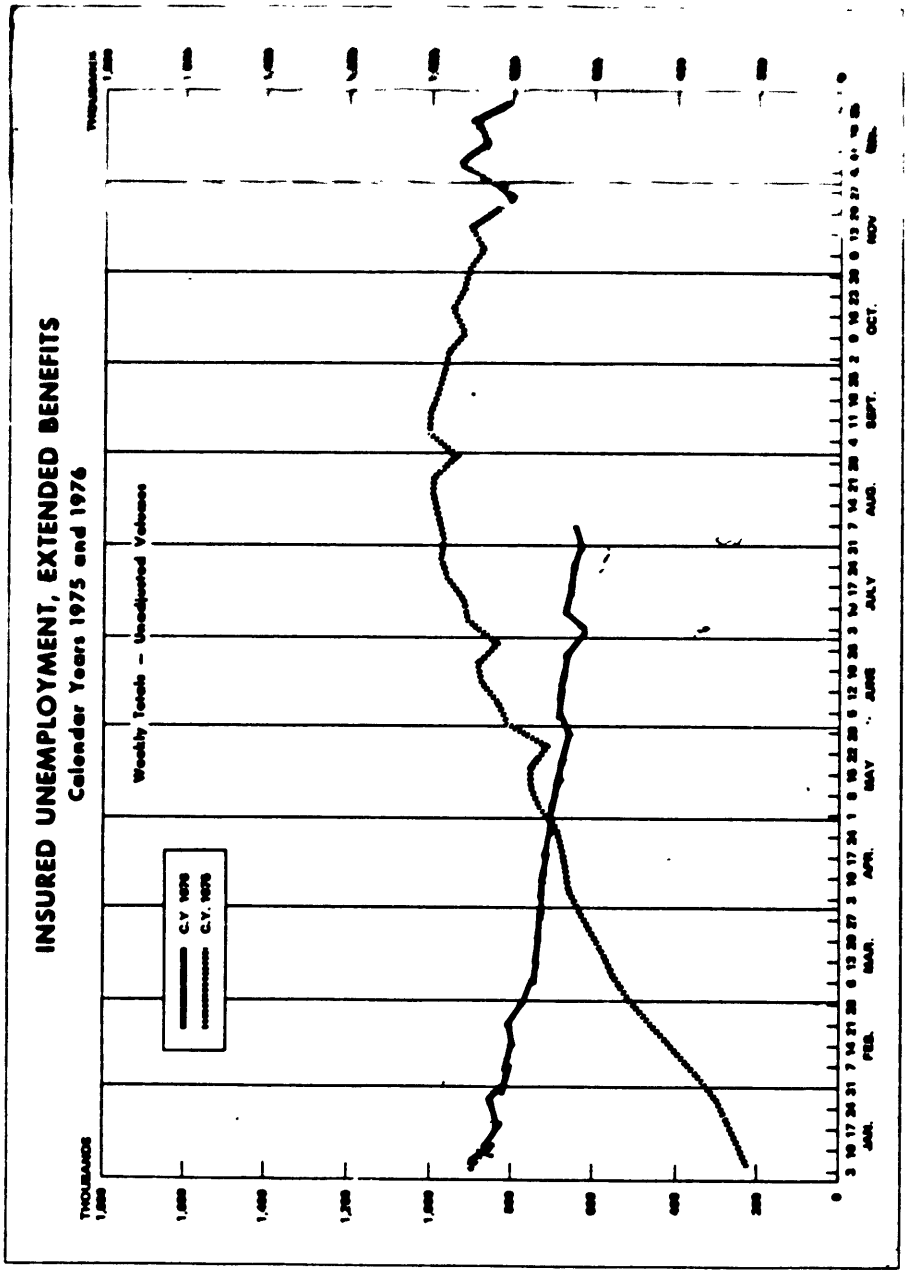
Based on 7/15/76 Unemployment Assumptions
*Transitional Quarter

U S Department of Labor
Employment and Training Administration
Unemployment Insurance Service
August 9, 1976

Staff note: SUA (special unemployment assistance) is a temporary general fund program of benefits for unemployed persons not covered by the regular unemployment compensation programs, FSB (Federal supplemental benefits) is the popular name given by the Department of Labor to the program established by the Emergency Unemployment Compensation Act of 1974.


STATE INITIAL CLAIMS
Fiscal Year 1976
Weekly Totals — Unadjusted Volumes
THOUSANDS
1,600
1,400
1,200
1,000
800
600
400
200
0
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.


STATE INSURED UNEMPLOYMENT
Fiscal Year 1976
Weekly Totals — Unadjusted Volumes
THOUSANDS
10,000
9,000
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.


INSURED UNEMPLOYMENT, EXTENDED BENEFITS
Calendar Years 1975 and 1976
Weekly Totals – Unadjusted Volumes
C.Y. 1976
C.Y. 1975
THOUSANDS
1,200
1,000
800
600
400
200
0
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV

UNEMPLOYMENT: 1960-75

[Rates in percent]

Year	National unemployment rate	
	Total	Insured
1960	5.5	4.7
1961	6.7	5.7
1962	5.5	4.3
1963	5.7	4.3
1964	5.2	3.7
1965	4.5	2.9
1966	3.8	2.2
1967	3.8	2.5
1968	3.6	2.2
1969	3.5	2.1
1970	4.9	3.5
1971	5.9	4.1
1972	5.6	3.3
1973	4.9	2.7
1974	5.6	3.7
1975	8.5	6.4

Note: The insured unemployment rate represents the average weekly number of insured unemployed as a percentage of the average number of persons in covered employment.

SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS, AUG. 15, 1976

State	Benefits									Taxes: 1975 Tax rates (percent of wages) [9]	
	Qualifying wage or employment (number X wba or as indicated) [1]	Waiting week [2]	Computation of wba (fraction of hqw or as indicated) [1] [3]	Wba for total unemployment [4]		Earnings disregarded [5]	Duration in 52-week period			Coverage: Size of firm (1 worker in specified time and/or size of payroll) [10]		
				Minimum	Maximum		Proportion of base-period wages [6]	Benefit weeks for total unemployment [7]			Minimum	Maximum
								Minimum [8]	Maximum			
Alabama	1½×hqw; not less than $522.	0	1/26	$15	$90	$6	1/3	11+	26	20 weeks	0.5 [9]	2.7 [9]
Alaska	$750; $100 outside HQ.	1	2.3–1.1 percent of annual wages, plus $10 per dependent up to $30.	18–23	90–120	Greater of $10 or ½ basic wba.	34–31 [6]	14	28	Any time	1.6 [9]	4.1 [9]
Arizona	1½×hqw; $375 in HQ.	1	1/25	15	85	$15	1/3	12+	26	20 weeks	.1	2.9.
Arkansas	30; wages in 2 quarters.	1.	1/26 up to 66⅔ percent of State aww.	15	100	1/3	1/3	10	26	10 days	.3	4.2.
California	$750	1	1/26–1/21	30	104	$18	1/3	12+–15.7	26 [7]	Over $100 in any quarter.	1.7 [9]	4.1 [9]
Colorado	30	1	60 percent of 1/13 of claimant's hqw up to 60 percent of State aww.	25	114	1/3 wba	1/3	7+–10	26	20 weeks.	0	3.6.

Connecticut	40	0	1/26, up to 60 percent of State aww plus $5 per dependent up to 1/2 wba.	15–20	110–165	1/3 wages	1/4	26 [7]	26 [7]	do	1.5 [8]	6.0. [9]
Delaware	36	0	1/26, up to 60 percent of State aww.[16]	20	125	Greater of $10 or 30 percent of wba.	26×wba or 50 percent of bpw.	17	26	do	1.3	4.2.
District of Columbia.	1½×hqw; not less than $450; $300 in 1 quarter.	1	1/23 up to 66⅔ percent of State aww plus $1 per dependent up to $3.	13–14	139 [6]	1/3 wba	1/3	17+	34	Any time	2.5	2.7.
Florida	20 weeks employment at average of $20 or more.		1/3 claimant's aww.	10	82	$5	1/3 weeks employment.	10	26.	20 weeks	.1	4.5.
Georgia	1½×hqw	1 [7]	1/23 plus $1	27	90	$8	1/3	9	26	do	.08 [8]	3.36. [9]
Hawaii	30; 14 weeks employment.	1 [15]	1/23 up to 66⅔ percent of State aww.	5	112	2	Uniform	26 [7]	26 [7]	Any time.[17]	3.0 [8]	3.0. [9]
Idaho	1¼× hqw; not less than $520.01; $416.01 in 1 quarter; wages in 2 quarters.	1	1/26 up to 60 percent of State aww.	17	99	1/3 wba.	Weighted schedule of bpw in relation to hqw.	10	26	20 weeks or $300 in any quarter.	1.1 [8]	4.7. [9]
Illinois	+1,000; $275 outside HQ.	1 [10]	1/3 claimant aww up to 50 percent of State aww.[18]	15	106–135	$7	Uniform	26	26	20 weeks	.1	4.0.

See footnotes at end of table.

SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS, AUG. 15, 1976—Continued

State	Benefits									Coverage: Size of firm (1 worker in specified time and/or size of payroll) [10]	Taxes: 1975 Tax rates (percent of wages) [9]	
	Qualifying wage or employment (number × wba or as indicated) [1]	Waiting week [2]	Computation of wba (fraction of hqw or as indicated) [1 3]	Wba for total unemployment [4]		Earnings disregarded [5]	Duration in 52-week period					
				Minimum	Maximum		Proportion of base-period wages [6]	Benefit weeks for total unemployment [7]				
								Minimum [8]	Maximum		Minimum	Maximum
Indiana	1¼×hqw; not less than $500; $300 in last 2 quarters.	1	½₂₆ up to $69.[3]	$35	$69–$115.	Greater of $3 or 20 percent of wba from other than BP employer.	¼	4+	26	20 weeks.	0.08	3.1.
Iowa	$600; $400 in 1 quarter and $200 in another.	0	½₃₀ up to 66⅔ percent of State aww.	10	116	$15+⅓ wages.	⅓	10.	39	do	0 [9]	4.0.
Kansas	30; wages in 2 quarters.	1	½₂₆ up to 60 percent of State aww.	25	101	$8	⅓	10.	26.	do.	0	3.6.
Kentucky	1¾×hqw; 8×wba in last 2 quarters; $250 in 1 quarter.	0	½₂₆ up to 50 percent of State aww.	12	87	⅛ wages.	⅓	15.	26	do	.1	3.2.
Louisiana	30	1 [10]	½₂₀–½₂₆	10	90 [11]	½ wba.	⅜	12.	28	do	1.0	3.0.

Maine	$900; $250 in each of 2 quarters.	0	1/52 up to 52 percent of State aww+$5 per dependent to 1/2 wba.	12–17	79–119	$10	1/4–1/3	11+–25	26	do	2.4	5.0.
Maryland	1 1/2×hqw; $192.01 in 1 quarter; wages in 2 quarters.	0	1/24+$3 per dependent up to $12.	10–13	89 [4]	$10	Uniform	26	26	Any time	.7	3.6.
Massachusetts	$1,200	1	1/21–1/26 up to 57.5 percent of State aww, +$6 per dependent up to 1/2 wba.[3]	14–20	101–152	$10	36 percent	9+–30	30	13 weeks	3.9.	5.1.
Michigan	14 weeks employment at $25.01 or more.	0	60 percent of claimant's aww up to $97 with variable maximum for claimants with dependent.[3]	16–18 [4]	97–136	Up to 1/2 wba.[5]	3/4 weeks employment.	11	26	20 weeks or $1,000 in calendar year.	.7 [6]	6.6.[6]
Minnesota	18 weeks employment at $30 or more.	1 [10]	([11])	18	113	$25	1/10 weeks employment.	13	26	20 weeks.[17]	.9 [6]	5.0.[6]
Mississippi	36; $160 in 1 quarter; wages in 2 quarters.	1	1/26	10	80	$5	1/3	12	26	do	.4	2.7.

See footnotes at end of table.

SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS, AUG. 15, 1976—Continued

State	Benefits									Coverage: Size of firm (1 worker in specified time and/or size of payroll) [10]	Taxes: 1975 Tax rates (percent of wages) [9]	
	Qualifying wage or employment (number × wba or as indicated) [1]	Waiting week [2]	Computation of wba (fraction of hqw or as indicated) [1 3]	Wba for total unemployment [4]		Earnings disregarded [5]	Duration in 52-week period					
				Minimum	Maximum		Proportion of base-period wages [6]	Benefit weeks for total unemployment [7]				
								Minimum [8]	Maximum		Minimum	Maximum
Missouri	30×wba; $300 in 1 quarter; wages in 2 quarters.	1 [10]	1/26	$15	$85	$10	1/3	8–13+	26	20 weeks.	0 [9]	3.6.[9]
Montana	13×wba outside HQ.	1 [9]	1/26 up to 60 percent of State aww.	12	94	(9)	(9)	13	26	Over $500 in current or preceding year.	1.1 [9]	3.1.[9]
Nebraska	$600; $200 in each of 2 quarters.	1	1/26–1/23	12	80	Up to 1/4 wba.[5]	1/3	17	26	20 weeks	.1	2.7.
Nevada	1½×hqw	0	1/52, up to 50 percent of State aww.	16	94	1/4 wages	1/3	11	26	$225 in any quarter.	.6 [9]	3.0.[9]
New Hampshire	$600; $100 in each of 2 quarters.	0	2.3–1.2 percent of annual wages.	14	95	1/3 wba	Uniform	26	26	20 weeks.	2.7	4.0.
New Jersey	20 weeks employment at $30 or more; or $2,200.	1 [10]	66⅔ percent of claimant's aww up to 50 percent of State aww.	20	96	Greater of $5 or 1/4 wba.	1/26 weeks employment.	15	26	$1,000 in any year.	1.2 [9]	6.2.[9]

New Mexico	1¼ × hgw	1	⅓₆ not less than 10 percent nor more than 50 percent of State aww.	16	78	½ wba	⅓	18+	30	20 weeks or $450 in any quarter.	.6	3.6.
New York	20 weeks employment at average of $30 or more.[11]	1 [9 12]	67–50 percent of claimant's aww.	20	95	([13])	Uniform	26	26	$300 in any quarter.	1.3	5.0.
North Carolina	1½ × hqw; not less than $565.50; $150 in 1 quarter.	0 (through Feb. 15, 1977).	⅓₆ up to 66⅔ percent of State aww.	15	105	½ wba	½ bpw	13	26	20 weeks	.2	4.7.
North Dakota	40; wages in 2 quarters.	1	⅓₆ up to 67 percent of State aww.	15	107	½ wba	([6])	18	26	do	.9	4.2.
Ohio	20 weeks employment at $20 or more.	1 [10]	½ claimant's aww + d.a. of $1–$55 based on claimant's aww and number of dependents.[31]	10–16	95–150	½ wba	20 × wba + wba for each credit week in excess of 20.	20	26	do	.1	3.8.
South Carolina	1½ × hqw; not less than $300; $180 in 1 quarter.	1	⅓₆ up to 66⅔ percent of State aww.	10	103	¼ wba	½	10	26	20 weeks	.25	4.1.
Oklahoma	1½ × hqw; not less than $500 in BP; $4,200	1	⅓₆ up to 55 percent of State aww	16	93	$7	½	10+	26	do	4	2 7.

See footnotes at end of table.

SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS, AUG. 15, 1976—Continued

State	Benefits										Taxes: 1975 Tax rates (percent of wages) [9]	
	Qualifying wage or employment (number × wba or as indicated) [1]	Waiting week [2]	Computation of wba (fraction of hqw or as indicated) [1 2]	Wba for total unemployment [4]		Earnings disregarded [4]	Duration in 52-week period			Coverage: Size of firm (1 worker in specified time and/or size of payroll) [10]		
				Minimum	Maximum		Proportion of base-period wages [5]	Benefit weeks for total unemployment [7]			Minimum	Maximum
								Minimum [8]	Maximum			
Oregon	18 weeks employment at average of $20 or more; not less than $700.	1	1.25 percent of bpw up to 55 percent of State aww.	$28	$102	⅓ wba	⅓	9–26	26	18 weeks or $225 in any quarter.	1.224 [9]	2.856. [9]
Pennsylvania	32+–36; $120 in HQ; at least 20 percent of bpw outside HQ.	0	1/50–1/52 up to 66⅔ percent of State aww + $5 for 1 dependent; $3 for 2d.	$13–18	$125–133	Greater of $6 or 40 percent wba.	Uniform	30	30	Any time	1.0	4.0.
Puerto Rico	21+30; not less than $150; $50 in 1 quarter; wages in 2 quarters.	1	1/15–1/26; up to 60 percent of State aww.	7	60	Wba	do	20 [7]	20 [7]	do	2.95	3.45.

Rhode Island	20 weeks employment at $46 or more; or $2,760.	1 [8]	55 percent of claimant's aww up to 60 percent of State aww, + $5 per dependent up to $20.	26–31	100–120	$5	⅓ weeks employment.	12	26	do	3.2 [9]	5.0.[9]
South Dakota	$400 in HQ: 10× wba outside HQ.	1	1/23 up to 62 percent of State aww.	19	89	½ wages up to ½ wba.	½	10+	26	do	0	2.7.
Tennessee	36; $338.01 in 1 quarter.	1	1/36	14	85	$20	½	12	26	do	.4	4.0.
Texas	1½×hqw; not less than $500 or ½ FICA tax base.	1 [10]	1/21	15	63	Greater of $5 or ¼ wba.	27 percent.	9	26	do	.1	4.0.
Utah	19 weeks employment at $20 or more; not less than $700.	1	1/26 up to 65 percent of State aww.	10	110	Lesser of $12 or ½ wba from other than regular employer.	Weighted schedule of bpw in relation to hqw.	10–22	36	$140 in CQ in current or preceding calendar year.	1.4 [9]	2.7.[9]
Vermont	20 weeks employment at $30 or more.	1.	½ claimant's aww for highest 20 weeks up to 60 percent of State aww.	15.	96	$15+$3 for each dependent up to $15.	Uniform	26	26	20 weeks.	1.0	5.0.
Virginia	36; wages in 2 quarters.	1 [10]	1/23	20	103	Greater of ½ wba or $10.	½	12	26	do	.05	2.7.

See footnotes at end of table.

SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS, AUG. 15, 1976—Continued

State	Benefits									Coverage: Size of firm (1 worker in specified time and/or size of payroll) [16]	Taxes: 1975 Tax rates (percent of wages) [9]	
	Qualifying wage or employment (number × wba or as indicated) [1]	Waiting week [2]	Computation of wba (fraction of hqw or as indicated) [1 3]	Wba for total unemployment [4]		Earnings disregarded [5]	Duration in 52-week period					
				Minimum	Maximum		Proportion of base-period wages [6]	Benefit weeks for total unemployment [7]			Minimum	Maximum
								Minimum [8]	Maximum			
Washington	$1,550 [18]	1	1/25 of hqw up to 50 percent of State aww.	$17	$102	$5+¼ wages.	1/5	8+23+	30	Any time	3.0 [19]	3.0.[19]
West Virginia	$700	1 [3]	1.9–0.8 percent of annual wages up to 66⅔ percent of State aww.	14	128	$25	Uniform	26	26	20 weeks.	0	3.3.
Wisconsin	17 weeks employment; average of $44.01 or more with 1 employer.	[10] 1	50 percent of claimant's aww up to 66⅔ percent of State aww.	23	122	Up to ½ wba.[5]	1/30 weeks employment.	1–13+	34	20 weeks.	[9] 0	[9] 4.7.
Wyoming	20 weeks employment with 20 hours in each week +800 in bpw.	1	1/25 up to 50 percent of State aww.	10	95	$10	1/30	11–24	26	$500 in current or preceding calendar year	0.79	3.49.

[1] Weekly benefit amount abbreviated in columns and footnotes as wba; base period, BP; base-period wages, bpw; high quarter, HQ; high-quarter wages, hqw; average weekly wage, aww; benefit year, BY; calendar quarter, CQ; calendar year, CY; dependent, dep.; dependents allowances, da.; minimum, min.; maximum, max.

[2] Unless otherwise noted, waiting period same for total or partial unemployment. New York, 2–4 weeks; West Virginia, no waiting period required for partial unemployment. No partial benefits paid in Montana but earnings not exceeding twice the wba and work in excess of 12 hours in any 1 week disregarding for total unemployment. Waiting period may be suspended if Governor declares state of emergency following disaster, New York, Rhode Island. In Georgia no waiting week if claimant unemployed not through own fault.

[3] When States use weighted high-quarter, annual-wage, or average weekly-wage formula, approximate fractions or percentages figured at midpoint of lowest and highest normal wage brackets. When da provided, fraction applies to basic wba. In States noted variable amounts above max. basic benefits limited to claimants with specified number of dependents and earnings in excess of amounts applicable to max. basic wba. In Indiana da. paid only to claimants with earnings in excess of that needed to qualify for basic wba and who have 1–4 dependents. In Michigan and Ohio claimants may be eligible for augmented amount at all benefit levels but benefit amounts above basic max. available only to claimants in dependency classes whose aww are higher than that required for max. basic benefit. In Massachusetts for claimant with aww in excess of $66 wba computed at 1/52 of 2 highest quarters of earnings or 1/26 of highest quarter if claimant had no more than 2 quarters work.

[4] When 2 amounts given, higher includes da. Higher for min. wba includes max. allowance for one dep.; Michigan for 1 dependent child or 2 dependents other than a child. In the District of Columbia and Maryland, same max. with or without dependents.

[5] In computing wba for partial unemployment, in States noted full wba paid if earnings are less than 1/2 wba; 1/2 wba if earnings are 1/2 wba but less than wba.

[6] With exception of Montana and North Dakota, States noted have weighted schedule with percent of benefits based on bottom of lowest and highest wage brackets. In Montana, duration is 13, 20, and 26 weeks, depending on quarters of employment; in North Dakota, 18, 22, and 26 weeks, depending on amount of BP earnings.

[7] Benefits extended under State program when unemployment in State reaches specified levels: California, Hawaii, by 50 percent; Connecticut by 13 weeks. In Puerto Rico benefits extended by 32 weeks in certain industries, occupations or establishments when special unemployment situation exists. Benefits also may be extended during periods of high unemployment by 50 percent, up to 13 weeks, under Federal-State extended compensation program and up to 26 additional weeks under the Federal supplemental benefits program.

[8] For claimants with minimum qualifying wages and minimum wba, when two amounts shown, range of duration applies to claimants with minimum qualifying wages in BP; longer duration applies with minimum wba; shorter duration applies with maximum possible concentration of wages in HQ.; therefore highest wba possible for such BP earnings. Wisconsin determines entitlement separately for each employer. Lower end of range applies to claimants with only 1 week of work at qualifying wage; upper end to claimants with 17 weeks or more of such wages.

[9] Represents minimum-maximum rates assigned employers in Calendar Year 1975. Alabama, Alaska, New Jersey require employee taxes. Contributions required on wages up to $4,200 in all States except Missouri, $4,500; Alabama, Montana, Rhode Island, $4,800; Michigan, New Jersey, $5,400; Connecticut, Georgia, Iowa, Utah, Wisconsin, $6,000; Nevada, $6,100; Minnesota, $6,200; California, Oregon, $7,000; Washington, $7,200; Hawaii, Idaho, $7,800; Alaska, $10,000.

[10] Waiting period compensable if claimant entitled to 12 consecutive weeks of benefits immediately following, Hawaii; unemployed at least 6 weeks and not disqualified, Louisiana; after 9 consecutive weeks benefits paid, Missouri; when benefits are payable for third week following waiting period, New Jersey; after benefits paid 4 weeks, Texas, Virginia; after any 4 weeks in BY, Minnesota; after 3d week unemployment, Illinois; after 3d week of total unemployment, Ohio; after 1 week, Wisconsin.

[11] Or 15 weeks in last year and 40 weeks in last 2 years of aww of 30 or more, New York.

[12] For New York, waiting period is 4 effective days accumulated in 1–4 weeks; partial benefits 1/4 wba for each 1 to 3 effective days. Effective days: fourth and each subsequent day of total unemployment in week for which not more than $95 is paid.

[13] To 60 percent State aww if claimant has nonworking spouse; 66-2/3 percent if he had dependent child, Illinois; 60 percent of first $85, 40 percent of next $85, 50 percent of balance up to $105, Minnesota.

[14] July 1, 1977, 63 percent, July 1, 1978, 66-2/3 percent, Delaware Sept. 1, 1976, 66-2/3 percent, Louisiana.

[15] In addition to total wages of $1,550, claimant also must have either (1) 16 weeks of employment with wages of 15 percent of average wage or (2) 600 hours of employment.

[16] $1,500 in any Calendar Quarter in current or preceding Calendar Year unless otherwise specified.

[17] Also covers employers of 20 or more agricultural workers in 20 weeks, Hawaii; covers 4 agricultural workers in 20 weeks, Minnesota.

[18] Maximum amount adjusted annually by same percentage increase as occurs in State aww.

D. Appendices

APPENDIX A.—CONSTITUTIONALITY OF STATE AND LOCAL COVERAGE: LABOR DEPARTMENT OPINION

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., June 28, 1976.

MEMORANDUM OF LAW

THE CONSTITUTIONALITY OF REQUIRING STATE LAW COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES UNDER THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

The question addressed in this paper is whether the Congress has the constitutional power to enact a statute requiring the States, as a condition of continued participation in the Federal-State unemployment compensation program, to cover employees of State and local governments. This question is especially pertinent, in light of the decision of the Supreme Court in *National League of Cities* v. *Usery*, —— U.S. ——, June 24, 1976, which struck down the Fair Labor Standards Act requirements of mandatory coverage of State and local government employees under that act's minimum wage and overtime provisions. We conclude that *National League of Cities* is clearly distinguishable and that Congress has the power, under the taxing and general welfare clause of the Constitution, to condition continued participation in the Federal-State unemployment compensation program on unemployment compensation coverage of State and local government employees.

BACKGROUND

The basic structure of the Federal-State unemployment compensation program has remained unchanged since the enactment of the Social Security Act on August 14, 1935. In title IX of that act a payroll tax of 3 percent was laid on private sector employers. A credit of up to 90 percent of the tax, or 2.7 percent, was allowable for contributions paid into a State unemployment fund, under a State unemployment compensation law found to meet the conditions for approval set out in title IX. A State which had an approved unemployment compensation law could apply, under title III of the act, for grants of funds to assist the State in the administration of its law; the payment of such grants would be certified upon a finding that the State law contained the further provisions required by title III. The provisions on grants remained in title III of the Social Security Act, 42 U.S.C. 501 et seq., while the taxing provisions are in the Federal Unemployment Tax Act, chapter 23 of the Internal Revenue Code of 1954 (26 U.S.C., 3301 et seq. The requirements for State unemployment compensation laws are set out in 42 U.S.C. 503(a) and 26 U.S.C. 3304(a), respectively.

For the first 37 years of this cooperative program no provision of the Federal statutes required the State laws to cover any specific class of employees in either the public or private sector. Inducement or persuasion of State law coverage was founded on the tax credit in the Federal Unemployment Tax Act. Credit against the Federal tax was based on contributions into a State unemployment fund on the same payroll, and coverage of the State law was based on the payroll subject to contributions. In this way State law coverage for compensation purposes was generally as broad as the tax coverage of the Federal Unemployment Tax Act, although the States retained the authority to adopt more restrictive coverage or expand coverage beyond the inducement provided by the Federal law.

In the employment security amendments of 1970 (Public Law 91–373), Congress amended section 3304(a) of the Federal Unemployment Tax Act to add new requirements for approved State unemployment compensation laws. Among the new requirements was section 3304(a)(6)(A), which required State laws to cover for compensation purposes employees of nonprofit organizations and employees of State hospitals and institutions of higher education. Another new requirement, added to section 3304(a)(12), required States to permit political subdivisions of the States to elect coverage for compensation purposes of employees of hospitals and institutions of higher education operated by the political subdivisions. These were the first coverage requirements to be contained in the Federal Unemployment Tax Act, and were requirements for State laws beginning in 1972. Expansion of coverage to those three classes of employees was accomplished by making the coverage a State law requirement instead of taxing the States and localities; the employment of those three classes of employees still remains excepted from Federal tax coverage.

Now before Congress is H.R. 10210, which in section 115 would further amend the Federal Unemployment Tax Act so as to further extend public employee coverage to most employees of State and local governments.

Related to those amendments is a change in section 302(a) of the Social Security Act, 42 U.S.C. 502(a). Section 302(a) would be amended to exclude from grants to the States any sums to meet costs of administration of the State laws which are associated with the coverage of the State and local government employees. Another related amendment is to the Federal-State Extended Unemployment Compensation Act of 1970 (title II of Public Law 91–373), pursuant to which State unemployment funds are reimbursed from Federal funds for one-half the cost of compensation paid by the States which is sharable extended compensation or sharable regular compensation within the meaning of that act. As so amended, sharable compensation would not include any compensation paid on the basis of State or local government employee coverage. The reason for withdrawing the financial support of grants and sharable compensation reimbursements with respect to State and local government employee coverage is that neither the States nor the localities contribute to the funding from which the financial support is drawn. Under title IX of the Social Security Act, 42 U.S.C. 1101 et seq., a permanent, indefinite appropriation is made to the unemployment trust fund, measured by the collections under the Federal Unemployment Tax Act. The sums

appropriated, insofar as is pertinent for present purposes, are transferred to accounts in the fund from which moneys are drawn for the financial support to the States of grants and sharable compensation reimbursements. Because the States and localities are not subject to the Federal Unemployment Tax Act they contribute nothing to the funding of the financial support, and consequently would derive no financial support with respect to State and local government employee coverage under the related amendments.

ARGUMENT

Article 1, section 8, clause 1, of the United States Constitution confers upon Congress the power: "To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States * * *".

It is within the powers of Congress to lay taxes and provide for the general welfare. Thus, as this memorandum will demonstrate, it is within the power of Congress to impose the Federal unemployment tax and grant a credit against the tax on the condition, among others, that State unemployment compensation laws cover State and local government employees. It is also within the power of Congress to grant funds to the States to assist them in the administration and funding of their approved unemployment compensation laws, to place limitations on those grants, and to make it a condition of such grants that the State unemployment compensation laws be approved under the Federal Unemployment Tax Act.

I. THE DECISION OF THE UNITED STATES SUPREME COURT IN STEWARD MACHINE CO. V. DAVIS IS CONTROLLING ON THE POWERS OF CONGRESS UNDER THE TAX AND GENERAL WELFARE CLAUSE

The issue of State law requirements as a condition of the approval of State unemployment compensation laws for tax credit purposes was fully argued and decided in favor of the validity of the Federal statute in *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937). The Court held that it is within Congress' power under the tax and general welfare clause to prescribe conditions for a tax credit which it found were related in subject matter to activities "fairly within the scope of national policy and power" (301 U.S. at 590), and which would "assure a fair and just requittal for benefits received". (301 U.S. at 598). The conditions, it said, are "not directed to the attainment of an unlawful end, but to an end, the relief of unemployment, for which Nation and State may lawfully cooperate". (301 U.S. at 593). "In determining essentials Congress must have the benefit of a fair margin of discretion." (301 U.S. at 594). In regard to these conditions, "inducement or persuasion does not go beyond the bounds of power". (301 U.S. at 591). On the 10th amendment issue the Court ruled that the provisions are not void as involving the coercion of the States in contravention of the 10th amendment or of restrictions implicit in our Federal form of government.

In its opinion the Court referred to the events which led to the passage of the Social Security Act. During the years 1929 and 1936 the number of unemployed workers rose to unprecedented heights, often

averaging more than 10 million, and at times reaching peaks of 16 million or more. The problem had become national in area and dimensions, and the States were unable to give the requisite relief. Obligations incurred by the National Government for emergency relief were almost $3 billion in the period between January 1, 1933 and July 1, 1936, and the obligations of State local agencies were half that sum. For public works and unemployment relief for the 3 fiscal years 1934, 1935, and 1936, the National Government expended "the stupendous total" of a little less than $9 billion. "It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of moneys of the Nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare." (301 U.S. at 586–587).

In these circumstances there was an urgent need for some remedial expedient. It was said that the freedom of the States to contribute their fair share to the solution of the national problem was paralyzed by fear, and to the extent the States failed to contribute to relief "a disproportionate burden, and a mountainous one, was laid upon the resources of the Government of the Nation." (301 U.S. at 588). The Social Security Act was an attempt to find a method by which all the public agencies may work together to a common end. In devising the tax and tax credit Congress did not intrude upon fields foreign to its function. Its intervention is to safeguard the Nation's treasury, and as an incident to that protection to place the States upon a footing of equal opportunity. (301 U.S. at 590–591). "Nothing in the case suggests the exertion of a power akin to undue influence, if we assume that such a concept can ever be applied with fitness to the relations between State and Nation." A State which enacted an unemployment compensation law to conform with the Social Security Act cannot be said to have acted "under the strain of a persuasion equivalent to undue influence, when she chose to have relief administered under laws of her own making, by agents of her own selection, instead of under Federal laws, administered by Federal officers, with all the ensuing evils, at least to many minds, of Federal patronage and power." (301 U.S. at 590).

Some of the conditions attached to the allowance of the tax credit are designed to give assurance that the State unemployment compensation law shall be one in substance as well as name. Others are designed to give assurance that contributions into a State's unemployment fund shall be protected against loss after payment to the State. (301 U.S. at 575). The conditions attached to the payment of granted funds to a State likewise are designed to give assurance to the Federal Government that the moneys granted by it will not be expended for purposes alien to the grant, and will be used in the administration of genuine unemployment compensation laws. (301 U.S. at 578). Congress must have the benefit of a fair margin of discretion in determining the standards which in its judgment are to be ranked as fundamental. (301 U.S. at 594). An unemployment law framed in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more. "What is basic and essential may be assured by suitable conditions." (301 U.S. at 593). One cannot say that the basic standards have been determined in any arbitrary fashion. (301 U.S. at 594).

The operation of the cooperative program in a State is dependent on the statutory consent of the State. A State so consenting obtains a credit of many millions in favor of her citizens out of the treasury of the Nation. "Nowhere in our scheme of Government—in limitations express or implied of our Federal constitution—do we find that she is prohibited from assenting to conditions that will assure a fair and just requital for benefits received." (301 U.S. at 597–598).

Further support for the scheme of tax credit and grants is found in other cases decided the same day as *Steward*. In *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495 (1937), the Court upheld the constitutionality of the Alabama unemployment compensation law which was designed to meet the requirements of the Social Security Act. Arguments as to the validity of the Alabama tax and contentions based on the tenth amendment were rejected. In one holding the Court said that if the tax, qua tax, is valid, and the purpose specified is one that would sustain a separate appropriation out of general funds, "Neither is made invalid by being bound to the other in the same act of legislation," citing *Cincinnati Soap Co.* v. *United States*, 301 U.S. 308, 313 (1937).

And in *Helvering* v. *Davis*, 3031 U.S. 619 (1937), the old age tax and benefit provisions of the Social Security Act were upheld against similar challenges on constitutional grounds. Holding that Congress may spend money in aid of the general welfare, the Court said that the conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison, with broad discretion not confided to the courts in the exercise of the power. "The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment." (301 U.S. at 640). When an act is challenged as invalid "'we naturally require a showing that by no reasonable possibility can be challenged legislation fall within the wide range of discretion permitted to the Congress'" (301 U.S. at 641), quoting from *United States* v. *Butler*, 297 U.S. 1, 67. Citation for comparison was made to *Cincinnati Soap Co.* v. *United States*, in which the Court stated that it would require a very plain case to set aside a conclusion of Congress whether a tax it has imposed by law serves the purpose of the taxing power. (301 U.S. 308, 313).

Measured by these pronouncements the conditions of State law coverage of State and local government employees clearly are within the Congress' powers under article 1, section 8, clause 1, of the Constitution. The discussion following shows that those conditions are fairly within the scope of national policy and power and have not been determined in any arbitrary fashion, and that those conditions involve no infringement of State sovereignty or constitutional federalism. Finally, there is discussion of the separable provisions on limited financial support of State laws.

II. THE CONDITIONS ON COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES ARE FAIRLY WITHIN THE SCOPE OF NATIONAL POLICY AND HAVE NOT BEEN DETERMINED IN ANY ARBITRARY FASHION

As originally enacted, the Federal Unemployment Tax Act covered employers of eight or more workers. In 1954 coverage was extended to

employers of four or more workers (Public Law 767, 83d Congress, 2d Session), and in 1970 coverage was further extended to employers of one worker (Public Law 91–373). Other changes expanding coverage also were made in the 1970 act. In the bill now before the Congress, H.R. 10210, in addition to the provisions on coverage of State and local government employees, coverage would be extended to agricultural workers and domestic employees.

As Congress has progressively expanded and improved the Federal-State unemployment compensation program it also has broadened the national protection of unemployment compensation. In 1954 it brought under this protective relief all Federal employees (Public Law 767, 83d Congress, 2d Session; 5 U.S.C. §§ 8501 et seq.), and in 1958 it followed with the Ex-Servicemen's Unemployment Compensation program (Public Law 85–848; 5 U.S.C. §§ 8521 et seq.). Both of these programs are administered by the States as agents of the United States in conjunction with their own State laws.

During periods of economic downturn Congress has enacted temporary laws to provide an extension of benefits where the regular programs proved inadequate for the times. The Temporary Unemployment Compensation Act of 1958 served during one such period (Public Law 85–441). Next was the Temporary Extended Unemployment Compensation Act of 1961 (Public Law 87–6). Ten years later Congress passed the Emergency Unemployment Compensation Act of 1971 (Public Law 92–224). In an effort to forestall the need for temporary extended benefit programs, with the recurrent burden on the Federal Treasury, Congress passed as a part of the 1970 amendments the Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Public Law 91–373), and by adding section 3304 (a)(11) to the Federal Unemployment Tax Act it made the extended program a part of the Federal-State unemployment compensation program. The extended program became effective and began operating in all States in 1972.

Even with extended benefits as a permanent part of the program, it proved inadequate in the 1974–75 economic downturn. Late in 1974 the Congress passed two remedial laws as temporary measures. The Emergency Unemployment Compensation Act of 1974 (Public Law 93–572) was like its predecessor, the Emergency Unemployment Compensation Act of 1971, and extended benefits for individuals in the regular unemployment compensation programs. The other law, the Emergency Jobs and Unemployment Assistance Act of 1974 (Public Law 93–567) enacted in title II a special unemployment assistance program unlike any previous program. It covered an estimated 12 million workers who were not covered by the regular unemployment compensation laws, including primarily State and local government employees, agricultural workers, and domestic employees.

It is notable that all three of the principal classes of workers covered by the special unemployment assistance program would be covered under the Federal-State unemployment compensation program by the amendments proposed in H.R. 10210. The coverage of State and local government employees proposed in the amendments would be an extension of the coverage of those classes of workers. The 1970 amendments, effective in 1972, required State law coverage of employees of State hospitals and institutions of higher education. That coverage

would now be extended under the proposals to most State and local government employees, with the exception of elected and certain appointed officials, members of legislatures and the judiciary, National Guardsmen, and temporary emergency employees.

The proposals in H.R. 10210 for expanding the coverage of the Federal-State unemployment compensation program do not represent a new initiative into areas untouched before, particularly as to State and local government employees. In the special unemployment assistance program the Congress saw a need for protective relief and met it. The program has been extended recently to 2 years to fulfill this need—Public Law 94–45—and to fill the gap until the permanent changes are enacted and take effect.

Coverage of State and local government employees is within the "fair margin of discretion" vested in the Congress. In the 1970 amendments it has not determined the conditions of coverage in an arbitrary fashion. The reasons are fully explained in the congressional committees' reports in these terms:

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 unemployment 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.

* * * * * * *

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. (Senate Report No. 91–752, March 26, 1970, pages 14–15. To the same effect: House Report No. 91–612, November 10, 1969, pages 11–12).

An estimated 940,000 State government employees were brought under coverage by the 1970 amendments. Another 3.5 million workers were brought in by other amendments, still leaving approximately 12 million not covered by any unemployment compensation program. The total number of workers then covered by all programs was over

62 million. The special unemployment assistance program temporarily fills the gap for the omitted 12 million workers. Most of these 12 million workers would be covered under the amendments proposed in H.R. 10210.

Congress has manifested a continuing concern in bringing appropriate segments of the labor force under unemployment compensation protection, and in improving the program. In the Senate Finance Committee's summary of the major amendments in Public Law 91-373, by way of illustration, it said:

"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 the 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 compensation programs which are designed to protect the integrity, of the program, and make other changes to strengthen the Federal-State unemployment compensation system." (Senate Report No. 91-752, March 26, 1970, pages 1-2. To the same effect: House Report No. 91-612, November 10, 1969, pages 1-2).[1]

The extension of coverage referred to in the Senate report included limited coverage of State and local government employees. The amendments proposed in H.R. 10210 build upon the prior extensions of coverage and improvements in the program, including an extension of coverage to most State and local government employees. Under the proposed amendments it is estimated that an additional 600,000 State employees and 7,700,000 local employees would be brought under the program's coverage.

The background of the emergency unemployment compensation and special unemployment assistance programs is particularly relevant to the extensions of coverage proposed in H.R. 10210. The two programs were combined in H.R. 16596 when the bill was reported favorably by the Committee on Education and Labor. House Report No. 93-1528, dated December 9, 1974, eloquently relates the setting:

"The Emergency Jobs and Unemployment Assistance Act of 1974 is a direct outgrowth of the deteriorating economic situation. No more devastating description of the current situation can be written than the dry prose of the Bureau of Labor Statistics official release on 'The Employment Situation: November, 1974.' The situation as described by the statisticians of BLS should be known to all who will act on this bill and the committee is therefore reproducing the following extract from the release as the best statement of the necessity for immediate action on this bill:

"When Nation's unemployment rate rose from 6.0 percent to 6.5 percent in November * * *. The jobless rate was at its highest level since October 1961.

"Total employment * * * fell by nearly 800,000 in November to 85.7 million * * *.

* * * * * * *

[1] See also pp. 1-2 and 6-7 of Senate Report No. 1794, July 12, 1954 (H.R. 9709), and pp. 1-4 of Senate Report No. 2439, Aug. 14, 1958 (H.R. 11630).

"The number of persons unemployed reached nearly 6 million in November, up 460,000 from the previous month * * *.

"Grim though the present picture is, it is necessary to add that the prospects for the future are even more grim. * * * economists differ only on the extent of the deterioration that lies ahead.

* * * * * * *

"Unemployment insurance has been a basic tool for counteracting cyclical downturns in the economy since the 1930's. It is the basic program to cushion the shock of unemployment, but experience has shown that its gaps in coverage and limited duration leave many workers without essential protection. Title II provides an interim approach to the problem. * * *

* * * * * * *

"It is obvious that we are in the throes of an economic crunch of major scope. Prompt action to provide at least a reasonable measure of income maintenance is required to avoid further spreading of the ripple effects of unemployment.

* * * * * * *

"New coverage equivalent to that under State UI laws would be available for the first time for up to 12 million workers not now covered. * * *

"The major groups newly covered for the duration of this act include:

* * * * * * *

"State/local government.—More than 8 million workers in State and local government, who are still outside the regular UI system would be included in title II. Particularly vulnerable are large numbers employed in this field, especially at lower skill levels, in public works and maintenance, and in hospital and food service occupations. Governments are subject to the same inflationary pressures and shortages as other employers and restructuring of priorities due to limitation on revenues may have considerable impact on these employees."

The problem is plainly national in scope. State and local government employees are subject to the same perils of unemployment and its ensuing destitution. Today, as in the 1930's, the burden of furnishing relief has fallen on the National Treasury. The remedial expedient for this need was adopted in the Social Security Act, and it exists today as the most appropriate means adaptable to the end sought. As the Court said in *Helvering* v. *Davis*, 301 U.S. 619, 641: "Nor is the concept of general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times."

In the light of the history of legislation in the field of unemployment relief, the action of the Congress in extending unemployment compensation protection to State and local government employees

cannot be said to fall outside the scope of national policy and power or to have been determined in any arbitrary fashion. In making States and local government employee coverage a condition of the approval of State laws, instead of making the States and localities subject to the Federal Unemployment Tax Act, the Congress has devised a standard which is in all respects most suitable in the treatment of such coverage. Its actions in the past are within the "fair margin of discretion" vested in the Congress by the Constitution, as its action would be in passing the amendments proposed in H.R. 10210.

III. NO INFRINGEMENT OF STATE SOVEREIGNTY OR CONSTITUTIONAL FEDERALISM IS INVOLVED IN THE CONDITIONS ON COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES

It has been shown that the conditions on State law coverage are within the Congress' powers under article I, section 8, clause 1, of the Constitution, and that those conditions are fairly within the scope of national policy and power, and have not been determined in any arbitrary fashion. The issue remains whether the conditions constitute an infringement of the constitutional rights of the States.

The conditions on State law coverage differ from other conditions upheld in *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937), in requiring the coverage of the State's own employees and employees of its political subdivisions. Acceptance of those conditions by the State is necessary for it to continue to obtain the tax credit for private employers in the State, and to continue to receive granted funds and participate in the Federal-State unemployment compensation program. No tax is laid upon the State or its localities under the Federal Unemployment Tax Act. The statutory consent of the State is still required, as with the original conditions, and the program will not operate in a State without its consent. The critical point is whether, in requiring the State's assent to cover State and local government employees under its statewide unemployment compensation program, the Congress infringes on the State's sovereignty and the principle of constitutional federalism.

In *United States* v. *Rekins*, 304 U.S. 27, 52 (1938), the Court said that the 10th amendment protects the right of the States to make contracts and give consents where that action would not contravene the provisions of the Constitution. "It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power." (304 U.S. at 51–52.) And, citing the *Steward* case, the Court stated that the formation of an indestructible Union of indestructible States does not make impossible "cooperation between the Nation and the States through the exercise of the power of each to the advantage of the people who are citizens of both." (304 U.S. at 53).

Steward Machine Co. v. *Davis*, *supra*, furnishes more insight on the issue. Noting that even sovereigns may contract without derogating from their sovereignty, the Court found no room for doubt that the States could contract with Congress if the essence of their statehood is maintained without impairment. (301 U.S. at 597.) There the Court found no impairment of statehood in the numerous conditions on participation in the Federal-State unemployment compensation

program. The conditions upheld at that time were pervasive, intruding upon the States' finances and controlling the handling of its revenues from taxation, among other matters.

Bekins and *Steward* hold that cooperation of the States and the Nation through the consent of the States is of the essence of sovereignty rather than impairment. Cooperation is permissible where it is to the advantage of the people who are citizens of both State and Nation. The Court put the proposition more succinctly in *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495 (1937), decided on the same day as *Steward*, in upholding the constitutionality of a State unemployment compensation law enacted with the objective of obtaining the benefits of the tax credit and grants under the Social Security Act. In concluding its opinion, the Court said: "The power to contract and the power to select appropriate agencies and instrumentalities for the execution of State policy are attributes of State sovereignty. They are not lost by their exercise." (301 U.S. at 526.)

Substantially the same considerations which led to the consent upheld in *Steward* and *Carmichael* are present today. Unemployment has risen to heights which once again requires relief from the Nation, and consequent drains on the Treasury. Congress has seen the need for extending the duration of benefits payable under the regular unemployment compensation programs, and has enacted the Emergency Unemployment Compensation Act of 1974. A new perception of the needs of the people has led to the enactment of the Special Unemployment Assistance program, to furnish relief to the 12 million workers who are not covered by the regular unemployment compensation programs. They suffer as much from the vicissitudes of unemployment as those covered by the regular programs; relief for them serves the same purposes. State and local government employees are the largest group covered by the special program. The special program is federally financed. It fills a gap most States have failed to occupy, or to encompass completely. Most of the workers covered by the special program would be brought under the Federal-State unemployment compensation program by amendments proposed in H.R. 10210. The drain upon Federal resources will to that extent cease; the National program will be broadened to better serve the people who are citizens of both the States and the Nation.

Consent of the States to the conditions on coverage of State and local government employees is "a fair and just requital for benefits received." (Steward, 301 U.S. at 598). Coverage is achieved without laying a tax on the States and localities or their employees, or increasing the Federal unemployment tax on employers. Financing of administrative and benefit costs of such coverage is left to the States, to devise the means according to their own interests. Cooperation is attained in carrying out national policy of strengthening and improving the Federal-State unemployment compensation program, which leaves to the States the administration of State unemployment compensation laws of their own making. State and local government employees are to be treated alike in all States, and placed on an equal footing with employees of the Federal Government and the few State and local government employees who are already covered. No infringement of State sovereignty or constitutional federalism occurs in the presence of such consent.

The consent required is not different in principle from the consent required to give effect to the original Social Security Act. With each change in the conditions of the Federal Unemployment Tax Act a renewal or reformation of consent is necessary. Renewed consent was freely given in 1972 to the several new conditions added by the Employment Security Amendments of 1970 (Public Law 91-373), among which were the conditions on coverage of State and local government employees. H.R. 10210 would add other new conditions, in addition to broadening the conditions on coverage of State and local government employees. In the light of the considerations which have led to the new conditions, Congress is not to be faulted as exceeding the bounds of its powers. In seeking to strengthen and improve the Federal-State unemployment compensation program, Congress may from time to time add conditions which it might have included in the first instance, and may reshape the old conditions to fit its new perceptions of national policy. The conception of the consent required is the same whether considered in reference to new conditions on coverage of State and local government employees or to new conditions dealing with other matters.

The 1970 amendments furnish historical support for coverage of State and local government employees with the consent of the States. The new conditions were freely assented to by the States. No complaint has been pressed that the 1970 conditions or the consents then given were invalid under the Constitution. No contention has been pleaded that assent to those conditions resulted in any impairment of State sovereignty or breach of constitutional federalism. Nor will such impairment or breach result from the reshaping of the conditions on coverage of State and local government employees by the proposals in H.R. 10210.

As an exertion of the taxing power, the conditions on coverage of State and local government employees clearly do not infringe on *Helvering* v. *Gerhardt* that the 10th amendment was devised only as a shield to protect the States from curtailment of the essential operations of government which they have exercised from the beginning (304 U.S. 405, 417 (1938)). It decided in that case that the income tax applied to the salary of an official of the Port of New York Authority "neither precludes nor threatens unreasonably to obstruct any function essential to the continued existence of the State government." (304 U.S. at 424).

The conclusion which necessarily follows from this analysis is that the conditions on State law coverage of State and local government employees, as now set forth in the Federal Unemployment Tax Act and as proposed to be amended in H.R. 10210, do not infringe upon the constitutional rights of the States.

IV. THE DECISION OF THE UNITED STATES SUPREME COURT IN *NATIONAL LEAGUE OF CITIES* V. *USERY* DOES NOT RENDER UNCONSTITUTIONAL UNEMPLOYMENT COMPENSATION COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES

Application of the 10th amendment to the exercise of the taxing and general welfare power in article I, section 8, clause 1, of the Constitution is clearly distinguishable from 10th amendment limitations

on the exercise of the Federal power to regulate commerce under article I, section 8, clause 3, enunciated in *National League of Cities* v. *Usery*, *supra*. *National League of Cities* held that Congress exceeded its authority under the commerce clause by extending mandatory coverage under the minimum wage and overtime provisions of the Fair Labor Standards Act (29 U.S.C. §§ 201 et seq.) to employees of State and local governments. 29 U.S.C. §§ 203(d), (s)(5), and (x). The Court held, using the *Fry* v. *United States*, 421 U.S. 542, 547 (1975), test, that "Congress has sought to wield its power in a fashion which would impair the States' 'ability to function effectively within a Federal system,'" thereby exceeding the scope of power vested in it by the commerce clause, and by that action impermissibly penetrated the 10th amendment barrier against infringement of the States' reserved powers. Slip opinion at 17–18.

The Federal Unemployment Tax Act and title III of the Social Security Act, as enacted, and as proposed to be amended by sections 115 and 212 of H.R. 10210, derive from Congress' power to lay and collect taxes and to provide for the general welfare. U.S. Constitution, article I, section 8, clause 1, supra; *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 596 (1937). 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.

National League of Cities has no application to statutes enacted under the taxation and general welfare clause: "We express no view as to whether different results might obtain 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, article I, section 8, clause 1, or section 5 of the 14th amendment. (Slip opinion at 18, n. 17.)

The opinion of the Court also left unanswered Mr. Brennan's statement in his dissenting opinion that the Federal Government might apply the Fair Labor Standards Act provisions to State and local government employees by making such coverage a condition for the receipt of Federal grants. See slip opinion, J. Brennan's dissent at 24–25; see also *Steward Machine Co.*, *supra*, 301 U.S. at 591, 593–98; and *Cincinnati Soap Co.* v. *United States*, 301 U.S. 308, 313 (1937).

The Court in *National League of Cities* stated that Congress exceeded its authority under the commerce clause, by forbidding choices to State and local governments in regulating relationships with their own employees. Slip opinion at 14. 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.

As seen in the Supreme Court's clear language in *National League of Cities*, that decision is not applicable to enactments which derive from the taxation and general welfare powers, such as the provisions

in the Federal Unemployment Tax Act and the proposed amendments in section 115 and 212 of H.R. 10210. Unlike the Fair Labor Standards Act amendments struck down in *National League of Cities*, the provisions on unemployment compensation coverage of State and local government employees are not regulatory in nature, and are consistent with the historic structure of the Federal-State unemployment compensation program. States are not forbidden choices in regulating relationships with their employees, nor are they stripped of their discretion of participating in the benefit program.

V. THE LIMITATIONS ON FINANCIAL SUPPORT OF STATE LAWS SEPARABLE AND WITHIN CONGRESS; POWER UNDER THE GENERAL WELFARE CLAUSE

The validity of the conditions on coverage of State and local government employees is not affected by the amendments proposed in section 212 of H.R. 10210, under which the financial support of grants and sharable compensation would not be furnished with respect to the coverage of any State or local government employees. As explained above, the funds for the financial support of all States is governed by the sum of the collections under the Federal Unemployment Tax Act. Because the States and localities are not subject to the Federal Unemployment Tax Act there is no contributory source of funding with respect to State and local government employees.

As a result the States will have to bear a portion of the costs of administration and what constitutes sharable compensation as to other workers covered by the State's laws. This is not different in principle, however, from the necessity undertaken by the States from the inception of the program to bear the costs of unemployment compensation. This was implicitly upheld in *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937), in ruling that the Nation and the States may cooperate in this manner to achieve a common end. The benefit created by statute may be partial, requiring the States to contribute a share of the costs, as in matching grant programs and the Federal-State Extended Unemployment Compensation Act of 1970.

Provision for less than full financial support needs no other authority than the statute itself. Congress has the power to create benefits by statute, and to attach any conditions to the benefits which it deems appropriate and suitable to the purpose. *Steward Machine Co.* v. *Davis*, *supra*. Having the power to create benefits, it may be exercised or not as the Congress decides in its judgment, and benefits once created may be abolished. Congress determines the scope of the benefits it creates; it is not compelled to cover the entire field as the judgment of others may conceive the proper scope. Therefore, it may provide a partial benefit, although there may be no explicit condition that the State make up the balance. The absence of an explicit condition does not make the benefit any less valid. Of necessity the balance must be provided for the benefit to operate in the fashion intended by the Congress. What is implicitly necessary need not be explicitly required for the statute to be valid. In this, as in matters concerning the operation of the benefit, the Congress determines the conditions upon which the benefit is to be given.

In *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 598 (1937), the Court said that the financial support provisions of title III of the

Social Security Act are separable from the tax. The condition requiring coverage is in the Federal Unemployment Tax Act. The financial support provisions are valid, therefore, without regard to the conditions stated in the Federal Unemployment Tax Act.

There is a rational basis for the provisions in H.R. 10210, under which less than full financial support would be furnished to the States. The provisions clearly are within the "fair margin of discretion" vested in the Congress.

Conclusion

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.

National League of Cities v. *Usery*, — — U.S. — — , June 24, 1976, is not applicable to the provisions on unemployment compensation coverage of State and local government employees in the Federal Unemployment Tax Act, or as proposed in H.R. 10210 now before Congress. 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:

1. 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*.

2. 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.

William J. Kilberg,
Solicitor of Labor.

APPENDIX B.—CONSTITUTIONALITY OF STATE AND LOCAL COVERAGE: CRS MEMORANDUM

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., August 9, 1976.

To: Hon. Russell B. Long, Chairman, Senate Finance Committee.
From: American Law Division.
Subject: Coverage of State and local government employees under the Federal-State unemployment compensation program—the constitutional considerations.

Pursuant to your request, we have examined the cases pertinent to the general question of whether and to what extent the Federal Government may, under its powers to regulate commerce, article I, section 8, clause 3, and to tax and spend for the general welfare, *id.*, clause 1, regulate the relationships between State and local governments and their employees. We have specifically focused upon the problem of whether Congress, in light of the U.S. Supreme Court decision in *National League of Cities* v. *Usery*, docket No. 74-878, June 24, 1976, has the constitutional power to enact a statute requiring the States, as a condition of continued participation in the Federal-State unemployment compensation program, to cover employees of State and local governments. In our study of the problem, we have reviewed the Solicitor of Labor's *Memorandum of Law*, June 28, 1976.

In our analysis which follows, we first discuss the Solicitor of Labor's Opinion in terms of its conclusions as well as its rationale. Then we set forth the points with which we disagree or which we believe are in need of greater refinement and further clarification. We conclude with our own analysis of *National League of Cities* and try to relate how the portions of that decision which are relevant to the problem here may affect the constitutionality of section 115 of H.R. 10210.

In his June 28th Opinion, the Solicitor of Labor concluded that (1) the Supreme Court's decision in *National League of Cities* was clearly distinguishable from the situation involving an amendment to the Federal Unemployment Tax Act proposed by H.R. 10210, section 115; and (2) the Congress has the power, under the taxing and general welfare clause of the Constitution, to condition continued participation in the Federal-State unemployment compensation program on the unemployment coverage of State and local government employees. (See *Memorandum of Law*, U.S. Department of Labor, Office of Solicitor, June 28, 1976, at 1 and 21-22.) In that opinion, the Solicitor also concluded that 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 Constitution. The Solicitor found further that in enacting such a scheme Congress would not be infringing upon a State's sovereignty.

In its conclusion that the *National League of Cities* decision is not applicable to the provisions on unemployment compensation coverage of State and local government employees, the Solicitor's Opinion reasoned that there are certain fundamental differences between the Fair Labor Standards Act Amendments of 1974, struck down by the Court in *National League of Cities*, and the enacted and proposed provisions on unemployment compensation coverage of State and local government employees. These differences are: (1) The basis of Congress' authority in enacting the Fair Labor Standards Act Amendments of 1974 was the commerce clause of the Constitution; while the power to enact the unemployment compensation provisions is derived from the taxation and general welfare clause of the Constitution; and (2) The Fair Labor Standards Act Amendments of 1974 were regulatory in nature and were made mandatory requirements compelling the States and local governments to comply; while the unemployment compensation provisions now enacted and proposed by H.R. 10210 permit States the option of participation. The taxing and spending power, from which the unemployment compensation program derives its existence, is a noncoercive power insofar as the States are concerned. Congress may offer the money and impose conditions, but Congress gets its way only if the money and conditions are accepted.

We are in basic agreement with most of the analysis presented in the Solicitor's Opinion. We accept the following: (1) its explanation of the structure and operation of the Federal-State unemployment compensation program; (2) its historical development of the changes and expanded coverage in the program; (3) its discussion of the holding in *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937)—a case which we, too, believe is controlling on the powers of Congress under the taxing and spending clause of the Constitution; and (4) its recognition of the basic differences between a statute such as the Fair Labor Standards Act and one resembling statutes relating to an unemployment compensation program predicated on a cooperative arrangement between the Federal Government and the States. In two respects, we find that we have to take issue with the interpretation of the Solicitor of Labor. We are not in full agreement with the Solicitor's analysis of footnote 17 in *National League of Cities* (slip opinion at 18); nor do we feel that the Solicitor's *Memorandum of Law* adequately discusses (*a*) the subject of Congress' power to condition Federal grants and (*b*) the type of conditions deemed constitutionally permissible.

National League of Cities dealt specifically with the power of the Federal Government to mandate minimum wages and maximum hours for certain State and local employees. The Court held that "* * * insofar as the challenged amendments operate to directly displace the states' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, sec. 8, clause 3." (Slip opinion, at 18.)

While the Court rejected Congress' ability through the commerce clause to enact laws affecting the employment conditions (in this instance their wages and hours) of public employees on the State and local levels, in a footnote it stated, "*We express no view* as to whether different results might obtain 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,

sec. 8, cl. 1, or sec. 5 of the Fourteenth Amendment." [*Id.* at n. 17]. [Emphasis supplied.] The Solicitor of Labor's opinion seems to view this footnote in very decisive terms. The Solicitor prefaced the citation of the quote with the following remark, "*National League of Cities* has *no application* to statutes enacted under the taxation and general welfare clause * * *" [Solicitor's Opinion at 19]. [Emphasis supplied]. The Solicitor later reiterated, "As seen in the Supreme Court's clear language in *National League of Cities*, that *decision is not applicable to enactments which derive from the taxation and general welfare powers*, such as the provisions in the Federal Unemployment Tax Act and the proposed amendments in sections 115 and 212 of H.R. 10210." (*Id.*) [Emphasis supplied.]

We regard footnote 17 in *National League of Cities* more as a reservation of judgment by the Court than a definitive conclusory statement. There is no way of predicting how the Court will rule in the future when the same issue comes before it but in the context of the taxing and spending clause instead of the commerce power. All that the Court decided in *National League of Cities* is that Congress does *not* have the authority under the commerce clause to impose minimum wage and maximum hour provisions upon State and local government units. Because of the reservation of judgment in footnote 17, the question of whether Congress can enact legislation affecting State and local employees pursuant to its authority under the taxing and general welfare clause is an open one.

It is true that Congress' power under the commerce clause is different from its power under the taxing and spending clause in the Constitution. In the former situation, Congress acts pursuant to a granted power that is enforceable directly against the regulated body, and the exercise of such a granted power as the commerce power is only limited by express restraints within the text of the Constitution itself and by general requirements of rationality and nonarbitrariness that govern the exercise of all congressional powers. In the instance of Congress acting pursuant to article I, section 8, clause 1, said power does not restrict Congress to taxing and spending to implement the granted powers of Congress and therefore need not be limited to, for example, matters in interstate commerce or the like; however, this taxing and general-welfare power is a noncoercive power insofar as the States are concerned. Despite the distinction between these two clauses in the Constitution and the Court's reservation of judgment in footnote 17, we feel that it is impossible to conclude with any degree of certainty that a different result will be forthcoming from the Court when it decides a case involving a statute enacted pursuant to the taxing and spending power.

In *National League of Cities*, the Court did express an overall concern for the preservation of state sovereignty. Justice Rehnquist, writing for the Majority, stated, "* * * We have repeatedly recognized that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner." (slip opinion, at 11).

Congress may have to be concerned with how any of its legislation, which relates to State and local employees, enacted pursuant to taxing

and spending power or section 5 of the 14th amendment, affects State sovereignty. The remark made by Justice Brennan in his dissenting opinion lends support to the view that *National League of Cities* has left some unanswered questions. He wrote: "* * * Even if Congress may nevertheless accomplish its objectives—for example by conditioning grants of federal funds upon compliance with federal minimum wage and overtime standards, cf. *Oklahoma* v. *United States Civil Service Comm'n*, 330 U.S. 127, 144 (1947)—*there is an ominous portent of disruption of our constitutional structure implicit in today's mischievous decision.*" (*Id.*, at 24-25.) (Emphasis supplied.)

In addition to taking issue with the Solicitor of Labor concerning the degree of finality to be given footnote 17, we also feel that the discussion relating to conditions attached to Federal funds pursuant to the general-welfare clause needs further refinement and a more extensive explanation in order to better understand the extent to which Congress may condition grants to States for the implementation of a joint Federal-State program or for the State administration of a federally funded program.

It is now well settled that Congress may extend its financial resources to the States for implementation of joint Federal-State programs or State-administered programs subject to Federal conditions. If the States fail to comply or if they comply inadequately, the Federal Government may cut off funds; on the other hand, the Federal courts are available to compel through injunctions compliance with the conditions agreed to by the States. *Rosado* v. *Wyman*, 397 U.S. 397 (1970). Numerous cases testify to the validity of this application of "cooperative federalism." (*See King* v. *Smith*, 392 U.S. 309 (1968); *California Dept. of Human Resources Development* v. *Java*, 402 U.S. 121 (1971); *Townsend* v. *Swank*, 404 U.S. 282 (1971); *Shea* v. *Vialpando*, 416 U.S. 251 (1974); *Philbrook* v. *Glodgett*, 421 U.S. 707 (1975)).

But it needs to be restated that while the Federal Government through its taxing and spending power may promote ends that are not within its other enumerated powers, the States retain the option of entering into or refusing to enter into the Federal relationship and accepting the proffered money on the stipulated conditions. Therefore, a condition such as the one proposed under the unemployment compensation program differs from the regulatory aspect inherent in the Fair Labor Standards Act Amendments of 1974. In the former situation, States are given a choice and participation is voluntary; while in the latter, States were required to comply. Of course, if the States reject the condition the following results will flow from such a decision: (1) a halt in participation in the Federal-State unemployment compensation program; (2) a loss of the benefits stemming from the allowable tax credits accorded private employers; and (3) a cut-off of federally granted funds to assist States in the administration of the program. The decision by States not to comply with the proposed requirement of covering employees of State and local governments under their unemployment statutes as a condition of continued participation in the Federal-State unemployment compensation program does have serious consequences. Not only are the States themselves affected, but also, the private employers will suffer by no longer being able to enjoy the tax credits given them. The phenomenon we just described appears to detract from the "voluntariness" of the

Federal-State unemployment compensation program. This type of arrangement contained in the proposed legislation may be subject to a State challenge of "coercion."

There is a discussion of "coercion" and "undue influence" in *Steward Machine Co.* v. *Davis*, *supra*, 586, 590–591. The Court in *Steward Machine Co.* noted that, "Nothing in the case suggests the exertion of a power akin to undue influence, if we assume that such a concept can ever be applied with fitness to the relations between state and nation. Even on that assumption the location of the point at which pressure turns into compulsion, and ceases to be inducement, would be a question of degree, at times perhaps, of fact." (*Id.*, at 590). So long as a State makes a choice of her unfettered will, though induced, but not under the strain of a persuasion equivalent to undue influence, *id.*, the choice stands. Here, the Federal Government was acting to ameliorate the travails of unemployment, to safeguard its own treasury, and to place the States upon a footing of equal opportunity. (*Id.*, at 590–591). It is important to point out that the Court reserved the issue of the propriety of inducing State conduct unrelated to the fiscal need subserved by the tax in its normal operation or to any other end legitimately national (*Id.*, at 591).

The Solicitor of Labor discusses the issue of State consent, voluntariness, and coercion in his *Memorandum of Law*. (See Solicitor's Opinion, at 5–7; 14–18.) We agree with the Solicitor's basic conclusion that it is within the power of Congress to (1) grant funds to States to assist them in the administration and funding of their approved unemployment compensation laws and (2) to place limitations on those grants. The Solicitor's statement that it is also within Congress' authority to make it a condition of such grants that State unemployment compensation laws be approved under the Federal Unemployment Tax Act is in need of further clarification which we develop below.

If Congress chooses to condition Federal grants-in-aid to bring about the submission of each State to coverage of its employees and the employees of its political subdivisions, this approach would arguably be permissible under such precedents as *Oklahoma* v. *U.S. Civil Service Commission*, 330 U.S. 127 (1947). In that case, the Court sustained the requirements of the Hatch Act and the C.S.C. order. This order directed that for engaging in partisan political activity (a violation of the Hatch Act), the Oklahoma Highway Commission member should be removed or there would be withheld from the State Federal highway funds an amount of money equal to the compensation of the commissioner. The Court wrote, "While the United States is not concerned with and has no power to regulate, local political activities as such of state officials, it does have power to fix the terms upon which its money allotments to states shall be disbursed. The Tenth Amendment does not forbid the exercise of this power in the way that Congress has proceeded in this case * * * The end sought by Congress through the Hatch Act is better public service by requiring those who administer funds for national needs to abstain from active political partisanship. So even though the action taken by Congress does have effect upon certain activities within the state, it has never been thought that such effect made the federal act invalid * * * We do not see any violation of the state's sovereignty in the hearing or order.

Oklahoma adopted the 'simple expedient' of not yielding to what she urges is federal coercion * * * The offer of benefits to a state by the United States dependent upon cooperation by the state with federal plans, assumedly for the general welfare, is not unusual." *Id.*, 143–144.

Further analysis, we think, will indicate that there are significant limiting principles regarding the approach of conditioning Federal grants.

As the language quoted above from *Oklahoma* makes clear and as is evident from the language of other cases, while Congress is not limited in attaching conditions in its taxing and spending programs to its enumerated powers, it is limited to the extent that the conditions must be reasonably related to the purposes of the taxing and spending programs themselves. This limitation was suggested by Justice Stone in *United States* v. *Butler*, 297 U.S. 1, 85–86, (1936), in arguing that the majority's objections to conditioning were inappropriate, and by Justice Cardozo in *Steward Machine Co.* v. *Davis*, *supra*, 590–591, 593. In *Ivanhoe Irrigation Dist.* v. *McCracken*, 357 U.S. 275, 295 (1958), the Court said:

"Also beyond challenge is the power of the Federal Government to impose reasonable conditions on the use of Federal funds, Federal property, and Federal privileges * * * [T]he Federal Government may establish and impose reasonable conditions relevant to federal interest in the project and to the over-all objectives thereof."

And in *Lau* v. *Nichols*, 414 U.S. 563, 569 (1974), it was said: "The Federal Government has power to fix the terms on which its money allotments to the States shall be disbursed. [Citing *Oklahoma* v. *Civil Service Comm.*] whatever may be the limits of that power, *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 590 *et seq.*, they have not been reached here."

The conditions attached in the various programs with which these cases were concerned all had to do with assuring the fair and efficient use of Federal moneys to accomplish the purposes of the programs for which revenues were raised and allocated. None of them was directed to accomplishing something extraneous to the program. Given Congress' power to enact the program, all of the conditions Congress chooses to establish must be attached for the purpose of insuring that in operation the system does indeed perform the functions that Congress wants performed. Congress cannot simply attach conditions to the program for purposes other than to insure the best performance of the program.

The Solicitor of Labor's Opinion notes that with respect to State compliance: "The consent required is not different in principle from the consent required to give effect to the original Social Security Act. With each change in the conditions of the Federal Unemployment Tax Act a renewal or reformation of consent is necessary. Renewed consent was freely given in 1972 to the several new conditions added by the Employment Security Amendments of 1970 (Public Law 91–373), among which were the conditions on coverage of State and local government employees. H.R. 10210 would add other new conditions, in addition to broadening the conditions on coverage of State and local government employees. In the light of the considerations which have led to the new conditions, Congress is not to be faulted as exceeding the

bounds of its powers. *In seeking to strengthen and improve the Federal-State Unemployment Compensation Program, Congress may from time to time add conditions which it might have included in the first instance, and may reshape the old conditions to fit its new perceptions of national policy.* The conception of the consent required is the same whether considered in reference to new conditions on coverage of State and local government employees or to new conditions dealing with other matters." (Solicitor's Opinion, at 17). (Emphasis supplied.)

The point that we believe needs emphasizing is that the conditions attached to the Federal grants-in-aid cannot be for a purpose wholly extraneous to the program, e.g. via conditions. Congress could not enact an entirely different program to achieve the coverage of other employees not reachable in the general exercise of Congress' taxing and spending powers. The Solicitor of Labor does point out that in the 1970 Amendments there is historical support for coverage of State and local government employees with the consent of the States. The Opinion notes: "The new conditions were freely assented to by the States. No complaint has been pressed that the 1970 conditions or the consents then given were invalid under the Constitution. No contention has been pleaded that assent to those conditions resulted in any impairment of State sovereignty or breach of constitutional federalism Nor will such impairment or breach result from the reshaping of the conditions on coverage of State and local government employees by the proposals in H.R. 10210." (*Id.*)

To reiterate, Congress may attach reasonable conditions to its taxing and spending programs, but in order to be reasonable, and not arbitrary, the object to which the conditions must relate is the legitimate purpose of the spending program to which the conditions are attached. It is not valid for Congress to attach conditions that, in and of themselves, promote the general welfare, because Congress may not legislate for the general welfare except through its granted powers. The conditions, in other words, must promote the general welfare objective of the taxing and spending program itself and may not be utilized to go beyond the programs to which they are attached.

The standard is, of course, the same as the due process standard which demands that "the means selected shall have a real and substantial relation to the object sought to be attained." *Nebbia* v. *New York*, 291 U.S. 502, 525 (1934). As such it is an extremely relaxed standard and no Federal taxing and spending program has ever failed a constitutional challenge to it on this ground (*Butler* being of course a different case for these purposes), but the qualifications are there.

Another item to examine more closely is the possibility of an allegation that the proposal amounts to an "unconstitutional condition." The term "unconstitutional condition" is an ill-defined doctrine that the courts have developed to deal with the frequent governmental practice of conditioning the extension of a benefit or privilege to a recipient upon his giving up or foregoing a constitutional right. Neither the courts nor the commentators are clear with respect to the limitations imposed upon Government by the doctrine. (See Hale, "Unconstitutional Conditions and Constitutional Rights," 35 *Columbia Law Review* 321 (1935); Merrill, "Unconstitutional Conditions," 77 *University of Pennsylvania Law Review* 879 (1929); Note, "Unconstitutional Conditions," 73 *Harvard Law Review* 1595 (1960))

In general, however, the cases and commentary seem to find common ground on several principles. The most significant would appear to be the condition's relevancy, or irrelevancy, to the attainment of the governmental objectives involved in the extension of the benefit. (See our earlier discussion.) A second principle, which may or may not grow logically out of the first, is that the power to impose conditions is not a lesser part of the greater power to withhold the benefit or privilege, but instead is a distinct exercise of power which must find its own justification. See *Frost and Frost Trucking Co.* v. *Railroad Comm.*, 271 U.S. 583 (1926), and *Terral* v. *Burke Const. Co.*, 257 U.S. 529 (1922). A third suggested principle is that the withholding or revocation must not be arbitrary, a condition of the exercise of all governmental power but one that apparently means different things in different contexts.

Upon examination of the U.S. Supreme Court's decision in *National League of Cities* and a review of the precedents under the taxing and spending power in the Constitution, we feel it necessary to conclude that, at the present time, the question of whether legislation as proposed by H.R. 10210 will be constitutionally permissible is an open one. We base our conclusion primarily upon several points we derived from our reading of *National League of Cities*: (1) The Court's reservation of judgment in footnote 17 (slip opinion, at 18); (2) the majority's preoccupation with the preservation of State sovereignty; and (3) the majority's failure to answer the question raised in Justice Brennan's dissent regarding conditioning grants of Federal funds.

We also feel that the Court's discussion of costs is important; that is, the expense involved if States and their political subdivisions had to comply with the mandate of the Fair Labor Standards Act Amendments of 1974. (See slip opinion, 11–14.) Justice Rehnquist, writing for the majority, noted that: "Judged solely in terms of increased costs in dollars, these allegations show significant impact on the functioning of the governmental bodies involved. The Metropolitan Government of Nashville and Davidson County, Tenn., for example, asserted that the Act will increase its costs of providing essential police and fire protection, without any increase in service or in current salary levels, by $938,000 per year. Cape Girardeau, Mo., estimated that its annual budget for fire protection may have to be increased by anywhere from $250,000 to $400,000 over the current figure of $350,000. The State of Arizona alleged that the annual additional expenditures which will be required if it is to continue to provide essential State services may total $21½ million. The State of California, which must devote significant portions of its budget to fire suppression endeavors, estimated that application of the Act to its employment practices will necessitate an increase in its budget of between $8 million and $16 million." (*Id.* at 12.)

In addition to pointing out increased costs, the majority emphasized that States and their localities might also be forced to reduce other programs in order to meet the increased costs of minimum wage-maximum hour requirements imposed by the Federal Government, for example, forced relinquishment of important governmental activities such as training programs or curtailment of affirmative action programs. (*Id.*, at 12–13.) The Court observed that the choices available

to States and their political subdivisions would be curtailed, and it remarked that the only "discretion" left to the States under the Act "* * * is either to attempt to increase their revenue to meet the additional financial burden imposed upon them by paying congressionally prescribed wages to their existing complement of employees, or to reduce that complement to a number which can be paid the federal minimum wage without increasing revenue." (*Id.*, at 14).

We believe it necessary to point out that the cost aspect is important in the context of the proposed amendment concerning the Federal-State unemployment compensation program. While coverage of State and local employees is not mandatory in this situation, failure to cover these employees will deprive private employers in a State of a substantial tax credit as well as depriving the State itself the grant for administering the program within the State. The funds for the financial support of all States is governed by the sum of the collections under the Federal Unemployment Tax Act. States and localities are not subject to the Federal Unemployment Tax Act, and therefore, they make no contribution to the source of funding with respect to State and local government employees. As a result, the burden will be upon the States to bear the costs of administration which will arise from the expansion of coverage to these public employees. The cost to the States may be significant and could conceivably reach the point where State sovereignty may be affected as in the case of *National League of Cities*.

Therefore, it is debatable whether provision for less than full financial support of State unemployment compensation laws by the Federal Government is within the general welfare power of the Congress under article I, section 8, clause 1, of the U.S. Constitution. It does not seem logical that a condition connected with provision for less than full financial support serves the purpose of improving the basic Federal-State unemployment compensation program. We must stress our point made earlier—that while Congress has the power to create benefits by statute and to condition those benefits, the attached conditions must: (1) have to do with assuring the fair and efficient use of Federal money to accomplish the purposes of the program for which the revenues were raised and allocated; (2) not be directed to accomplishing something extraneous to the program; (3) relate to the legitimate purpose of the spending program to which the conditions are attached; and (4) promote the general welfare objective of the taxing and spending program itself and may not be utilized to go beyond the program to which they are attached.

One may derive from the cases in this area the limiting principle that Congress may not, when acting under its taxing and spending powers, so structure its enactments as to coerce in fact and in law unwilling States to undertake some activity, to fall into some congressionally prescribed pattern, because to condition a Federal program in such a manner is to exceed Federal power. In so acting, Congress would not be respecting the concept of federalism and would not be employing a rational, nonarbitrary means to effectuate an object within the scope of the Federal taxing and spending power.

KAREN J. LEWIS,
Legislative Attorney.

APPENDIX C.—SUPREME COURT DECISION ON PREGNANCY DISQUALIFICATION PROVISIONS

SUPREME COURT OF THE UNITED STATES

MARY ANN TURNER v. DEPARTMENT OF EMPLOYMENT SECURITY AND BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

No. 74–1312. Decided November 17, 1975

PER CURIAM.

The petitioner, Mary Ann Turner, challenges the constitutionality of a provision of Utah law that makes pregnant women ineligible for unemployment benefits for a period extending from 12 weeks before the expected date of childbirth until a date 6 weeks after childbirth. Utah Code Ann. § 35–4–5(h)(1) (1974).

The petitioner was separated involuntarily from her employment on November 3, 1972, for reasons unrelated to her pregnancy. In due course she applied for unemployment compensation and received benefits until March 11, 1973, 12 weeks prior to the expected date of the birth of her child. Relying upon § 35–4–5(h)(1), the respondent, department of employment security, ruled that she was disqualified from receiving any further payments after that date and until 6 weeks after the date of her child's birth. Thereafter, Mrs. Turner worked intermittently as a temporary clerical employee. After exhausting all available administrative remedies, the petitioner appealed the respondents' rulings to the Utah Supreme Court, claiming that the statutory provision deprived her of protections guaranteed by the 14th amendment. The State court rejected her contentions, ruling that the provision violated no constitutional guarantee. *Turner v. Department of Employment Security*, —— Utah 2d ——, 531 P. 2d 870. The petition for certiorari now before us brings the constitutional issues here.

The Utah unemployment compensation system grants benefits to persons who are unemployed and are available for employment. Utah Code Ann. § 35—4—4(c) (1974). One provision of the statute makes a woman ineligible to receive benefits "during any week of unemployment when it is found by the commission that her total or partial unemployment is due to pregnancy." § 35–4–5(h)(2). In contrast to this requirement of an individualized determination of ineligibility, the challenged provision establishes a blanket disqualification during an 18-week period immediately preceding and following childbirth. § 35–4–5(h)(1). The Utah Supreme Court's opinion makes clear that the challenged ineligibility provision rests on a conclusive presumption that women are "unable to work" during the 18-week period because

of pregnancy and childbirth.* See —— Utah 2d, at ——, 531 P. 21, at 871.

The presumption of incapacity and unavailability for employment created by the challenged provision is virtually identical to the presumption found unconstitutional in *Cleveland Board of Education* v. *LaFleur*, 414 U.S. 632. In *LaFleur*, the Court held that a school board's mandatory maternity leave rule which required a teacher to quit her job several months before the expected birth of her child and prohibited her return to work until 3 months after childbirth violated the 14th amendment. Noting that "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the due process clause," 414 U.S., at 639, the Court held that the Constitution required a more individualized approach to the question of the teacher's physical capacity to continue her employment during pregnancy and resume her duties after childbirth since "the ability of any particular pregnant woman to continue at work past any fixed time in her pregnancy is very much an individual matter." *Id.*, at 645.

It cannot be doubted that a substantial number of women are fully capable of working well into their last trimester of pregnancy and of resuming employment shortly after childbirth. In this very case Mrs. Turner was employed intermittently as a clerical worker for portions of the 18-week period during which she was conclusively presumed to be incapacitated. The 14th Amendment requires that unemployment compensation boards no less than school boards must achieve legitimate State ends through more individualized means when basic human liberties are at stake. We conclude that the Utah unemployment compensation statute's incorporation of a conclusive presumption of incapacity during so long a period before and after childbirth is constitutionally invalid under the principles of the *La Fleur* case.

Accordingly, the writ of certiorari is granted, the judgment is vacated, and the case is remanded to the Supreme Court of Utah for further proceedings not inconsistent with this opinion.

THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN would not summarily vacate the judgment of the Supreme Court of Utah. Instead, they would grant certiorari and set the case for full briefing and oral argument.

MR. JUSTICE REHNQUIST dissents.

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*The respondents contend that the challenged provision is a limitation on the coverage of the Utah unemployment compensation system and not a presumption of unavailability for employment based on pregnancy. This characterization of the statute, advanced in an attempt to analogize the provision to the law upheld in *Geduldig* v. *Aiello*, 417 U.S. 484, conflicts with the respondents' argument to the Utah Supreme Court. Before that court respondents claimed that "near term pregnancy is an endemic condition relating to employability." The Utah Supreme Court's decision is premised on the impact of pregnancy on a woman's ability to work. Its opinion makes no mention of coverage limitations or insurance principles central to *Aiello*. The construction of the statute by the State's highest court thus undermines the respondents' belated claim that the provision can be analogized to the law sustained in *Aiello*.

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