UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 10210

AN ACT TO REQUIRE STATES TO EXTEND UNEMPLOYMENT COMPENSATION COVERAGE TO CERTAIN PREVIOUSLY UNCOVERED WORKERS; TO INCREASE THE AMOUNT OF THE WAGES SUBJECT TO THE FEDERAL UNEMPLOYMENT TAX; AND FOR OTHER PURPOSES

SEPTEMBER 8 AND 9, 1976

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CONTENTS

COMMUNICATIONS

ADDITIONAL INFORMATION

APPENDIXES

UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

WEDNESDAY, SEPTEMBER 8, 1976

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

The committee met, pursuant to notice, at 10:05 a.m. in room 2221, the Dirksen Office Building, Hon. Herman E. Talmadge presiding.

Present: Senator Talmadge.

Senator TALMADGE. The committee will come to order. The Finance Committee today begins 2 days of hearings on H.R. 10210, a bill to extend coverage under the unemployment compensation program and to strengthen the program's financing. The House bill would increase wages, taxable under unemployment compensation from $4,600 per year to $6,000, increase the effective Federal unemployment tax rate from five-tenths of 1 percent to seven-tenths of 1 percent, and extend coverage on a compulsory basis to a significant portion of the Nation's farmworkers and to nearly all employees of the State and local governments.

[The Committee on Finance press release announcing these hearings and the text of the bill H.R. 10210 follow:]

FINANCE COMMITTEE SETS HEARINGS ON UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976 (H.R. 10210)

The Honorable Russell B. Long (D., La.), Chairman of the Senate Committee on Finance, announced today that the Committee will hold a hearing on the Unemployment Compensation Amendments of 1976 (H.R. 10210), a bill passed by the House of Representatives on July 20, 1976. The hearing will begin at 10:00 a.m. on Wednesday, September 8, 1976, and will be held in Room 2221, Dirksen Senate Office Building.

The House-passed bill would make numerous changes in the statutes governing the Federal-State unemployment compensation programs. Under the bill coverage would be extended to State and local Government employees and to agricultural and domestic workers. The net Federal unemployment payroll tax would be increased effective January 1977 and the amount of earnings subject to Federal and State unemployment taxes would be raised effective January 1978. The bill would also make other changes related to the coverage, financing, and benefits of the unemployment programs and would establish a national commission on unemployment compensation to study and develop recommendations for further changes in the programs.

Requests to Testify.—The Chairman advised that witnesses desiring to testify during this hearing must submit their requests in writing to Michael Stern, Staff Director, Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D.C. 20510, not later than Wednesday, August 25, 1976. Witnesses will be notified as soon as possible after this cutoff date as to when they are scheduled to appear. If for some reason the witness is unable to appear, he may file a written statement for the record of the hearing in lieu of a personal appearance.

Consolidated Testimony.—Senator Long also stated that the Committee urges all witnesses who have a common position or with the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Committee. This procedure will enable the Committee to receive a wider expression of views than it might otherwise obtain. The Chairman urged very strongly that all witnesses exert a maximum effort, taking into account the limited advance notice, to consolidate and coordinate their statements.

Legislative Reorganization Act.—Senator Long stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify must comply with the following rules:

(1) A copy of the statement must be filed by the close of business the day before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 75 copies must be submitted by the close of business the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Committee, but are to confine their ten-minute oral presentations to a summary of the points included in the statement.

(5) Not more than ten minutes will be allowed for oral presentation.

Written Testimony.—The Chairman stated that the Committee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies by Friday, September 10, 1976, to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

[H.R. 10210, 94th Cong., 2d sess.]

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

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

SECTION 1. SHORT TITLE

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

TITLE I—EXTENSION OF COVERAGE PROVISIONS

PART I—GENERAL PROVISIONS

Sec. 111. Coverage of certain agricultural employment

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

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

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

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

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

"(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $10,000 or more to individuals employed in agricultural labor (not taking into account labor performed before January 1, 1980, by an alien referred to in subparagraph (B)), or

"(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (not taking into account labor performed before January 1, 1980(by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 4 or more individuals; and

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

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

Sec. 112. Treatment of certain farmworkers

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

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

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

"(A) if—

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

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

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

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

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

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

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

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

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

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

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

Sec. 113. Coverage of domestic service

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

"(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of $600 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;".

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

Sec. 114. Definition of employer

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

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

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

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

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

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

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

"(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $10,000 or more for agricultural labor, or

"(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 4 individuals in employment in agricultural labor for some portion of the day.

"(3) DOMESTIC SERVICE.—In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term 'employer' means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of $600 or more for such service.

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

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

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

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

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

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

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

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

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

Sec. 115. Coverage of certain service performed for nonprofit organizations and for State and local governments

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

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

(b) EXCLUSION OF CERTAIN GOVERNMENT EMPLOYEES.—

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

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

(A) an elected official, or an appointed official, if such appointed official serves for a specific term established by law or is not required to perform services on a substantially full-time basis;

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

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

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

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

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

(c) TECHNICAL ADJUSTMENTS.—

(1) Paragraph (6)(A) of section 3304(a) of such Code is amended—

(A) by striking out "institution of higher education" and inserting in lieu thereof "educational institution";

(B) by striking out "institution or institutions of higher education" and inserting in lieu thereof "educational institution or institutions";

(C) by striking out "except that," and inserting in lieu thereof "except that (i)"; and

(D) by inserting before ", and" at the end thereof the following: ", and (ii) with respect to service in any other capacity for an educational institution (other than an institution of higher education) to which section 3309(a)(1) applies, compensation payable on the basis of such service may be denied to any individual for any week which begins before January 1, 1980, and which commences during a period between 2 successive academic terms or similar periods if such individual performs such service in the first of such academic terms (or similar periods) and there is a reasonable assurance that such individual will perform such service in the second of such academic terms (or similar periods)".

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

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

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

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

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

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

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

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

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

"(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit

toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

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

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

SEC. 116. Extension of Federal unemployment compensation law to the Virgin Islands

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) AMENDMENTS RELATING TO FEDERAL UNEMPLOYMENT COMPENSATION.—

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

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

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

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

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

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

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

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

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

(C) by striking out paragraph (3).

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

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

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

(f) EFFECTIVE DATES.—

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

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

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

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

PART II—TRANSITIONAL PROVISIONS

Sec. 121. Federal reimbursement for benefits paid to newly covered workers during transition period.

(a) GENERAL RULE.—If any State, the unemployment compensation law of which is approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1954, provides for the payment of compensation for any week of unemployment beginning on or after January 1, 1978, on the basis of previously uncovered services, the Secretary shall pay to the unemployment fund of such State an amount equal to the Federal reimbursement for any compensation paid for a week of unemployment beginning on or after January 1, 1978, to any individual whose base period wages include wages for previously uncovered services.

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

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

(2) which—

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

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

(c) FEDERAL REIMBURSEMENT.—

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

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

(A) if such services were performed—

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

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

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

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

(d) EXPERIENCE RATING OF CERTAIN EMPLOYERS.—The unemployment compensation law of any State may without being deemed to violate the standards set forth in section 3303(a) of the Internal Revenue Code of 1954 provide that the experience-rating account of any employer shall not be charged for the compensation paid to any individual whose base period wages includes wages for previously uncovered services which are reimbursable under subsection (c)(2) to the extent that such individual would not have been eligible to receive such compensation had the State law not provided for the payment of compensation on the basis of such previously uncovered services.

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

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

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

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

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

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

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

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

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

Sec. 122. Transitional rules in case of nonprofit organizations

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

"(g) TRANSITIONAL RULE FOR UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976.—To facilitate the orderly transition to coverage of service to which sec-

tion 3309(a)(1)(A) applies by reason of the enactment of the Unemployment Compensation Amendments of 1976, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law with respect to such service, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before the date of the enactment of this subsection, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to such service performed in its employ, until the total of such compensation equals the amount—

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

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

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

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

TITLE II—FINANCING PROVISIONS

Sec. 211. Increase in Federal unemployment tax wage base and rate

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

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

"Sec. 3301. Rate of tax

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

"(1) 3.4 percent, in the case of a calendar year beginning before the earlier of—

"(A) the calendar year 1983, or

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

"(2) 3.2 percent, in the case of the earlier of the calendar years referred to in subparagraphs (A) and (B) of paragraph (1) and each calendar year thereafter;

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

(c) TECHNICAL AMENDMENTS.—

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

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

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

(3) The last sentence of section 6157(b) of the Internal Revenue Code of 1954 is amended to read as follows: "In the case of wages paid in any calen-

dar quarter or other period during a calendar year to which paragraph (1) of section 3301 applies, the amount of such wages shall be multiplied by 0.7 percent in lieu of 0.5 percent.".

(d) EFFECTIVE DATES.—

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

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

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

Sec. 212. Financing coverage of State and local government employees

(a) DENIAL OF REIMBURSEMENT FOR CERTAIN ADMINISTRATIVE EXPENSES.—Section 302(a) of the Social Security Act is amended to read as follows:

"SEC. 302. (a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. The amounts certified by the Secretary of Labor under the preceding sentence for payment to any State shall not include amounts which are attributable to the administration of the State law with respect to services to which section 3306(c)(7) of the Federal Unemployment Tax Act applies. The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.".

(b) DENIAL OF CERTAIN PAYMENTS UNDER THE EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM.—Subsection (a) of section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new paragraph:

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

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to amounts certified under section 302(a) of the Social Security Act for calendar quarters beginning on or after January 1, 1979.

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

Sec. 213. Advances to State unemployment funds

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

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

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

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

(b) APPLICATIONS.—Paragraphs (2) and (3) of such section 1201(a) are each amended by striking out "month" each place it appears and inserting in lieu thereof "3-month period".

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

Sec. 214. Proration of costs of claims filed jointly under State law and section 8505 of title 5, United States Code

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

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

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

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

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

Sec. 215. Federal reimbursement for unemployment benefits paid on basis of certain public service employment

(a) GENERAL RULE.—Chapter 85 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER III—CERTAIN PUBLIC SERVICE EMPLOYEES

"§ 8531. Definitions.

"For purposes of this subchapter—

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

"(2) 'compensation' has the meaning given to such term by section 8501(4) of this title;

"(3) 'qualified public service job' means any public service job funded with assistance provided under the Comprehensive Employment and Training Act of 1973;

"(4) 'pulbic services wages' means all pay and allowances, in cash and in kind, for services performed in a qualified public service job; and

"(5) 'base period' has the meaning given to such term by section 8501(8) of this title.

"§ 8532. Payments to States.

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

"(b) Each State shall be paid the amount to which it is entitled under subsection (a) in the manner prescribed by subsections (b) and (c) of section 8505 of this title.

"(c) Money paid a State under this subchapter may be used solely for the purposes for which it is paid. Money so paid which is not used for these purposes shall be returned, at the time specified by the Secretary of Labor, to the Treasury of the United States and credited to current applicable appropriations, funds, or accounts from which payments to States under this subchapter may be made."

(b) CLERICAL AMENDMENT.—The chapter analysis of chapter 85 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter analysis:

"Subchapter III—Certain Public Service Employees

"8531. Definitions.
"8532. Payments to States.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to compensation paid for weeks of unemployment ending after September 30, 1976.

TITLE III—BENEFIT PROVISIONS

Sec. 311. Amendments to the trigger provisions of the extended program

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

"(d) For purposes of this section—

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

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

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

"(e) For purposes of this section—

"(1) There is a State 'on' indicator for a week if the rate of insured unemployment (seasonally adjusted) under the State law for the period consisting of such week and the immediately preceding twelve weeks equaled or exceeded 4 per centum.

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks beginning after December 31, 1976.

Sec. 312. Pregnancy disqualifications

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

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

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

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

Sec. 313. Repeal of finality provision

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

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

Sec. 314. Denial of unemployment compensation to athletes and illegal aliens

(a) GENERAL RULE.—Subsection (a) of section 3304 of the Internal Revenue Code of 1954 (relating to requirements for approval of State unemployment compensation laws) is amended by redesignating paragraph (13) as paragraph (15) and by inserting after paragraph (12) the following new paragraphs:

"(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

"(14) compensation shall not be payable on the basis of services performed by an alien who was not lawfully admitted to the United States;"

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to certifications of States for 1978 and subsequent years.

TITLE IV—NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Sec. 411. National Commission on Unemployment Compensation

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

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

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

(3) Seven members appointed by the President.

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

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

(1) examination of the adequacy, and economic and administrative impacts, of the changes made by this Act in coverage, benefit provisions, and financing;

(2) identification of appropriate purposes, objectives, and future directions for unemployment compensation programs; including railroad unemployment insurance;

(3) examination of issues and alternatives concerning the relationship of unemployment compensation to the economy, with special attention to long-range funding requirements and desirable methods of program financing;

(4) examination of eligibility requirements, disqualification provisions, and factors to consider in determining appropriate benefit amounts and duration;

(5) examination of (A) the problems of claimant fraud and abuse in the unemployment compensation programs 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 information 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.

(c) POWERS OF THE COMMISSION.—

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

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

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

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

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

(d) COOPERATION OF OTHER FEDERAL AGENCIES.—

(1) INFORMATION.—Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Commission, upon request made by the Chairman, and to the extent permitted by law, such data, reports, and other information as the Commission deems necessary to carry out its functions under this section.

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

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

(e) PAY AND TRAVEL EXPENSES.—

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

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

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

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

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

Passed the House of Representatives July 20, 1976.

Attest:

EDMUND L. HENSHAW, JR.,
Clerk.

Senator TALMADGE. Our first witness this morning will be the Honorable Michael H. Moskow, Under Secretary of Labor.

We are delighted to have you with us, Mr. Secretary, and if you desire to do so, you may insert your full statement in the record and summarize it.

STATEMENT OF MICHAEL MOSKOW, UNDER SECRETARY OF LABOR, ACCOMPANIED BY WILLIAM H. KOLBERG, ASSISTANT SECRETARY FOR EMPLOYMENT AND TRAINING; LAWRENCE E. WEATHERFORD, JR., ADMINISTRATOR OF THE UNEMPLOYMENT INSURANCE SERVICE; AND MURRAY RUBIN, CHIEF OF THE DIVISION OF PROGRAM POLICIES AND LEGISLATION OF THE UNEMPLOYMENT INSURANCE SERVICE

Mr. MOSKOW. Thank you, Mr. Chairman. My statement is very brief and if it is acceptable to the chairman, I will just read through it very quickly.

I appreciate the opportunity to appear here today to express the support of the administration for H.R. 10210, the Unemployment Compensation Amendments of 1976, and to explain why we strongly believe that this legislation must be enacted during this session of Congress. Before I begin my presentation I should like to introduce my associates. They are: William H. Kolberg, Assistant Secretary for Employment and Training; Lawrence E. Weatherford, Jr., Administrator of the Unemployment Insurance Service; and Murray Rubin, Chief of the Division of Program Policies and Legislation of the Unemployment Insurance Service.

Our experience with the unemployment insurance program during the recent recession has clearly demonstrated the absolute necessity for certain basic improvements in the Nation's Federal-State unemployment insurance system. These changes are necessary during this session of Congress and we appreciate the attention to this need by the committee.

Mr. Chairman, prompt passage of H.R. 10210 would meet the need for certain basic improvements in the unemployment compensation system which should not be delayed. We urge that this committee complete action on H.R. 10210 promptly in order to permit passage by the Congress before the adjournment.

The unemployment insurance system has served this Nation well for over 40 years. During the recent economic recession it provided the Nation's first line of defense against the effect of high unemployment. However, the system is in serious financial difficulty. In addition, there are millions of American workers who should be covered under the regular unemployment insurance system but are presently only temporarily protected under the special unemployment assistance program.

As we indicated previously when we appeared before this committee last year, there are four areas in which basic improvements are needed in the permanent unemployment insurance program. These include coverage of additional workers, improved financing, benefit adequacy, and a revised trigger mechanism for the extended benefits program. We also recommend a National Study Commission to undertake in-depth consideration of longer range needs.

Since 1975 the administration and the Congress have worked long and hard to develop a bill that addressed these issues. Those efforts resulted in passage by the House of H.R. 10210 which is now before this committee.

Mr. Chairman, the President is deeply-concerned with the present financial status of the unemployment insurance program. In his July 22 message to Congress listing an agenda of legislation which needs to be enacted, the President cited H.R. 10210's "urgently needed changes to strengthen the financing of the system." Because of the high levels of unemployment during the past 2 years, 21 States have depleted their trust funds. To date, $3.1 billion of Federal funds have been loaned to these States. As you know these funds must be repaid to the U.S. Treasury, through employer contributions in those States. We expect this deficit to increase to $3.9 billion by 1978.

At the same time the Federal extended unemployment compensation account (EUCA) trust funds, which have been in debt to general revenue since the enactment of the extended benefit program in 1970, are currently operating with a deficit of $7.3 billion. This level may, under current law, reach $10.6 billion at the end of fiscal year 1978.

This is a very disturbing picture of financial instability for a program that has had a long history (40 years) of financial soundness. Prior to 1972 there had only been three instances in which State trust funds proved inadequate to pay benefits. The recent deluge of heavy benefit costs has proven inadequate the present financing provisions of the Federal Unemployment Tax Act (FUTA). The only available alternative ot a tax increase is to continue to borrow billions of dollars from Federal general revenues to operate the Federal-State unemployment insurance program.

H.R. 10210 provides for an increase in both the taxable wage base and the FUTA rate. The wage base increase would be to $6,000 and could not be effective prior to January 1, 1978, because of the need for States to pass implementing legislation. Effective January 1, 1977, the net tax rate would be increased temporarily from the present 0.5 percent to 0.7 percent. The rate would decline back to 0.5 percent when all deficits are paid or in 1983 whichever comes first. Our best estimates are that 1983 will come first.

Mr. Chairman, the H.R. 10210 proposals represents a positive step toward easing the financial situation of the unemployment insurance system. These provisions will increase the FUTA tax revenues by $300 million in fiscal year 1977, $700 million in fiscal year 1978, and $1.3 billion in fiscal year 1979. Unfortunately these increases are not adequate to restore solvency to the system. We expect that with the proposed changes the total Federal trust fund deficit will be reduced to approximately $2 billion by the end of fiscal year 1983, before beginning to climb again.

Therefore, we strongly support these H.R. 10210 proposals as an interim step toward restoring financial soundness to the unemployment trust fund. We also believe that the proposed National Study Commission must accord a high priority to considering adequate long-term funding of the program.

The second major area of H.R. 10210 is coverage of workers under the unemployment insurance system. At the present time about 12 mil-

lion wage and salaried workers are still outside of the permanent program. H.R. 10210 proposes to cover most of the workers now temporarily protected under the special unemployment assistance program. The exceptions are individuals employed on small family farms, many domestic day workers, employees of nonprofit organizations with fewer than four employees, and certain employees of religious organizations and institutions.

In all, H.R. 10210 would result in extension of regular unemployment insurance coverage under amended State laws to 9.2 million workers on January 1, 1978. This includes 327,000 workers on large farms; 300,000 in domestic service; 8.3 million in local and State governments; and 300,000 in nonprofit secondary and elementary schools.

Unemployed workers in these categories have been paid benefits during the past 21 months under the special unemployment assistance program passed by the Congress in December 1974. As you recall this program is funded from Federal general revenues and is scheduled to end on December 31 of this year with phaseout payments through March 1977.

The experience under this temporary program has demonstrated that administration of a unemployment insurance program for these groups is possible. Public and farm employers have cooperated with State employment security officials in an outstanding manner. Analysis of benefit experience under special unemployment assistance and in those States which now cover State and local government employees indicates that benefit costs for these employees is significantly lower than for the average of all workers in the general labor force.

Studies directed by the Congress in the 1970 amendments were conducted by a group of State agricultural experiment station research staffs and three State employment security agencies for the Department of Labor. These studies indicate that providing unemployment benefits to eligible farmworkers would have little or no impact on overall unemployment compensation cost rates in 18 States surveyed. In two States—California and Florida, there would have been a small increase. However California has now provided agricultural coverage under its own law.

The largest segment of workers that would be brought into the permanent system are, of course, employees of State and local governments. This group of workers would be covered and subject to the same general eligibility requirements as other individuals with regular labor force attachment.

There have been many inquiries about the applicability of the recent decision of the U.S. Supreme Court in *National League of Cities* v. *Usery* to unemployment compensation for State and local employees. In our view that decision does not preclude such an extension of coverage. With your permission, Mr. Chairman, I would like to submit with this statement a copy of the opinion of the Solicitor of Labor which deals with the constitutionality of this provision of H.R. 10210.

Senator TALMADGE. Without objection, it will be inserted at this point in the record.

Mr. MOSKOW. Thank you, Mr. Chairman.

[The document referred to follows:]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., June 26, 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 in 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 3.0% was laid on private sector employers. A credit of up to 90% of the tax, or 2.7%, 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 remain 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 for 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 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 in 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 requital 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 Tenth Amendment issue the Court ruled that the provisions are not void as involving the coercion of the States in contravention of the Tenth 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 three 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 unemploymnet 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*, 301 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 the 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 Power 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 1974–1975 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 two years to fulfill this need (Public Law 91-45), 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 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:
>
> "The 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 * * *.
>
> * * * * * * *
>
> "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 leaves 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 pubic 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 limitations on revenues may have considerable impact on these employees. (Pagse 1-3, 6-7).

The problem is plainly national in scope. State and local government employees are subject to the same perils of unemployment and its ensuing destitution.

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

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 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 State 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 respect 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. *Bekins*, 304 U.S. 27, 52 (1938), the Court said that the Tenth 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 asset 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 State sovereignty or constitutional federalism. The Court said in *Helvering* v. *Gerhardt* that the Tenth 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 Tenth 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 Tenth 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 Tenth 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, 590 (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, Art. I, § 8, cl. 1, or § 5 of the Fourteenth 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 States 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 sections 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 Are 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 United States 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 United States 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 enactment and proposed pro-

visions 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 Fourteenth 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 United States 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 United States Constitution.

WILLIAM J. KILBERG,
Solicitor of Labor.

Mr. MOSKOW. The States will be free to determine whether public employers shall pay for benefits by using the regular taxing provisions applicable to private sector employers, by dollar-for-dollar reimbursement of benefits paid to former workers, or by some other method. This is consistent with the way in which Congress previously extended UI coverage in 1970 to certain categories of State employees.

Mr. Chairman, the employees to whom protection under the permanent program would be extended by this bill have been protected either under some State's laws or under the SUA program, since December 1974. While bills to extend special unemployment assistance for 1 more year have been introduced in both Houses, we support further extension of SUA only as a transitional step to permanent coverage under the regular UI program.

The third major improvement to be effected by H.R. 10210 concerns the triggering mechanism for setting in motion the permanent program of extended benefits enacted in 1970.

Under present law, extended benefits, up to a maximum of 13 weeks, become available in a State when unemployment conditions either nationally or in the State reach certain prescribed levels. The State trigger has created problems. There are two component parts to the State trigger: an insured unemployment rate of at least 4 percent and a level of insured unemployment which exceeds by 20 percent the level attained in a comparable period during the 2 previous years. The 20-percent part of the trigger has proved unrealistic. Congress has already suspended the 20-percent factor on seven different occasions; the most recent suspension will remain in effect until March 31, 1977. H.R. 10210 would provide a 4 percent State trigger, seasonally adjusted. This would make the trigger responsive to downturns in the economy but not to normal seasonal variations.

We also support a fourth major provision of H.R. 10210, which would provide for a 13-member national study commission on unemployment compensation. This commission, appointed by the President

and the presiding officers of the two Houses of Congress, would submit a final report by no later than January 1, 1979. This proposal has universal support.

The work of the study commission would represent the first comprehensive review of the entire unemployment compensation area since the Federal-State system was established by the original Social Security Act in 1935. It would deal with many of the major questions and issues facing the system.

I would also note that the administration has supported and continues to support, a minimum benefit amount standard. However, such a provision was rejected by the House of Representatives, and it is clear the House will not pass one this year. Because the reforms included in H.R. 10210 are of great importance, its prompt enactment, even without a minimum benefit amount standard, is essential.

Mr. Chairman, this completes my summary of the major provisions of H.R. 10210. There are a group of technical amendments included in H.R. 10210 by the Ways and Means Committee, regarding administration of the UI program. In the interests of time I will not discuss them all here but will try to answer any questions that the members may have.

One of these amendments permits Federal employees to use the State UI benefit appeals procedures available to other claimants in contesting the determination of the employing agency on the issue of the cause of separation. The administration does not object to this change with the understanding that a decision under this provision will apply only to unemployment insurance and will have no other application or effect.

An amendment of the provision outlining the National Study Commission agenda directs a study of the mechanism by which national and local employment and unemployment statistics are collected and analyzed. This subject matter area is alien to the purposes of the proposed study of the unemployment insurance system. We believe that the statistics study would divert the commission's attention from UI matters to concepts and methodology for a vital set of economic statistics. This diversion would likely produce less than satisfactory results in both areas of examination. The statistics study would require a fullfledged effort in its own right.

We believe H.R. 10210 would be improved if this provision were deleted.

In summary, Mr. Chairman, it is our judgment that the House-passed bill addresses the major immediate problems confronting the UI program and requiring prompt resolution. While the bill falls short of a total resolution of the financing problem, we urge that the Senate give prompt favorable consideration to H.R. 10210 in its present form so that congressional action may be completed before the end of this session.

Mr. Chairman, this completes my formal presentation. My associates and I will be happy to respond to your inquiries.

Senator TALMADGE. Thank you, Mr. Secretary.

Do you have any estimates or studies as to how many farmworkers who now work in nonfarm employment in the off season will decide to draw unemployment compensation rather than take nonfarm work in the off season?

Mr. MOSKOW. Decide to draw unemployment compensation rather than take on nonfarm work, Mr. Chairman?

Senator TALMADGE. Yes.

Mr. WEATHERFORD. I think we can give you those, Mr. Chairman.

Senator TALMADGE. If you don't have it, will you please supply it for the record?

Mr. WEATHERFORD. Yes, sir.

[The material referred to was subsequently supplied for the record:]

IMPACT OF EXTENDING UNEMPLOYMENT INSURANCE PROTECTION ON THE SUPPLY OF WORKERS IN SEASONAL FARM WORK

There has been expressed concern that the proposed extension of unemployment insurance protection to farm workers would induce workers in seasonal farm jobs to prefer to sit at home and collect unemployment insurance benefits rather than work. This would aggravate an already existing problem of finding enough workers to work during the season.

The 1969–70 study of farm workers in 15 States which was mandated by the Congress in the Employment Security Amendments of 1970 sheds much light on this concern. For purposes of understanding the nature of the problem farm workers who work in seasonal farm jobs are considered in three distinct groups: (1) workers who combine farm and nonfarm work in their yearly pattern, (2) migratory workers and, (3) non-migratory workers who are in the labor force only part of the year.

Those workers with farm (not covered) and nonfarm (covered) work and qualified for UI benefits based on their nonfarm work still go on and take farm jobs even though farm work is not needed to qualify for benefits. This group made up 15 percent of all farm workers studied. Of this group, 20 percent had one or more weeks of compensable unemployment but only 10 percent applied for and received one or more benefit checks. These results strongly suggest that the availability of unemployment insurance benefits does not significantly affect the desire for and acceptance of farm jobs when they are available.

Migratory workers have strong demonstrated attachment to the labor force and for many there is no choice to reduce work and still be able to qualify for and collect UI benefits. Nationwide, less than 7 percent of all farm wage workers are interstate migrants. Contrary to popular ideas, study results show that migrant workers reported working an average of almost 45 weeks during the one-year period. Of those workers who will be protected under H.R. 10210, 45 percent did farm work only while fully 55 percent combined both farm and nonfarm work. For close to one-fourth of all migrant workers nonfarm (covered) earnings exceeded farm earnings. Migrants do not have a great many employers. Eighty-nine percent had three or fewer farm employers. Many return to the same employers year after year. Additionally, migrant workers do not work in a great many States. About 95 percent of the migrants studied worked in three States or less in a one-year period. When test were applied to the work histories to determine how much work a worker could try to eliminate and still be eligible for and collect UI benefits, it was found that for 41 percent of the migrants no work reduction could be made and still meet the UI tests for qualification for benefits. Reducing work effort has the effect of reducing the amount of UI benefits a worker could collect in most States. With no work reduction, migrants averaged $3,534 in earnings plus UI benefits assuming they had UI protection ($3,372 in earnings plus $162 in UI benefits). If migrants tried to reduce their inter-state work as much as possible and still qualify for benefits they would suffer a 21 percent loss in average earnings plus benefits, a loss of $732. At these earning levels and potential loss of some UI benefits, it does not seem likely that migrants could easily afford to cut back on work and stay home to collect benefits.

A large proportion of workers for seasonal jobs are local workers who are in the labor force only part of the year, i.e., work only in seasonal employment. Study results show that 37 percent of all non-migrants are in the labor force only part of the year. Of this group 44 percent were 18 years old or younger and the same proportion spent all or some of their nonworking time as students. Study results also show that 73 percent of all non-migrant beneficiaries were in the labor force only part of the year. Of this group, however, only 11 percent were 18 years old or younger and could receive UI benefits if coverage were extended. This is be-

cause they either are not available for work while in school or do not earn enough in seasonal employment to qualify for benefits. It is unlikely that unemployment insurance benefits would dry up this important source of labor for seasonal work.

It is highly unlikely that extension of unemployment insurance to farm workers would have a significant impact on workers' decisions to cut down on seasonal work and sit home and collect unemployment insurance benefits. Unemployment insurance protection may have the opposite effect of making seasonal jobs more attractive. Study results also indicate that almost two-thirds indicated the availability of unemployment insurance benefits would make their jobs more attractive.

Senator TALMADGE. Here is what I am talking about. It takes only 3 or 4 months to produce a crop. Under the House-passed bill if a farmer has four employees for 20 weeks, he would be covered. Usually after farmworkers plant a crop they will take employment in some other category. Will they be qualified to draw unemployment compensation at that time?

It seems to me that this provision is going to place an extremely heavy load of people on the unemployment compensation rolls.

Mr. WEATHERFORD. The workers that would be qualified, Mr. Chairman, under this provision would be required to take the suitable work that was available, including the farmwork. All of the States apply that suitable work criteria to any claimant that is drawing benefits.

Senator TALMADGE. I am aware of that. Here is what I am talking about. Maybe a migrant worker starts off picking oranges in Florida and vegetables and comes up to Georgia and picks peaches and he is through picking peaches maybe by the middle of July. He has had 20 weeks of work, maybe he comes to North Carolina or South Carolina and does something else but he says, "What the heck, I've got it earned now, fishing is good."

Mr. WEATHERFORD. Yes, sir, Senator Talmadge, but I think the distinction needs to be drawn here that the coverage provision requires that the employer, the farm grower, have four or more workers in 20 weeks in a year in order to be liable for the tax at all.

Senator TALMADGE. The same employer?

Mr. WEATHERFORD. Yes, sir. If the worker came up to Georgia after working in Florida, the peach season doesn't extend that full 20 weeks. This grower will not be liable for the tax and those workers' wages would not be considered for computing unemployment.

Senator TALMADGE. Twenty weeks is also less than 5 months. That is about the time they are planting and laying a crop. You would have the same problem there?

Mr. WEATHERFORD. Yes, sir.

Senator TALMADGE. It has been said that unemployment compensation for farmworkers would be expensive and that resultant high taxes would be too great a burden for farm employers. As a result, the taxes paid by all other employers would need to be increased.

Is this a general problem or just one that would exist in some States such as Florida, where there is a large seasonal farm population?

Mr. WEATHERFORD. Mr. Chairman, we have done some very intensive studies of this which indicate that the problem would only occur potentially in two States, that is, California and Florida; and also I think it is important to point out that California already has a State law covering these employees.

Senator TALMADGE. Do some States have rules about people who work in seasonal employment drawing unemployment compensation

in the off season, and if they do, how many States and what are the rules?

If we provide unemployment compensation to farmworkers should we add special rules for collecting unemployment compensation into off season? There are some rules like this in the House bill relating to school employees and professional athletes at least. What is your recommendation?

Mr. WEATHERFORD. Mr. Chairman, there are 11 States that have what we classify as seasonal provisions in their law relating to nonfarm employment. I believe that the House-passed bill does address this issue, particularly in the area of schoolworkers, who cannot draw benefits during the period when they are out of season, if you will.

Basically, in these States, if a worker becomes unemployed during the season he can draw benefits, if it is outside of the season he is denied benefits. A good example of a seasonal industry would be the canning industry.

Senator TALMADGE. For professional football players the season is about 4 months and off duty is about 8. They could draw unemployment compensation 8 months out of the year and earn $100,000 a year in 4 months.

Mr. WEATHERFORD. Yes, sir; we have had some difficulty in the last year with respect to that and the House bill has a provision which would deny benefits to professional athletes. I think we have some concern and so will the States about how to administer that program but we——

Senator TALMADGE. I believe some schoolteachers are drawing unemployment benefits now, aren't they?

Mr. WEATHERFORD. Yes, sir.

Senator TALMADGE. Does the House bill correct that?

Mr. WEATHERFORD. Yes, it extends the special unemployment assistance program for 1 year, Senator Talmadge, and requires that the States deny benefits to these workers. Under their existing State laws, States cannot deny those benefits because they must apply the same rules to teachers they do to everyone else.

Senator TALMADGE. It has been suggested that if unemployment compensation is extended to migrant workers, the number of migrant workers might be reduced from the low paid workers staying in their home States and leaving crops in other States unharvested. Do you have any fear about how the availability of unemployment compensation benefits might effect the supply of migrant labor?

Mr. WEATHERFORD. Mr. Chairman, the migrant workers you are referring to I think in most cases would not qualify under the program because of the 20-week requirement I mentioned before.

Senator TALMADGE. Well, in States like Florida and perhaps others where you have a multiplicity of vegetables and fruits grown I can see it might be very easy for them to qualify in one particular State for 20 weeks.

Mr. KOLBERG. I think we ought to point out that the migrant workers are now covered under the special unemployment assistance program. We haven't noticed any real significant change in the pattern of migration or in the numbers of migratory workers available for harvesting. As a matter of fact, it has been better the last year or two in terms of the numbers available, as opposed to bringing in certified aliens.

Senator TALMADGE. Mr. Secretary, I have a number of additional questions which will be submitted to you in writing and if you would respond for the record we can save time in that manner.

Mr. MOSKOW. We would be happy to, Mr. Chairman.

[The questions of Senator Talmadge and answers by the Department follow:]

ECONOMIC IMPACT OF TAX INCREASE

Question. The House bill proposes a significant increase in employer payroll taxes. Some people have indicated that in view of the current economic situation, this may not be a good time to put these tax increases into effect? What assessments do you have as to the possible economic effects of the proposed tax increase?

Answer. The point at which a tax increase is most feasible is during a period of economic expansion—such as the 1977–1978 period.

In addition, the tax increase will be phased in two steps which will further cushion the impact of the increase. The tax rate increase will occur first in January 1, 1977, but the tax base increase will not become effective until the following year.

VALIDITY OF STATE SEASONALLY ADJUSTED DATA

Question. We hear various criticisms of using seasonally adjusted rates in other indices. Is there an adequate data base for the seasonally adjusted insured rates for each of the States and would you supply for the record a detailed description of how the rates would be computed? Would they be computed by each individual State or would the Department of Labor make the computation?

Answer: An adequate data base does exist to perform the required seasonal adjustment. Historical data from 1947 to the present are lacking only for Alaska, Hawaii and Puerto Rico. For these three jurisdictions, data are available from 1960 to the present.

The 13 week moving average of weeks claimed for each State would be computed and seasonally adjusted by factors supplied by the Department of Labor. The number of EB claims for the given week would then be added to the seasonally adjusted figure. This combined figure would then be divided by the level of covered employment computed by taking the average of the first four of the prior 6 completed calendar quarters with respect to the quarter currently under consideration.

IMPACT ON INDUSTRIES

Question. If the tax base increase proposed by the House bill is enacted, what industries will have to pay more taxes and which will be more or less unaffected?

Answer. Industries which have a relatively high average employee wage rate, to the extent that it is higher than $4,200 a year, would have to pay more taxes as a result of the increase in tax base to $6,000. Employers with a lower average employee wage rate would pay a proportionately lower tax. An employer would pay no greater tax on behalf of any employee whose annual wages were no higher than $4,200.

State tax rates under experience rating, are based on employers' experience with their workers' unemployment, usually measured by the amount of benefits paid such workers. Experience rating should result in the highest rates being allocated to employers with the poorest experience and the lowest rates to those with the best experience. Where the wage base is unrealistically low, however, the experience rating provisions are distorted since high-wage industries with relatively poor experience actually pay a smaller percentage of their total payroll in unemployment insurance taxes than low-wage industries with good experience.

Example. Employer A and Employer B each has an experience-rated tax rate of 2 percent. Employer A has an average wage of $4,200 a year. His tax rate of 2 percent yields a tax of $84 per employee, which is also 2 percent of the total wage Employer B has an average wage of $6,000. His tax rate of 2 percent also yields percent yields a tax of $84 per employee, which is also 2 percent of the total wage. Employer B is paying a considerable lower-percentage of his total payroll in UI taxes than is Employer A, even though Employer B's employees will be entitled to higher benefit amounts, since these payments are based on total wages.

Change in Trigger Provisions

Question. The House bill would change the State trigger for extended benefits from an unadjusted insured unemployment rate of 4 percent and 120 percent of the rate for the similar period for the past 2 years to a seasonally adjusted rate of 4 percent without the 120 percent requirement. The reason for this change seems to be an expectation that the change from an unadjusted rate to a seasonally adjusted rate will have much the same effect as the present provisions were it tended to have. However, the data in the staff document (pp. 54–55) suggests that the difference between the adjusted and the unadjusted rate is nearly nonexistent when averaged over a number of years. Can you give us some idea of what the difference would be in individual States in specific years when the unemployment rate in the States is high?

Answer. The 4 percent seasonally adjusted trigger is designed to eliminate extended benefit periods based solely on seasonal unemployment. The duration of the regular program will handle the relatively short term seasonal unemployment in most cases.

The impact of the seasonal adjustment procedure on individual States depends on two factors: (1) The amount of seasonality in their unemployment, and (2) The general overall level of unemployment. The process of seasonal adjustment tends to smooth out the seasonal variations that may both trigger the State on or off. If a State's IUR is above 4 percent most of the time with occasional dips below due to seasonal variations then seasonally adjusting the trigger rate will increase the number of weeks of EB. If the rate is generally below 4 percent then seasonal adjustment will tend to keep the State from paying EB.

Repeal of Increased Tax After 5 Years

Question. The House bill increases the net Federal tax rate in order to pay off the Federal trust fund debt to the Treasury which is now about $8 billion. When the tax expires in 5 years that debt will still be about $5 billion. Shouldn't the tax increase remain in force until the debt is completely paid off?

Answer. We believe that this question should be studied carefully by the National Study Commission which would be established by the bill. Between enactment of H.R. 10210 and expiration of the rate increase there would be ample opportunity for the Commission to consider the adequacy of both rate and base in light of more current economic projections.

Domestic Workers

Question. The rule for determining when household workers are covered cuts out day workers who work full time but for several employers but covers the person who works only two or three days a week for one employer. Why doesn't it make more sense to cover the full-time worker and not cover the part-time worker?

Answer. Coverage of a day worker who works for several employers would require application of the Federal tax to any employer who hires a worker to perform domestic services, regardless of the length of employment. Although we believe it would be desirable to cover all workers who work for wages eventually, the pattern over the history of this program has been to extend coverage to previously excluded workers on a gradual basis. The House-passed H.R. 10210, follows this pattern in that the extension of coverage to both domestics and farm workers excludes services performed for small employers. These exclusions reflect consideration of the administrative difficulties involved in asking employers unfamiliar with retaining records, to submit regularly recurring forms and to respond to requests involving adjudication of claims.

Administrative and Extended Benefit Cost of State Coverage

Question. The House bill proposes that the Federal funds not be made available, as they are under present law, to pay the administrative costs and the extended benefit costs connected with coverage of State and local government employees. This seems like quite a break with tradition and comes at a time when many States and local governments are having real financial problems. What sort of a burden is this cost to the Federal program and what would it be to the individual States?

Answer. State and local governments are not now subject to the Federal unemployment tax. Under the bill, this status would continue. Thus, in contrast

to most other employers, States and their political subdivisions would not be liable for other than benefit costs arising from coverage of their employees, and would therefore contribute no revenue to Federal accounts, otherwise used for administrative and extended benefit costs. Accordingly, the bill provides that grants to the States to cover administrative costs be adjusted to omit those administrative expenses resulting from coverage of State and local government workers. Similarly, the 50 percent Federal share of the costs of extended benefits (also derived from the Federal Tax from which public employers are exempt) would not include payment for the costs of extended benefits attributable to coverage of government workers.

States have made their own estimates as to what this effect will be, and based on SUA experience it would appear that these costs would be quite minor. We estimate that enactment of these provisions would cost approximately $8 million for Fiscal Year 1979.

FLEXIBLE STATE WAGE BASE

Question. From time to time suggestions have been made that the Federal law requirement for a minimum State tax base should be eliminated. The Federal tax is used to provide money for administrative expenses, a loan fund and to pay Federal benefit costs while the State tax is used to provide benefit payments. Because the objectives of the two taxes are so different, could you explain why the State should be required to use the Federal tax base as their minimum? Would you submit for the record an analysis of the effect an increase in the tax base to $6,000 will have on the State experience-rating rules?

Answer. The effect upon State experience rating systems of an increase in tax base depends upon how States adjust their experience rating systems and tax rate schedules.

An increase in the State taxable wage base does not necessarily mean that the statewide tax yield must increase. If a State does not need additional tax revenues to maintain sound financing of its unemployment insurance program—and currently some States do not—it can adjust its tax structure accordingly. For example, if a State now collects an average employer rate of 1.5 percent of taxable wages on a taxable wage base of $4,200, it can restructure its tax schedule downward to produce the equivalent total dollar tax yield on a $6,000 base. For example: an average employer tax of 1.5 percent on a State taxable wage base of $500 million would yield a return of $7.5 million. If the tax base were increased to $700 million by increasing the individual taxable wage base from $4,200 to $6,000, an average employer rate of 1.08 would yield approximately the same $7.5 million in taxes.

The State can put such a restructured tax schedule in effect concurrently with the effective date of the higher wage base. H.R. 10210 provides that the increase in taxable wage base first become effective as of January 1, 1978, allowing time for implementing State action in 1977.

There is no Federal law requirement for a minimum State tax base. Each State, however, has a base at least as high as the base established in the Federal Unemployment Tax Act so that employers in the State may receive full credit against the Federal tax for taxes they pay under the State unemployment insurance law.

It is true that the taxes paid by employers to the Federal Government are used for different purposes than the employer taxes paid to the States. A yield sufficient to accommodate both purposes must, however, be predicated on an adequate tax base. Adjustments to ensure proper financing of Federal liabilities are most appropriately made by changing the net Federal tax rate after establishing an adequate base. For these reasons, there would seem to be no compelling reason why the structure of the Federal law, which has provided for a single taxable wage base since the beginning of the program, should be changed to provide two separate tax bases.

STATE AND LOCAL GOVERNMENT EMPLOYEES

Question. The Staff document reprints two opinions on the constitutionality of extending coverage on a mandatory basis to employees of State and local Governments. One, from the Department of Labor says that there is no Constitutional problem and the other, from the Library of Congress, suggests that if the question were presented to the Supreme Court, the Court might rule either way. First, would you comment on the two opinions and, second, is there some middle course we could take? By a middle course, I have in mind some in-

ducement for the States to extend coverage but short of requiring them to do so.

Answer. As you have indicated, the Solicitor's Office of this Department has issued an opinion which concluded that the National League of Cities case, which was decided under The Commerce Clause of The Constitution, can be clearly distinguished from the issue presented in extending coverage to State and local employees and that the Congress has the power, under the taxing and general welfare clause of the Constitution, to condition continued participation in the Federal-State Unemployment Insurance program. We believe that this opinion was sound when it was issued in June and is still sound.

The opinion of the Library of Congress held 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." We respect that opinion and submit that such issues rarely reach the Court when there is such a degree of certainty about the outcome. Since neither of the two opinions before the Committee concludes that the proposed extension of coverage in H.R. 10210 is unconstitutional, we see no basis for delaying Congressional action in this area.

As to possible alternatives to the bill's approach toward coverage, we know of no feasible middle course that would accomplish the results as effectively. Leaving coverage of Local government employees solely to State initiative has resulted in comprehensive coverage in only eight States, even though the States would not have been liable for the administrative costs of such coverage. Although, inducements could be provided, in the form of Federal subsidies in exchange for State coverage, we believe the most reasonable and equitable approach is to establish coverage of public employees on the same basis as applies to other covered workers.

Senator TALMADGE. Thank you very much for your comments and your associates for their comments. It will be helpful in the deliberations of the committee.

Our next witness is the Lieutenant Governor of the State of Massachusetts, on behalf of the Coalition of Northeast Governors, the Honorable Thomas P. O'Neill III.

We are hapy to have you with us. You may insert your full statement in the record and summarize it as you desire.

STATEMENT OF HON. THOMAS O'NEILL, LIEUTENANT GOVERNOR, STATE OF MASSACHUSETTS, FOR THE COALITION OF NORTHEAST GOVERNORS

Lieutenant Governor O'NEILL. Thank you, Senator.

I apologize for coming in a little late but I thank you nevertheless, for the opportunity to testify before the committee this morning.

I am Thomas P. O'Neill III, Lieutenant Governor of the Commonwealth of Massachusetts. I am here today representing Governor Dukakis in my role as head of Federal-State relations for the Commonwealth.

I am also representing the Coalition of Northeastern Governors, which includes the States of Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

The coalition was formed by the Governors earlier this year out of a growing recognition that many of the economic, social, and fiscal problems we face daily in our individual States, we also share in common as a region.

So serious is the drain on unemployment trust funds and so grave are the consequences for economic recovery that the seven Governors have come forward, together, to present a Northeast perspective on the financing of our unemployment compensation system.

Since its enactment in 1935, the Federal-State unemployment insurance system has often been characterized as controversial. And there are today many areas deserving our attention. But clearly the burgeoning fiscal crisis facing the trust funds presents the most serious threat to the integrity and the very heart of the unemployment system in the 40-year history of the program.

The unemployment insurance program has a great impact in each State on personal incomes, employer taxes, Federal-State relations, and competition for economic development. It is timely that this committee is reexamining the system at a time when it faces its most serious threat as insurer against the risks of unemployment.

The recent, almost disastrous, recession has demonstrated the vital role played by the U.I. program in protecting the national economy. The recession has also shown that the system's current financing structure insures only against normal levels of unemployment and an employer funded insurance system cannot protect society or our economy against the risks of a protracted recession.

Through the first 35 years the system's financing mechanisms worked very well. The State's prerecessionary reserves and the responsiveness of the tax system financed benefit payments through several recessions. Typically past recessions lasted about 18 months.

However, if our current recession has hit the Nation hard, it has been devastating for the Northeast States. The States represented by the coalition have experienced unemployment rates in excess of 6 percent for the past 60 months. And unemployment hit 15 percent in some States.

The present unemployment insurance program was not designed to finance benefit costs of this magnitude. For the first time in history of the program, States have depleted their trust fund reserves; 22 States have borrowed a total of $3.5 billion. Of this amount, $1.6 billion has been borrowed by States represented by the coalition.

The problem extends beyond the Northeast. For example, as of June, Michigan had borrowed over $570 million, Illinois over $375 million. The State of Washington had borrowed nearly $150 million and Alabama, $30 million.

By 1978 borrowing for State trust funds will total $16.5 billion. In addition, loans to the Federal trust fund will add another $6.2 billion to the deficit for unemployment payments.

Most States have taken steps to repay their debt and to qualify for deferral of Federal Unemployment Tax Act increases. But as serious as the debt is, the cure may be worse. Loss of future tax credit and higher tax rates will make economic recovery slower in the very States that need it most. Capital that could go into expansion and creation of new jobs will instead go to the trust funds.

Mr. Chairman, the solution to this problem is beyond the scope of the program as it exists today. We are dealing with a crisis that is national in scope—a crisis that clearly requires Federal direction and initiative.

If we are to protect our workers and maintain the integrity of the unemployment insurance program; if we are to stimulate an economic climate conducive to the creation of jobs; and if we are to continue the flexibility that has served the program so well until now—then new measures, broader in scope, must be introduced to sustain the program during periods of prolonged national recession.

Therefore, we recommend the following:

1. The repayment of loans from the Federal Unemployment Insurance Trust Fund due to the depletion of State trust fund reserves should be deferred until insured unemployment falls below 4.5 percent and the loans should be repayed over 10 years at a fixed penalty rate.

The Federal Unemployment Tax Act placed unlimited liability on each State for financing benefits to their unemployed workers. The experience of four decades of the Federal-State system of unemployment insurance is no longer a reasonable guide to the potential drain on State trust funds during catastrophic recession or a series of close following recessions.

To protect against such a catastrophy would demand the building of immense reserves. But money in reserve is money that is idle. It means less expansion, less investment, less capital to develop foreign markets—in short, less money to take the most important step of all—putting people to work.

It is far better to have to have two salaries to tax than having to tax one job at a higher level, and paying unemployment benefits to the second person.

Just as with other disasters, the system needs a good Federal backup. For flood-prone areas we have a Federal coinsurance program to share the risk. We can't have a viable employer financed insurance system unless the maximum risk is measurable. And we shouldn't force the accumulation of immense reserves to deal with the unexpected. It is therefore appropriate that the repayment schedule be modified to place a ceiling on State liability during catastrophic recessions.

Since 29 States will be borrowing from the Federal fund during 1976, the Governors recommend a 10-year loan repayment period after unemployment falls below 4.5 percent and a fixed 0.5-percent penalty rate to replace the existing graduated penalty tax rate.

This repayment plan is more realistic than what we have now and it will help the private sector contend with the legacy of the recession.

2. Retrospective and prospective funding of Federal supplemental benefits from general revenues.

The ravages of recent unemployment—its severity, and its duration—went far beyond anything people thought would be possible after the Depression. The supplemental benefits program met the needs of workers caught in the recessionary seige. In addition, during the course of this recession, Congress instituted an expanded public service employment program and a public works program to diminish the severity of unemployment.

Still, it was not enough. While some say the economy is on the road to recovery, the second quarter gross national product indicates the pace is slowing down.

I doubt that the 7.5 million Americans who are out of work can take solace from the glowing descriptions of economic recovery they hear daily—especially when we know that the unemployment rate has increased in each of the last 3 months.

The FSB program was passed as an emergency measure—a response to the extraordinary pressures of millions out of work with families to house and to feed. It was passed as a temporary measure because no one thought the need would last so long. And this is perhaps why Congress felt there would be no need to change the financing mechanism.

But now the need is clear and we must cope with the costs. Unemployment after 39 weeks is not the fault of individual employers and thus the costs of prolonged national recession should not be charged to the FUTA tax.

The coalition strongly urges that effective January 1, 1975, all loans to the Federal trust fund for Federal supplemental benefits (FSB) be forgiven. And all future FSB program costs should be funded solely from general revenues.

Since the FSB debt from general revenues has already figured into the fiscal 1977 budget resolution, no additional expenditures are necessary.

And finally,

3. Extended benefits forgiveness:

The Northeast Governors recommend that effective January 1, 1975, the trust fund of each State be credited with an amount equal to its share of extended benefits. For States who have borrowed from the Federal fund, this amount would be credited to the loan.

The extended benefits provision was originally conceived as a technique for supplementing the regular week maximum during times of unusually high unemployment. Recent experience has demonstrated, however, that high average unemployment and the extended benefits triggers make 39 weeks of benefits the rule rather than the exception.

Therefore, it is appropriate that the extended benefits program, established through Federal initiatives and mandated by Federal law, be financed exclusively by the Federal Government. State financing systems could then be geared, with more actuarial accuracy, to fully financing State-mandated benefits.

In conclusion, Mr. Chairman, we are doing all we can to stimulate economic growth. And we do not believe the full burden of economic recovery lies with the Federal Government. But we need this legislation to continue our momentum in the face of staggering pressures on the trust funds.

These amendments will help us use our capital for creating jobs instead of repaying a debt that is beyond the scope of what is reasonable.

Senator TALMADGE. Thank you very much, Governor, for your helpful suggestions.

You favor the portions of the bill that provide States and municipalities and counties be covered by unemployment insurance?

Lieutenant Governor O'NEILL. Yes, we do. I want to specify as Lieutenant Governor of Massachusetts in that regard. I am not speaking for the Northeast Coalition in that respect.

Senator TALMADGE. How much will the taxes be on the State of Massachusetts?

Lieutenant Governor O'NEILL. We are presently changing the tax for the State fund in legislation that is currently going through our legislative process. We are changing the tax rate and the taxable wage base.

So, we think that that will pretty much solve the problem. I will tell you at the same time that we will not see a surplus in our State fund perhaps until 1979 or 1980.

That is why we are asking for Federal assistance after the first 26 weeks of the mandated unemployment compensation program.

Senator TALMADGE. I believe the benefit payments by 1981 will get up to $260 million——

Lieutenant Governor O'NEILL. Over a period of 10 years perhaps we could restore the integrity of our State fund.

Senator TALMADGE. According to this estimated unemployment benefit payments based on State and local government——

Lieutenant Governor O'NEILL. I can't hear you, Mr. Chairman. I am sorry.

Senator TALMADGE. The tax would be by 1981, $260 million. Will that be the benefit or the tax paid? It would be $260 million in payments by 1981 according to our staff, Governor.

Do you think all of the local governments and all the counties are prepared to pay that tax?

Lieutenant Governor O'NEILL. I think both the State and localities will have a difficult time in paying for benefits for their own employees. But these employees should be covered.

I would hope the committee would help out by striking the requirement in the House bill that States pay the administrative costs of coverage of State and local employees.

I think they are striving to. I know most States in the Northeast Coalition presently have filed legislation to remedy the financing problem, and I think there they all collectively have put their best foot forward in order to solve the problem. I think, again, some amount of understanding is really in order here, and that is why I am before you today speaking for them.

Senator TALMADGE. Thank you very much, Governor, we appreciate your contributions to this committee's deliberations.

Lieutenant Governor O'NEILL. Thank you, Senator.

Senator TALMADGE. Our next witness is Mr. Ross Morgan, president of the Interstate Conference of Employment Security Agencies, Inc.

I have a message from Senator Bob Packwood, expressing his regret that he won't be able to be here to hear your statement, Mr. Morgan. He is involved in the conference on the tax reform bill in the Longworth Building and asked me to express his regrets.

STATEMENT OF ROSS MORGAN, PRESIDENT, INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES, INC.

Mr. MORGAN. Thank you.

Senator TALMADGE. You may insert your statement in full in the record and summarize it as you see fit, Mr. Morgan.

Mr. MORGAN. Thank you for the opportunity to appear before you. I have with me here John Crosier on my left, who is president-elect of our conference, who is also the administrator in Massachusetts. On my right I have our staff members from our Washington office, Mr. Goodwin and Mr. Heartwell.

Senator TALMADGE. We are delighted to have all of you gentlemen. You may proceed, Mr. Morgan.

Mr. MORGAN. Mr. Chairman, I will try to confine my statements I think to about 5 minutes, if that meets your approval.

Mr. Chairman and members of the committee, my name is Ross Morgan. I am administrator of the Oregon Employment Division and president of the Interstate Conference of Employment Security

Administrators of the 50 States, the District of Columbia and Puerto Rico. Each of these State administrators is responsible for administering the unemployment insurance program as well as the employment service program in his State.

The States have been very much concerned with weaknesses in the unemployment insurance program and have worked with the Department of Labor, the Congress, and interested groups to improve the system. There is general agreement among the States that they want a system strong enough and adequate enough to meet all types of unemployment.

In testimony before the House Ways and Means Committee, the Interstate Conference of Employment Security Agencies made recommendations designed to strengthen financing, improve benefit adequacy, extend coverage, and improve the State trigger. We also recommended some seven comparatively minor, but still important additional proposals.

Some of these recommendations differ from H.R. 10210 as it passed the House. However, we realize that time is short and we are, therefore, in the interest of getting a bill this year, asking that you approve H.R. 10210 as it passed the House with the exception of section 212. In summary, we therefore support:

1. A tax base of $6,000 effective January 1, 1978, with a temporary rate increase to 0.7 percent effective January 1, 1977.

2. Coverage of an additional 9.5 million workers as proposed in H.R. 10210.

3. State trigger provisions at 4 percent seasonally adjusted as proposed in H.R. 10210.

4. Seven minor amendments contained in H.R. 10210.

We oppose:

1. Section 212 which would shift administrative and extended benefit costs for State and local workers from the Federal Government to the States.

2. We oppose an extension of FSB beyond its termination date of March 31, 1977.

With respect to financing, which is our most serious current problem, there has been a long-term trend toward less adequate reserves resulting from an inadequate tax program. This inadequate funding was suddenly and dramatically increased by the high unemployment and unprecedented drain on the system during the past 2 years. In fiscal 1976 some $17.5 billion was paid to beneficiaries through the several different programs embraced by the system. State trust fund reserves dropped from $11.9 billion in 1970 to $4.5 billion in 1975. Twenty-one States have had to borrow a total of $3.1 billion from the Federal Government to pay benefits. If an adjustment were made for this debt the total of State reserves would be reduced to $1.4 billion. State deficits are still increasing.

The magnitude of our financial problem is evident. To meet this problem the conference recommended to the House that the base go to $6,000 January 1, 1976, and to the national average wage in covered employment beginning January 1, 1977. We recommended that the rate go from 0.5 percent to 0.7 percent January 1, 1976, and remain there until 1983 or until the deficit is eliminated, whichever comes first. The advantage of our proposal over the House Ways and Means pro-

posal of $8,000 or the House-passed $6,000 is that our proposal would keep up with rising wages, whereas the static wage base will be obsolete in a few years.

On the matter of coverage, the conference is on record in favor of universal coverage, and we support the proposal in H.R. 10210 which would bring into the system 9.5 million of the 13.5 million still not covered. We believe that as a matter of simple equity, State and local employees, domestic workers, and farmworkers should be brought into the system. A highly desirable side effect of this coverage would be the replacement of the SUA program with its built-in inequities.

A majority of administrators in the conference also support the administration's proposal to change the State trigger to an insured unemployment rate of 4 percent seasonally adjusted. (This equals a total unemployment rate of about 6 percent.) The 120 percent provision in the permanent existing law has been suspended by the Congress on eight different occasions. (It is suspended now until March 31, 1979.) It is time that it now be replaced on a permanent basis. The provision for seasonal adjustment of the trigger will meet most of the seasonal problem the 120 percent requirement was designed to meet and without the undesirable results.

It is a very real problem because it isn't equal to all States. My own State has high swings of unemployment because of seasonal unemployment. We have a lot of loggers, millworkers, people in the fruit canning business, construction people, and we take a wide swing each year in normal years and that is why the triggering device is a problem, too.

Senator TALMADGE. How do they deal with that problem?

Mr. MORGAN. We deal with it the best we can and we have become accustomed to it, Senator and——

Senator TALMADGE. As best you can doesn't tell me much. How is that?

Mr. MORGAN. Well, we pay unemployment insurance to the seasonal workers when they are unemployed through the winter months and we think that is what the program is all about.

Senator TALMADGE. You do give insurance?

Mr. MORGAN. Yes.

Senator TALMADGE. You pointed out Oregon is a highly diversified State. You have the highly productive agricultural fruit crops and so on. I can see how it would be pretty easy for a fellow to get 20 covered weeks in Oregon harvesting fruit and then when the fruit season is over he could sit down and draw unemployment compensation after working some 20 weeks?

Mr. MORGAN. Well, in Oregon he could draw 26 regular weeks, 13 weeks extension and under FSB go on to 65 weeks.

Senator TALMADGE. That would be 65 weeks. That is well over a year unemployment compensation that he would earn for working 5 months.

Mr. MORGAN. That is true.

Senator TALMADGE. That would be a pretty good deal for someone who wanted to loaf, wouldn't it?

Mr. MORGAN. That is right, and we are very concerned about this but it isn't confined to farmworkers, all our workers have the same problem.

Senator TALMADGE. Do you have some remedies that you could make to us to prevent that? We all know human nature. Most of them are honest, most of them prefer to work, but you have some malingerers who prefer not to work and if they can work for 20 weeks and then be entitled to 65 weeks loafing money, a lot of people are going to take the loafing money, aren't they?

Mr. MORGAN. I agree with you, Senator, and it has to do with better administrative control. We are doing that in our State. We have got several programs going where we are working with people who have been on benefits longer than 26 weeks, a very concentrated program. If we do our job in the States and Congress backs us up with adequate staff to do the job, we can put a stop to the people not really looking for work but saying that they are. That is the biggest problem in this program.

Senator TALMADGE. Do you have any recommendations, either you or your associates, that we might write onto the act and try to deal with that particular problem? We would be interested in hearing it.

Mr. MORGAN. I think if the Congress would speak to the fact that there is no doubt that they feel that there should be adequate administrative work done in this field to see to it that people are really looking for work, are available for work, that is the big issue.

If they are doing these two things and we have staff in order to followup and police this type of thing, then I think we would be all better satisfied with the program because nobody believes that people ought to be paid just to sit down who are not really in the work force and not looking for work.

Senator TALMADGE. Thank you very much for your contributions and the contribution of your associates.

[The prepared statement of Mr. Morgan follows:]

STATEMENT BY ROSS MORGAN, ADMINISTRATOR, OREGON EMPLOYMENT DIVISION AND PRESIDENT, INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES, INC.

PRINCIPAL POINTS IN STATEMENT OF ROSS MORGAN, PRESIDENT, INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES

In testimony before the House Ways and Means Committee, the Interstate Conference made recommendations designed to strength financing, improve benefit adequacy, extend coverage, and improve the State trigger. The Conference also recommended some seven comparatively minor but still important additional proposals.

Some of these recommendations differ from H.R. 10210 as it passed the House. However, we realize that time is short and we are, therefore, in the interest of getting a bill this year, asking that the Senate approve H.R. 10210 as it passed the House with the exception of Sec. 212. We therefore support:

1. A tax base of $6,000 effective January 1, 1978 with a temporary rate increase to 0.7% effective January 1, 1977.
2. Coverage of an additional 8.6 million workers as proposed in H.R. 10210.
3. State trigger provisions at 4% insured unemployment rate seasonally adjusted as proposed in H.R. 10210. (This equates to about a 6% total unemployment rate.)
4. The seven minor amendments contained in H.R. 10210.

We oppose:

1. Sec. 212 of H.R. 10210 which would shift administrative and extended benefit costs for State and local government workers from the Federal government to the States.
2. On a separate but related matter we oppose an extension of FSB beyond its termination date of March 31, 1977.

Mr. Chairman and members of the Committee, my name is Ross Morgan. I am Administrator of the Oregon Employment Division and President of the Inter-

state Conference of Employment Security Agencies. I am here today to represent Employment Security Administrators of the 50 States, the District of Columbia and Puerto Rico. Each of these State Administrators is responsible for administering the unemployment insurance program as well as the employment service program in his State.

During the past two years the unemployment insurance program has been tested to a greater degree than at any time in its history. We have had more unemployment and higher benefit loads than ever experienced by the program. To meet this load the Congress supplemented our regular system with the extension of duration up to 65 weeks through the Federal Supplemental Benefits Program and filled the gaps on coverage by passing the Special Unemployment Assistance Program.

With the tremendous stress of unprecedented workloads, many emergency measures had to be taken and delays in benefit payments were inevitable. To the credit of the system, the States got on top of the job in a short time and benefits are being paid promptly in most situations now.

The States have been very much concerned with weaknesses in the unemployment insurance program and have worked with the Department of Labor, the Congress, and interested groups to improve the system. There is general agreement among the States that they want a system strong enough and adequate enough to meet all types of unemployment.

In giving consideration to necessary changes in the program the Conference, working through its Legislative, Unemployment Insurance, and Benefit Financing Committees, developed proposals which were then submitted to all States in arriving at a Conference position.

In testimony before the House Ways and Means Committee, we made recommendations designed to strengthen financing, improve benefit adequacy, extend coverage, and improve the State trigger. We also recommended some seven comparatively minor but still important additional proposals.

Although we believe all of our recommendations make good public policy, we realize that time is short and we are, therefore, in the interest of getting a bill this year, asking that you approve H.R. 10210 as it passed the House with the exception of Sec. 212. We therefore support:

1. A tax base of $6,000 effective January 1, 1978 with a temporary rate increase to 0.7% effective January 1, 1977.
2. Coverage of an additional 8.6 million workers as proposed in H.R. 10210.
3. State trigger provisions at 4% IUR seasonally adjusted as proposed in H.R. 10210.
4. Seven minor amendments.

We oppose:

1. Sec. 212 which would shift administrative-extended benefit costs for State and local workers from the Federal government to the States.
2. An extension of FSB beyond termination March 31, 1977.

With respect to financing, there has been a long-term trend toward less adequate reserves resulting from an inadequate tax program. This inadequate funding was suddenly and dramatically increased by the high unemployment and unprecedented drain on the system during the past two years. In fiscal 1976 some $17.5 billion was paid to beneficiaries through the several different programs embraced by the system. State trust fund reserves dropped from $11.9 billion in 1970 to $4.5 billion in 1975. Twenty-one States have had to borrow a total of $3.1 billion from the Federal government to pay benefits. If an adjustment were made for this debt the total of State reserves would be reduced to $1.4 billion. State deficits are still increasing.

The magnitude of our financial problem is evident. To meet this problem the Conference recommended to the House that the base go to $6,000 January 1, 1976 and to the national average wage in covered employment beginning January 1, 1977. We recommend that the rate go from 0.5% to 0.7% January 1, 1976 and remain there until 1983 or until the deficit is eliminated, whichever comes first. The advantage of our proposal over the House Ways and Means proposal of $8,000 or the House-passed $6,000 is that our proposal would keep up with rising wages whereas the static wage base will be obsolete in a few years.

The position of State Administrators on federal standards for benefit adequacy is far from unanimous. A good many State administrators are opposed in principle to benefit standards while others are opposed on the basis of adding additional costs until we have pulled out of our present fiscal difficulties. On the other hand, there is a widespread conviction among administrators that benefits should

be adequate enough in all States to meet the minimum needs of the unemployed, and that the system as a whole should be adequate enough to forestall congressional approval of special unemployment benefit programs. In evaluating all of these factors a majority of State administrators favored support for the Administration's proposal for a federal standard on State maximums. As you know, this proposal was not accepted by the House.

On the matter of coverage, the Conference is on record in favor of universal coverage, and we support the proposal in H.R. 10210 which would bring into the system 8.6 million of the 11.2 million still not covered. We believe that as a matter of simple equity, State and local employees, domestic workers, and farm workers should be brought into the system. A highly desirable side effect of this coverage would be the replacement of the SUA program with its built-in inequities.

A majority of Administrators in the Conference also support the Administration's proposal to change the State trigger to an insured unemployment rate of 4% seasonally adjusted. (This equals a total unemployment rate of about 6%.) The 120% provision in the permanent existing law has been suspended by the Congress on eight different occasions. (It is suspended now until March 31, 1979.) It is time that it now be replaced on a permanent basis. The provision for seasonal adjustment of the trigger will meet most of the seasonal problem the 120% requirement was designed to meet and without the undesirable results.

Our recommendations to the House and the provisions in H.R. 10210 as it passed the House are significantly different on both financing and the provision for benefit standards on maximums. Athough we have not had occasion to change our basic position on these two items, it would appear to us that it is unrealistic to expect to get these changes in the short time left in this session of the Congress. An effort to do so might endanger the passage of any unemployment insurance bill this session of Congress.

The unemployment insurance system is very much in need of financial relief. We also need the additional coverage which would more adequately provide for workers not covered and would permit dropping the troublesome SUA program. Therefore, we desperately need a bill. For this reason we are ready to support H.R. 10210 as it came to you from the House with one exception.

We strongly believe that the Senate should eliminate from H.R. 10210 Sec. 212 which transfers the administrative costs and the federal share of extended benefit costs for State and local government employees. These costs have been paid by the Federal government since the beginning of the program, and we believe this is a particularly poor time to saddle the States and localities with this burden. It would add a large administrative burden to distribute and collect the costs among cities, counties and other local governments.

The proposal is highly inequitable because it would continue to pay administrative and extended benefit costs for the federal programs (UCV, UCX) from the FUTA tax. Section 212 was not convered by the rule under which the House voted on H.R. 10210, and the House, therefore, did not have an opportunity to vote on this issue. We believe, however, that the House would accept the elimination of Sec. 212 if it were voted by the Senate.

Before closing my testimony Mr. Chairman and members of the Committee, I would like to comment on the quality of the job done by the unemployment insurance system. I earlier made reference to the tremendous load of the past several years which resulted in some delays in payments. It is also true that there have been some abuses in the system. This is inevitable in a program of this size, particularly when the workload is climbing steeply. However, evidence that the States are doing a good policing job is contained in figures released by the Department of Labor for 1975. These figures show that the States found some six million claimants ineligible for benefits in the one year. This included those that lacked qualifying requirements of the law, those that quit their jobs or were discharged for cause and those that failed to look for work or refused work that was offered.

In the same year the States identified about $75 million in overpayments, half of which were fraudulent. $48 million of this amount was recovered.

I submit that this record is good and would compare favorably with other government programs or private programs making large numbers of payments to individuals.

Mr. Chairman, it is our understanding that since your committee has jurisdiction over FSB you may give consideration to proposals to extend this program when it expires next March 31. Although the Conference had earlier supported this program, a poll taken August 10, 1976 was opposed to extension by a vote of

14 for extension and 29 opposed. Our change in position is related principally to a drop in the unemployment rolls and the fact that a number of States have triggered off and the program is not now in operation in those States.

Mr. Chairman and members of the Committee, I would like to repeat that we very much need an unemployment insurance bill this session of Congress. Although H.R. 10210 will not solve all of our problems, it will help tremendously, and we urge that you approve it but without Sec. 212. Thank you very much.

Senator TALMADGE. Our next and final witness is Mr. Patrick Banks, an old friend, and I particularly welcome him to the committee.

STATEMENT OF HON. PATRICK BANKS, REPRESENTATIVE, GEORGIA STATE HOUSE OF REPRESENTATIVES

Mr. BANKS. My good friend, Senator Talmadge, Mr. Chairman, I am delighted to be before this committee. I have been, I guess, looking into the unemployment law for about 12 years.

Mr. Chairman, let me first state I am not here today to oppose the concept of unemployment insurance, I am here today to oppose H.R. 10210 as written for farmworkers, domestics, and I may be a little offkey from the House version that was originally passed since I have been in an election year down in my State of Georgia, I haven't kept that close contact with what happened in the House version, the changes, and so forth.

But the farmworkers, the municipalities, the domestic workers, State municipalities; I am concerned about the cost to the farmer, as you are well aware, that when a farmer this day and time has no way to give a price on his crop, he takes his tomatoes, takes his tobacco, takes his whatever to the market, he doesn't have a 33-percent markup on his crop, he doesn't have a 50-percent markup.

When he takes his crop to the market he asks what will you give me and he pretty well takes what they offer. He has to take it.

It is going to put a very large strain on the farm business, I think, in our particular State of Georgia. I am concerned with the domestic help that the bill calls for, and I could be wrong there, but where a person in a household has a maid 1 day a week, or whatever, they are going to be burdened with paperwork to send to the Government, send money to the Government and this type of thing. I am not saying they shouldn't be covered but it is going to put a very large strain on that property owner. States and municipalities, Mr. Chairman, in our particular county of Macon and Butts County if this becomes law, it will cost our State and county $1,337,000 a year. Where can we get this kind of money? Through ad valorem tax. Our ad valorem tax in Macon and Butts Counties is the largest in the State of Georgia.

We don't have any way to increase taxes unless you reevaluate the homes.

My other concern I would like for the committee to maybe think about is some amendments to this bill that I spoke to you about back maybe a year or so ago, about an employee that is exempt from drawing unemployment. If the employee is exempt, like a high school person or a college person that is working part time for an employer, we will take a restaurant that may only need an employee for we will say 2 hours per day or 3 hours for their lunch hour, and this type of thing. That employee that is going to college that may be out of school for those 3 hours or the rest of the day is actually making

part-time money to play around with or to continue their education yet that employee is exempt from drawing unemployment.

Now, I have talked to the Federal Labor Department, I have talked to our State labor department; they say they are not exempt. Well, I had seven employees that were college students when my business closed. I turned around and took all seven down to the labor department. They said that they could not draw unemployment insurance.

I can understand why because we don't want to pay unemployment to somebody who is going to school. That is one of the basis that I oppose this bill because I think it has gotten to the point that it is another welfare program that our country can't stand. The concept of unemployment insurance is great.

As I stated before, but it is going away when you extend benefits for a year and 3 months to an employee that doesn't want to work.

In the State of Georgia, in our Georgia bill, I personally this year put an amendment to it where if a person walks off his job he is not entitled to draw unemployment insurance. So, we have cut down a great deal in the State of Georgia.

As an individual in the State of Georgia, that makes $180 per week, he can sit home and draw unemployment insurance and the other benefits that go along with it and make $73 more a week nonworking than he can working with a job making $180 a week. I am talking about with other benefits that go along with the $90 a week unemployment.

Senator TALMADGE. You are talking about the tax exemption also plus the cost of going to and from the site of the job?

Mr. BANKS. That is correct, sir.

Senator TALMADGE. In other words, what you are telling me is if he is drawing unemployment compensation in Georgia, at present he could earn $.73 more a week by drawing unemployment compensation than he could by working?

Mr. BANKS. That is correct, sir. That is a man is eligible with a wife and two children that is drawing $180 a week, if I was to lose my job or before the amendment passed in the Georgia Legislature this past year I presented, I could have quit my job and drawn $90 a week plus food stamps and the other necessary things and I wasn't counting the gasoline to and from work or the automobile, I was talking about the food stamps, unemployment, and so forth, and you could draw $.73 more.

Senator TALMADGE. Medicaid? Does that include medicaid benefits?

Mr. BANKS. That is correct. And, I am just really concerned also with another amendment I would like for you all to consider.

I asked the Speaker of the House of Representatives this year, this past year, to set up an unemployment compensation committee. We toured several military bases in the State of Georgia, several State employees, and so forth, that had retired. Some of them had retired as high as $20,000 per year and drawing unemployment compensation. I think this is unfair to the people in this country as in our State.

Senator TALMADGE. I understand you to say that one individual could draw $20,000 in unemployment compensation?

Mr. BANKS. We found not only one, we found seven in our investigation.

Senator TALMADGE. That was fraud, applying under several different names? I thought there was a limit on the benefits, a limit on the benefits in Georgia.

Mr. BANKS. The limit?

Senator TALMADGE. The ceiling. You have a maximum payment.

Mr. BANKS. Yes, sir. $90.

Senator TALMADGE. $90 a week?

Mr. BANKS. Yes. But a person that can retire at a military base, a lieutenant colonel, is going down and drawing unemployment after drawing this retirement.

Senator TALMADGE. Now I understand what you are talking about. You are talking about military retirement plus his unemployment compensation?

Mr. BANKS. Yes; and I think this is one of the concepts, this is one of the reasons that I am opposing such a bill because a man making $18,000 a year, let's give it to the man who needs it, let's give it to the man that is deprived of a job, that really needs this $90.

Senator TALMADGE. I certainly agree with you. If someone is drawing retirement benefits from the Federal Government in that magnitude, he certainly ought not to have unemployment benefits added to it.

Mr. BANKS. Correct.

Senator TALMADGE. Because the object of this retirement was to provide security for him when he was not working. So we are giving him a double dip in the illustration that you mentioned.

You put your finger on one of the problems that concerns me about this bill. You are thoroughly familiar with our State, of course. In agriculture, the production of a crop normally takes 4 or 5 months. That would be just about the amount of time to qualify one for unemployment compensation under the House-passed bill.

You heard by colloquy with the Director of Unemployment Security of Oregon, if one qualified by working 20 weeks then he could draw unemployment compensation for a maximum of 65 weeks after that temporary job ceased to exist. Now, how would you recommend that the committee approach that so we would not provide a greater incentive for not working than we have for working. You have already pointed out one such instance.

Mr. BANKS. Mr. Chairman, I am working on a proposal right now for our State unemployment insurance to be presented this year in the general assembly but I have not completed it and I will be happy to send it to you.

Senator TALMADGE. When you do I would appreciate it greatly, if you would submit it to the staff for the committees' examination.

I want to thank you for your very helpful and constructive suggestions that you have made to the committee. We were delighted to have you appear before us.

Mr. BANKS. Thank you.

Senator TALMADGE. The committee will stand in recess until 10 a.m. tomorrow morning.

UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

THURSDAY, SEPTEMBER 9, 1976

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

The committee met, pursuant to notice, at 10:15 a.m. in room 2221, Dirksen Senate Office Building, Hon. Michael Gravel presiding.

Present: Senators Gravel and Brock.

Senator GRAVEL. The hearing will come to order.

Our first witness today is the Honorable Dewey Bartlett.

Let me state that we have a large list of witnesses to hear. I would just like to state that because of the exigencies of time, we have informed the witnesses that we would like to limit testimony to 5 minutes.

We will receive all statements in full in the record so that the record will not be deficient in that regard. In order to accommodate all the witnesses and the problems we have in scheduling for the hearing, the witnesses will understand.

I know, Senator Bartlett, that you understand this as well as I do.

If you will kick our hearings off today, it is a pleasure to see you.

STATEMENT OF HON. DEWEY BARTLETT, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator BARTLETT. Mr. Chairman, I do understand and before me I have my short version. I ask unanimous consent that the long version be included in the record.

Mr. Chairman, I also thank you for having these hearings, and you and the members of the committee for the opportunity to present testimony on two bills which I introduced to reduce the total cost of unemployment compensation by eliminating the double dip loopholes.

These two pieces of legislation, S. 3216 and S. 3529 should be considered by the committee for inclusion as amendments to H.R. 10210.

I will briefly summarize the contents of these two bills, and I request that the text of my full statement be inserted in the record.

S. 3216, introduced March 26, 1976, amends chapter 85 of title 5 of the United States Code to provide that unemployment compensation for all Federal retirees, both uniformed and civilian, would be eliminated in most cases because the retiree only receives unemployment compensation where it exceeds his or her pension, and then only the amount by which the unemployment exceeds the pension.

S. 3259, introduced on January 8, 1976, amends the Emergency Unemployment Compensation Act of 1974 and the Federal-State Extend-

ed Unemployment Compensation Act of 1970. This bill provides that a private sector retiree would have his or her unemployment compensation reduced by the amount of the pension. The retiree only draws unemployment where it exceeds the retirement pay and that amount is the increment above the pension.

The committee should note that these bills complement each other and are specifically designed to reduce the Federal dollars that are expended on unemployment compensation leaving each State to make its own decision on how to expend its own unemployment compensation funds.

The analysis done on these two sections shows that some $187 million is being expended annually on unemployment compensation benefits to retirees. The private sector retiree accounts for some $71.1 million of this total.

A hypothetical example may be useful to illustrate the possibilities. An individual who retired from a job at 65 and began drawing a pension of $1,000 per month could, in many States, also draw unemployment compensation up to as much as $416 a month for 64 weeks. This $416 is in addition to the pension received, and social security. This same situation could apply to a Federal retiree, many of whom also receive social security because of employment in the private sector prior to Government service, or immediately thereafter.

Certainly we have established the need to provide for those individuals who are temporarily out of work, and who are actively seeking to rejoin the labor force. However, providing unemployment funds to retirees is contrary to the purpose of unemployment compensation.

Over half the States allow for this abuse to some extent or another, and S. 3216 and S. 3529 seek to resolve this problem. Again, they neither totally disqualify the retiree from unemployment compensation, but the bills do provide for a reduction, dollar for dollar, where Federal tax moneys are being expended. In most cases, these amendments would eliminate the necessity of payments.

There is strong support throughout the Nation for reform of our unemployment compensation system, and I propose these two amendments as a beginning to halt the unnecessary drain on those often much needed unemployment compensation funds.

Again, thank you, Mr. Chairman and members of the Finance Committee, and I submit my entire statement, including a letter from the U.S. Postal Service in support of these amendments, in the record.

Senator GRAVEL. Thank you very much. We appreciate it.

[The prepared statement and letter of Senator Bartlett follow:]

STATEMENT BY SENATOR DEWEY F. BARTLETT

Mr. Chairman: I would like to thank you and the committee for the opportunity to present testimony on two bills which I introduced to reduce the total cost of unemployment compensation by eliminating the double-dip loopholes. These two pieces of legislation should be considered by the committee for inclusion as amendments to H.R. 10210.

S. 3216, introduced on March 26, 1976, would amend Chapter 85 of Title V of the United States Code, to provide that unemployment compensation for all federal retirees, both uniformed and civilian, would be reduced by the amount of benefits payable under any federal pension system. The reduction would eliminate unemployment compensation, but would not affect the retirees pension. The net result of the passage of this amendment would be to close a loophole which provides overlapping payments of both unemployment compensation and federal

pensions out of federal funds. The retiree would only receive the amount of compensation that exceeds the pension, and then only the amount by which the compensation exceeds the pension.

S. 3529, which I introduced on June 8, 1976, would amend the Emergency Unemployment Compensation Act of 1974 and the Federal State Extended Unemployment Compensation Act of 1970. This bill provides that a private sector retiree would have his or her unemployment compensation reduced by the amount received from any annuity or pension. This bill is specifically designed to accompany S. 3216. The objectives and methods of implementing each are closely related in that they affect only federal money and do not interfere with states making decisions concerning their own unemployment compensation funds. I believe that both bills are necessary reforms to the unemployment compensation system.

The need for this legislation is clear. In an analysis prepared by Evans Whitt of the Associated Press, it is estimated that over 90,000 federal retirees and 71,000 private sector retirees receive unemployment compensation. The total expenditures in 1974 was estimated to be $187 million. The private sector accounts for, at the minimum, $71.1 million of this total. In addition, there is a wide discrepancy from state to state between amounts received and the length of time that individuals may draw the compensation. The following is a portion of Mr. Whitt's analysis, and I include it in my testimony to elucidate the situation which exists from state to state.

"In 16 States, including many of those with the most unemployed, both private and Government pensioners can draw full unemployment benefits. The States are: Alaska, Arizona, California, Georgia, Hawaii, Kansas, Kentucky, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, and Vermont.

In 15 other States, many retirees from the military can draw full benefits, while host non-Government pensioners can not. These are: Arkansas, Connecticut, Florida, Idaho, Iowa, Louisiana, Maine, Massachusetts, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, South Dakota, and Tennessee.

In eight of the above States, Federal civilian pensioners can receive more jobless pay than most other pensioners; despite Federal law saying ex-Federal employees shall receive the same benefits as other jobless persons.

In Louisiana and South Dakota, all those drawing Government pensions also can draw full unemployment benefits, while retirees from private business face reduced jobless benefits because of their pensions.

In Massachusetts and Oklahoma, Federal pensions—military and civilian—can draw full jobless pay. In those States, jobless benefits for other retirees can be reduced or eliminated because of their pensions.

In Ohio, all Federal pensioners and all other retirees who contributed to their own pension plans can draw full unemployment checks. Others face a reduction in benefits.

In Missouri, Nebraska, and Connecticut, Federal civilian pensioners and some private pensioners can draw full benefits—at least initially—while other pensioners face reduced jobless pay. Delaware also treats Federal pensioners in this manner, but reduces jobless benefits going to military pensioners.

In the other 19 States and the District of Columbia, unemployment benefits may be reduced if the applicant draws a pension. The amount of the reduction varies and can mean the pensioner gets no jobless check."

Therefore, the need to amend both the Emergency Unemployment Compensation Act, the Federal State Extended Unemployment Compensation Act and Title V are clear. S. 3529 will reduce expenditures by at least $71.1 million, and on an even broader scale, S. 3216 will save American taxpayers over $100 million.

The question of mandatory termination from employment under unemployment laws is provided on the basis that retirement is mandatory because the employee reaches a certain age set by his or her employer. The retiree then may apply for unemployment compensation and receive it. Although the retiree must seek a job, usually a statement to that effect is satisfactory to fulfill the statutory requirements. Besides this perfunctory statement, it is virtually impossible for a State employment security commission to locate a job for a retiree, in that this person is at the peak of his income but declining in productivity.

A hypothetical example cited by Evans Whitt may be useful to illustrate the possibilities. An individual who retired from a job at 65 and began drawing a pension of $1,000 per month could, in many States, also draw unemployment compensation up to as much as $416 per month for 64 weeks. This $416 is in addition to the pension received and social security.

Certainly we have established the need to provide for those individuals who are temporarily out of work, and who actively seek to rejoin the labor force. However, providing the funds to retirees is contrary to the purpose of unemployment compensation and is of even greater concern because of the drain that has been placed on these funds during the recession of the past several years.

The purpose of unemployment compensation has been outlined by the Department of Health, Education, and Welfare in their publication of January 1973, entitled "Social Security Programs in the United States." On page 55, HEW stated:

"Unemployment insurance programs are designed to provide cash benefits to regularly employed members of the labor force who become involuntarily unemployed and who are able and willing to accept suitable jobs."

The original report to the President by the Committee on Economic Security, published in 1935, stated on page 4 that:

"Unemployment compensation, as we conceive it, is a front line of defense especially valuable for those who are ordinarily steadily employed * * *."

These descriptions clearly do not apply to the retiree who has ceased his employment, left the labor force, and is receiving a retirement pension. The intention of the Unemployment Compensation Act is concisely summed up in the first sentence of a book written by Merrill G. Murray, staff member of the Committee on Economic Security. Mr. Murray published a book entitled, Unemployment Insurance in the American Economy, and in the opening sentence of chapter 2, "The objectives of unemployment insurance," he stated:

"The primary objective of unemployment insurance is to alleviate the hardship that results from the loss of income during unemployment. Other objectives are secondary."

The abuses of the Unemployment Compensation Program have reached a level that cannot be tolerated. In Oklahoma alone, some $2 million is unnecessarily being paid to Federal Civil Service and Military retirees. There are 24 States which allow Federal civilian retirees to draw unemployment compensation and 31 that allow military retirees to draw unemployment compensation. S. 3216 does not totally disqualify Federal retirees from unemployment compensation, but it does provide that they may only draw unemployment compensation which exceeds the amount of their entitlement from a Federal retirement program. In most cases this amendment would eliminate the necessity of these payments entirely.

Mr. Chairman, I would also like to submit a copy of a letter from Mr. W. Allen Sanders, Assistant General Counsel, Legislative Division of the United States Postal Service. Mr. Sanders' letter which was forwarded to the committee states the Postal Service's support for the enactment of S. 3216 and S. 3529.

There is strong support throughout the Nation for reform of our unemployment compensation system. Unemployment compensation and pensions perform two entirely different functions. The amendments I propose will halt the unnecessary drain of unemployment compensation funds to those who require them the least. Therefore, Mr. Chairman, I urge inclusion of these bills in the final markup of H.R. 10210.

U.S. POSTAL SERVICE,
LAW DEPARTMENT,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in regard to S. 3216, "To amend chapter 85 of title 5, United States Code, so as to provide that unemployment compensation * * * payable to a Federal employee for any week shall be reduced (but not below zero) by the benefits payable to him with respect to such week under a Federal pension system;" and S. 3529, "To amend the Emergency Unemployment Compensation Act of 1974 * * *, and to amend the Federal-State Extended Unemployment Act of 1970 * * *." Although we have not received a formal request to furnish our comments on these bills, we believe it is appropriate to furnish you our views concerning their impact on the Postal Service.

These bills would reduce some unemployment compensation by the amount by which recipients are entitled to certain pension benefits. To the extent that former postal employees also receive pensions covered under the bills, the Postal Service would be able to reduce its payments for unemployment compensation. Accordingly, the Postal Service supports their enactment.

S. 3216 would reduce unemployment compensation payable to a Federal employee (defined in U.S.C. § 8503(3) as anyone who has performed Federal service) by the amount to which the employee is entitled to a Federal pension (in-

cluding a military pension). The bill would override State laws which allow some retiring Federal employees, including Postal Service employees, to collect unemployment while retiring on Federal pensions. The bill contains a "grandfather clause," § 1(f)(2) of the bill, which prevents the bill from affecting employees who are already receiving unemployment compensation when the legislation takes effect.

If S. 3216 were passed, S. 3529 would provide little additional benefit to the Postal Service. S. 3529 would reduce certain unemployment benefits of any employee, public or private, receiving a pension from any source. Since almost all postal employees on pensions are receiving Federal pensions which are covered in S. 3216, the number of additional employees covered under S. 3529 would be small. However, if S. 3529 were passed without S. 3216, it would provide some savings for the Postal Service. S. 3529 applies only to Federal payments under the Federal-State Extended Unemployment Compensation Act of 1970 (27th through 39th weeks of unemployment) and the Emergency Unemployment Compensation Act of 1974 (40th through 52d weeks). The bill would reduce payments under these Acts, but would not reduce either the 50% share paid by the States under the 1970 Act, or any payments under regular unemployment compensation (1st through 26th weeks) or the Special Unemployment Assistance Program (53d through 65th weeks). Since the Postal Service is ultimately responsible for all unemployment payments made to its former employees, it would continue to be liable to the States for payments made under programs not covered by S. 3529.

We have noted two technical defects in S. 3529. On p. 1, line 3 of the bill, it is stated that "section 102(d)(1) of the Emergency Unemployment Compensation Act of 1974 is amended * * *." This should read "section 102(d) of the Emergency Unemployment Compensation Act of 1974 is amended * * *" since the bill amends both paragraphs (1) and (2) of 102(d). Beginning on p. 1, line 5, the bill would strike out "shall be equal" and replace it with "shall (except as is otherwise provided in subsection (h) * * *." The words "be equal" were apparently omitted from the end of the substitute language, which should read "shall (except as is otherwise provided in subsection (h)) be equal * * *."

The Postal Service supports enactment of S. 3216 and S. 3529 because we know of no reason why the Postal Service as an employer should be required to pay unemployment compensation to former employees who are also receiving a Federal pension.

Sincerely,

W. ALLEN SANDERS,
Assistant General Counsel Legislative Division.

Senator GRAVEL. Our next witness is a panel consisting of the Honorable Herbert Pfuhl, mayor of Johnstown, Pa., on behalf of the National League of Cities; Fred F. Cooper, chairman, Board of Supervisors, Alameda County, Calif., on behalf of the National Association of Counties.

Please proceed.

STATEMENT OF HON. HERBERT PFUHL, JR., MAYOR OF JOHNSTOWN, PA., ON BEHALF OF THE NATIONAL LEAGUE OF CITIES

Mr. PFUHL. Mr. Chairman and members of the committee, I am Herbert Pfuhl, mayor of Johnstown, Pa., and vice president of the Pennsylvania League of Cities.

I am here today to testify on behalf of the National League of Cities and the 15,000 municipalities which it represents in opposition to section 115 of H.R. 10210, the Unemployment Compensation Act Amendments of 1975.

The National League of Cities has traditionally opposed the intrusion of the Federal Government in local personnel practices. At the same time as inflation and recession have blown both the tops and bottoms out of local budgets, city officials are becoming increasingly concerned about federally "mandated costs" to local governments.

As you know, many communities are faced with a financial crisis more severe than at any time since the depression of the 1930's. Despite great efforts on the part of local officials to supplement revenues collected through local property tax assessments by State and Federal revenue sharing, this crisis has not been overcome.

Such mandated costs represent serious intrusions into the limited resources available to local governments and seriously limit the ability of local governing bodies to respond to the essential needs of their communities.

The worthiness of the objectives of many Federal initiatives is unquestionable, but too often accountability and responsibility are reduced when decisions result in costs of unknown size to be paid by another unit of government.

Extension of unemployment compensation benefits to State and local government employees is just such an example. Additional mandated costs at this juncture would increase the financial difficulties of local units of government at precisely the wrong time. It will undoubtedly result in the loss of additional jobs and reduction in public services to enable compliance with this new Federal mandate.

The employment security experience of local government employers has on the whole been good. In addition, many State and local government employees are covered by legal and other safeguards available to many employees in the private sector. While this record has recently been jeopardized by a critical financial situation, the solution to the resulting job insecurity will not come from placing new burdens of unknown fiscal impact on the public employer.

Rather, the solution lies in providing greater fiscal flexibility and new sources of revenue for local units of government—as this committee is currently doing through revenue sharing—as a means of achieving the objective of continued job security for public employees at the local level.

From our perspective, it seems to make little sense for the Federal Government to give with one hand—as with general revenue sharing; and then to take it away with the other—as with extension of unemployment compensation to local government employees.

While no one can presume to anticipate how the Supreme Court would decide the constitutional question involved in the extension of unemployment compensation benefits to State and local employees, we do believe that the House committee report language dealing with this issue begs the question. State and local government have just come through an 18-month period of uncertainty awaiting the outcome of a constitutional challenge to the Fair Labor Standards Act Amendments of 1974. It is more than likely that extension of unemployment compensation legislation to State and local governments will also be challenged in the courts and we will again face—at least from the budget planning perspective—another period of uncertainty until the issue is finally litigated.

The Social Security Act of 1935 virtually compelled the States to set up their own individual compensation programs by imposing a Federal payroll tax on most employers but then provided a tax credit to those employers participating in a State unemployment insurance program.

To enact a statute which requires extension of coverage to additional categories of employees as a condition precedent for continued participation in the Federal system can scarcely be considered optional or voluntary compliance.

Were this a completely new legislative initiative, such reasoning might make eminent good sense. But we are well into the 40th year of existence of State unemployment compensation systems; and at this point such reasoning truly does not make sense.

No State in its right mind can realistically or politically withdraw from the Federal unemployment compensation system. As Congressman Ketchum indicated in the House floor debate, "There is no option, just a very persuasive threat."

It is also quite possible that this extension could have a significant impact on our ability to utilize Federal funds made available to cities for the purposes of increasing available job opportunities. While the House-passed bill adequately deals with unemployment compensation benefits for individuals hired with the Comprehensive Employment and Training Act funds, no similar provisions are made for individuals hired with Federal funds under other grants. Is there much sense in diverting a substantial portion of funds designed to hire the unemployed to paying compensation for being unemployed?

In conclusion, Mr. Chairman, the cities are opposed to Federal interference in the management of local government affairs and believe that matters of this nature should be left to local elected officials to resolve since they are best able to determine local needs. We understand the need for legislation designed to solve the problems related to the funding of the unemployed compensation trust fund of the States and Federal Government.

We do not believe that the provision relating to the extension of coverage to local employees has been sufficiently and thoroughly reviewed. Costs have not been projected on a State-by-State and city-by-city basis and certainly this issue should be carefully studied before Congress acts.

I want to thank you very much, on behalf of the National League of Cities.

Senator GRAVEL. Thank you.

STATEMENT OF FRED F. COOPER, CHAIRMAN, BOARD OF SUPERVISORS, ALAMEDA COUNTY, CALIF., ACCOMPANIED BY JON WEINTRAUB, LEGISLATIVE REPRESENTATIVE WITH THE NATIONAL ASSOCIATION OF COUNTIES

Mr. COOPER. Mr. Chairman, my name is Fred Cooper, chairman of the Board of Supervisors of Alameda County, Calif. I serve as chairman of the Collective Bargaining Subcommittee of the National Association of Counties' Labor/Management Relations Steering Committee.

I represented that steering committee on NAC's Unemployment Insurance Task Force which developed NACO's policy on that subject.

I have also served as chairman of the Public Labor Relations Committee of the County Supervisors Association of California. I am

accompanied today by Jon Weintraub, legislative representative with the National Association of Counties.

We are here today to oppose legislation before your committee mandating unemployment insurance coverage of county employees at county expense. We are sympathetic to the equity question of extending employment insurance coverage to county employees. However, we oppose section 115 of H.R. 10210 because of the financial burden it places on counties. We must make the distinction that, as an employer, county government is substantially different from the private sector. These include the facts that: Most public employees have lifetime jobs; under civil service, merit pay increases and promotions are not at the sole discretion of the employer, as they are in private industry; pensions are 2 to 3 times the size of the average pension in private industry.

County budgets are being stretched to their limit of revenue raising potential. In States which have imposed statutory limits, some counties have reached or are close to the legal limit of their revenue-raising capacity.

In fiscal 1976, in my State of California, for example, 17 counties have reached or exceeded 90 percent of their Senate bill 90 revenue limits. Inelastic property taxes, still the source of 85 percent of locally guaranteed tax revenues, are at the maximum level people will tolerate.

Simply stated, Mr. Chairman, where will we get the money to pay unemployment insurance benefits; when we are faced with layoffs in our county, should we limit or cut basic services in order to provide unemployment insurance benefits?

Counties, through a public process, set their budgets once a year. If counties chose the less costly reimbursement method, they would face a catch-22 situation. If we have to pay $2 to $3 million in unemployment benefits, we can do this only by raising the property tax or by laying off employees.

Laying off employees not only increases unemployment, but cuts the services we provide our residents in health, welfare, and law enforcement. Raising the property tax is not acceptable, since we already increase our property taxes 8 to 10 percent per year just to keep up with inflation.

In my county, we would have to eliminate our job sharing program because of the increased numbers of employees to be covered. We would discourage and eliminate wherever possible the use of part-time and temporary employment, which would further contribute to unemployment.

Speaking individually as a county supervisor from California, and not on behalf of NACo, I would like to have the committee consider the following compromise:

Congress should require local governments to provide unemployment compensation benefits for permanent civil service employees. It is a financial disaster for counties and inconsistent with unemployment insurance principles to extend unemployment compensation benefits to all local government employees, including part-time, temporary, and seasonal employees.

This would result in the termination of all or most of the job slots in Alameda County for people we are trying to get off welfare through CETA, WIN, and COD.

The county of Los Angeles has sent a letter to the members of the committee outlining language which would limit coverage to permanent civil service employees. I would strongly recommend that members of this committee consider this amendment to section 115 of H.R. 10210.

We appreciate this opportunity to present our views on unemployment insurance compensation and would be happy to answer questions that you may have.

Senator GRAVEL. Thank you very much.

[The prepared statement of Mr. Cooper follows:]

STATEMENT OF FRED COOPER, CHAIRMAN, BOARD OF SUPERVISORS, ALAMEDA COUNTY, CALIF., ON BEHALF OF ALAMEDA COUNTY AND THE NATIONAL ASSOCIATION OF COUNTIES

SUMMARY

(1) NACo opposes section 115 of H.R. 10210 because of the severe financial burden it places on counties.

(2) As an employer, county government is substantially different from the private sector. (a) County revenue raising potential is tied to inelastic property taxes, which are at the maximum level people will tolerate.

(3) Counties would have to create more unemployment by firing additional employees to free the dollars necessary to pay unemployment benefits to those on layoffs.

(4) Should section 115 be adopted, counties would have to discourage or eliminate the use of part-time and temporary employment as well as job sharing programs thus creating further unemployment.

STATEMENT

Mr. Chairman, members of the Senate Finance Committee, my name is Fred Cooper, Chairman of the Board of Supervisors, in Alameda County, California. I serve as chairman of the collective bargaining subcommittee of National Association of Counties' labor/management relations steering committee. I represented that steering committee on NACo's unemployment insurance task force which developed NACO's policy on that subject. I've also served as chairman of the public labor relations committee of the county supervisors association of California. I am accompanied today by Jon Weintraub, Legislative Representative with the National Association of Counties.

I am honored to be able to appear before your committee to testify on behalf of Alameda County and the National Association of Counties, the only national organization representing county government in the United States.[1] We are here today to oppose legislation before your committee mandating unemployment insurance coverage of county employees at county expense.

We are sympathetic to the equity question of extending unemployment insurance coverage to county employees. However, we oppose section 115 of H.R. 10210 because of the financial burden it places on counties.

We must make the distinction that, *as an employer, county government is substantially different from the private sector.*

County governments simply do not have the same options that are available to private sector employers to increase revenues to provide services. Between the end of fiscal 1964 and fiscal 1974 (the most recent national data available) county expenditures increased 216%. During the same time period county payrolls paralleled that rise by increasing 206%. County indebtedness jumped from $6.6 billion in fiscal 1964 to $18.9 billion in fiscal 1974, an increase of 186 per

[1] The National Association of Counties is the only national organization representing county government in the United States. Its membership spans the spectrum of urban, suburban, and rural counties which have joined together for the common purpose of strengthening county government to meet the needs of all Americans. By virtue of a county's membership, all its elected and appointed officials became participants in an organization dedicated to the following goals:

Improving county governments;
Serving as the national spokesman for county governments;
Acting as a liaison between the nation's counties and other levels of government; and
Achieving public understanding of the role of counties in the federal system.

cent. Especially staggering is that non-guaranteed county indebtedness increased 500 per cent during that same decade.

Recent census studies show that 45 per cent of county revenues are from intergovernmental sources not controlled by county government. On the other hand, 75 per cent of county budgets are inflexible because of legislatively mandated services, principal and interest payments, and matching funds committed for programs which are underway and must be completed. We are concerned that under this bill counties must bear the full burden for UI costs for employees who are wholly or partially paid through a variety of intergovernmental sources.

County budgets are being stretched to their limit of revenue raising potential. In states which have imposed statutory limits, some counties have reached or are close to the legal limit of their revenue raising capacity. In fiscal 1976 in my state of California, for example, 17 counties have reached or exceeded 90 per cent of their Senate bill 90 revenue limits. Inelastic property taxes, still the source of 85 per cent of locally guaranteed tax revenues, are at the maximum level people will tolerate.

Simply stated, Mr. Chairman, where will we get the money to pay unemployment insurance benefits? When we are faced with layoffs in our county should we limit or cut basic services in order to provide unemployment insurance benefits?

Counties, through a public process, set their budgets once a year. If counties chose the less costly reimbursement method, they would face a Catch-22 situation. Counties would have to create more unemployment by firing additional employees to free the dollars necessary to pay unemployment benefits to those on layoffs.

Let me give you an idea, Mr. Chairman, of the impact of H.R. 10210 on counties in California. In our state, to file a valid unemployment insurance claim, an employee must earn a only $750 in wages during the 12 month base period. The inclusion of section 115 in H.R. 10210 would discourage and eliminate the use of part-time, seasonal and temporary employment and consequently would contribute to unemployment. My own county is currently encouraging job sharing to spread the available work and salaries to more people. H.R. 10210 would eliminate this practice because of the prohibitive costs resulting from the requirement to pay unemployment benefits to the large number of people attracted to the program.

In the state of California anyone covered by unemployment insurance is required to pay state disability insurance at 1% of his/her gross income up to $8450. Thus, in the state of California you would be reducing employee pay checks to cover this cost if local government employers are mandated to pay unemployment insurance coverage. As you know, Mr. Chairman and members of this committee, the people of our nation are getting angrier and angrier about the increased bite of payroll deductions into their take home pay. As someone who is knowledgeable in labor management relations it would be my bet that at the negotiation of our next collective bargaining agreement, public employees would be asking their county to pay the employees' share of the state disability insurance program. Thus, within a year's time local governments in California would be hit twice with additional payroll costs.

To give you some idea of what these costs would be, the personnel department of my county has secured the following information from the State Department of Employment Development (see appendix I). For an average month in calendar year 1975, 7,203 governmental employees qualified for and received benefits under the SUA program. During this time period the average weekly benefit paid was $52.85. Consequently, the benefits paid under SUA to all unemployed workers in this category, in Alameda County alone, was $19,795,284 in 1975. For the first six months of 1976, an average of 8,225 governmental employees per month received SUA benefits in Alameda County at a cost of $11,343,195. It must be noted that these figures relate to benefits paid and do not include administrative costs which are part of H.R. 10210. Using the SUA data, Alameda County alone would have paid out $1,849,538 in unemployment insurance benefits in 1975 and $1,187,222 in the first six months of 1976. Again, administrative costs are not included. This UI coverage would cost our employees $850,000 per year out of their paychecks to belong to the California State Disability Insurance System.

The unemployment insurance section in NACo's Platform begins with the following statement, "NACo recognizes the need for a system of unemployment insurance coverage as a continuing base line support for those workers who are temporarily without a job. In setting spending priorities, however, NACo endorses providing

federal subsidy for various job creation activities as an alternative to massive (federal) subsidy of unemployment." I call your attention to that statement, Mr. Chairman, since it is our best projection that counties across the country will be eliminating jobs and social programs in order to pay unemployment benefits. As mentioned earlier, in my county we would have to eliminate our job sharing program. We would discourage or eliminate wherever possible the use of part-time and temporary employment, which would further contribute to unemployment. In summary, Mr. Chairman, this bill fails when it does not recognize the difference between private employment and local government employment. These include the facts that:

1. Most public employees have lifetime jobs,
2. Under civil service, merit pay increases and promotions are not at the sole discretion of the employer, as they are in private industry,
3. Pensions are 2 to 3 times the size of the average pension in private industry,

We appreciate this opportunity to present our views on unemployment insurance compensation and would be happy to answer any questions that you may have.

APPENDIX

GOVERNMENTAL EMPLOYEES RECEIVING SUA BENEFITS IN ALAMEDA COUNTY

	(Col. I) All governmental employees receiving SUA benefits	(Col. II) Estimated Alameda County employees receiving SUA
January 1975	3,657	341
February 1975	5,332	498
March 1975	6,820	637
April 1975	8,328	778
May 1975	6,271	586
June 1975	5,079	474
July 1975	8,157	762
August 1975	9,030	843
September 1975	8,414	786
October 1975	8,296	775
November 1975	7,523	702
December 1975	9,534	890
Average month	7,203	673
January 1976	9,808	916
February 1976	8,703	813
March 1976	9,240	863
April 1976	8,885	830
May 1976	6,365	874
June 1976	6,526	889
Average month	8,255	864

Senator GRAVEL. The next witness is August W. Steinhilber, Assistant Executive Director, Office of Federal Relations on behalf of the National School Boards Association.

STATEMENT OF AUGUST W. STEINHILBER, ASSISTANT EXECUTIVE DIRECTOR, OFFICE OF FEDERAL RELATIONS, ON BEHALF OF NATIONAL SCHOOL BOARDS ASSOCIATION

Mr. STEINHILBER. Thank you, Mr. Chairman.

I wish to have my full statement put into the record, and I will excerpt from it.

My name is August Steinhilber, assistant executive director for the National School Boards Association. I would like to point out two basic facts with respect to our organization and our membership, and that is that we represent local elected public officials, over 90 percent of them are locally elected; second of all, they are unsalaried, which in this day and age of volunteer service is very unsuual.

I would also like to point out that we employ in local school districts in excess of 2 million employees.

Therefore, it is with this in mind that we come here, basically to object to section 115 of H.R. 10210. Specifically, we oppose the extension of coverage to public employees and support, with modification, the denial of benefits to school employees during periods between academic terms.

Turning first to the extension of coverage for public employees, our opposition is not to the concept of public employees receiving unemployment benefits, rather we are concerned that this Federal program will impair the ability of local school boards to perform their governmental function.

The ability of local school boards to perform their governmental functions is tied directly to their capacity to raise and spend local tax revenues. Therefore, to the extent that unemployment contributions are paid from the local tax base, such contributions, by definition, represent at least a potential impingement upon local decisionmaking. Especially now with school bond issues failing at the rate of 54 percent and tax levy increases also encountering difficulties—I would point out that school districts are unusual in another respect, that we normally have to go back to the voters every time we wish to have a tax increase.

Many school districts will find some real problems in terms of eliminating or depleting their services for children.

Our position was well stated in the recent Supreme Court decision of *National League of Cities* v. *Usery*. In that case, the Court ruled that the Federal Fair Labor Standards Act could not be applied to State and local employment because it would—

> Operate to directly displace the States freedom to structure integral operations of traditional governmental function.

Specifically, in dealing with the question of State and local sovereignty, the Court was particularly concerned with how the FLSA would affect: (1) wages; (2) the basis upon which personnel would be employed; and (3) the manner in which the performance of services would be changed or diminished.

Mr. Chairman, it is our view that from the standpoint of local impact, section 115 of the House unemployment compensation amendments would have a strikingly parallel effect.

Obviously, from a legal standpoint, the two documents, meaning the Fair Labor Standards Act and the Unemployment Compensation Act, are based on different constitutional concepts. However, I would say that the rationale of the court draws some degree of parallelism.

We would contend that the House report language, indeed, the debate on the floor of the House, really did not answer those. They sort of went by the periphery.

I would like to take an example that I presented in our testimony. I took a hypothetical situation of the problems of a typical school district, and the problems of inflation and what that cutback will mean. In the interim, I was able to get a specific school district, that of San Diego, Calif.

San Diego Unified School District is not part of the city of San Diego. They are fiscally independent, like most school districts in the United States. They have in excess of 10,000 employees.

They have estimated that next year, if unemployment compensation were required, they would be required to pay—it would cost them another $1.2 million, almost $1.3 million, actually $1.265 million. They have a limitation in California on their increases. That limitation next year is $6 million. That $6 million has to cover all salary increases, all fringe benefit increases, et cetera.

Obviously, with the cost of living going up at the rate that it has, there is no way that California and the San Diego School District can afford this program.

I would also like to point out, turning to a peripheral question, but a very important one, the argument really cannot be made that the Federal Government is providing general assistance to school districts so that they can pay for this. Most educational programs are of a categorical nature. They are very specifically limited.

I would also point out that, contrary to what we have heard from the previous witness, a general purpose unit of government does get general revenue sharing money. The school district does not.

We do not receive general purpose moneys. Ours are categorical. Therefore, it is not the case of the Federal Government giving with one hand and taking away with the other. It is a direct impingement upon our fiscal ability, having no respect to what the Federal Government is doing for us, because in that respect, we will receive only categorical funds.

We have one other particular concern which we would like to point out. It was handled in part by the House language, that is, what is the position with respect to unemployment during the summer months?

Now, we do not believe that it is beyond the point of debate that the tax dollar should not be spent to compensate school employees during summer vacation. We do believe that one important aspect of section 115 does require clarification.

Specifically, professional employees are not eligible for benefits if they have a contract to perform services in the following semester.

Senator GRAVEL. Excuse me, sir.

The points that you are covering, are they covered in your prepared statement?

Mr. STEINHILBER. Yes, sir.

Senator GRAVEL. We have a problem. We did want to limit each witness to 5 minutes. You have gone over your time.

Mr. STEINHILBER. I am sorry.

Senator GRAVEL. Your statement will be placed in the record.

Mr. STEINHILBER. The point that I would like to make is that, with respect to summer employment, if an employee of a school system has the expectation of employment the following fall, that that is sufficient enough for the individual not to be eligible.

That, Mr. Chairman, is our position. As I repeat, our position is in opposition to section 115, and a concern with what happens with summer employment.

Thank you very much.

Senator GRAVEL. Thank you.

[The prepared statement of Mr. Steinhilber follows:]

TESTIMONY ON BEHALF OF THE NATIONAL SCHOOL BOARDS ASSOCIATION, PRESENTED BY AUGUST W. STEINHILBER, ASSISTANT EXECUTIVE DIRECTOR, OFFICE OF FEDERAL RELATIONS

INTRODUCTION

Mr. Chairman, my name is August W. Steinhilber, and I am the Assistant Executive Director for Federal Relations of the National School Boards Association. The National School Boards Association is the only major education organization representing school board members—who are in some areas called school trustees. Throughout the nation, approximately 80,000 of these individuals are Association members. These people, in turn, are responsible for the education of more than ninety-five percent of all the nation's public school children.

Currently marking its thirty-seventh year of service, NSBA is a federation of state school boards associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Most of these school board members are elected public officials. Accordingly, they are politically accountable to their constituents for both education policy and fiscal management. As lay unsalaried individuals, school board members are in a rather unique position of being able to judge legislative programs, including unemployment compensation benefits for public employees, purely from the standpoint of public education, without consideration to their personal professional interest.

Association policy is determined at the NSBA annual convention at which representatives from across the nation translate policies and resolutions into ongoing programs.

Mr. Chairman, in our testimony today on pending unemployment compensation amendments, we would like to address two provisions contained in section 115 of the House bill H.R. 10210. Specifically, we oppose the extension of coverage to public employees and support (with modification) the denial of benefits to school employees during periods between academic terms.

I. Opposition to extending benefits to public employees

Turning first to the extension of coverage for public employees, our opposition is not to the concept of public employees receiving unemployment benefits, rather we are concerned that this federal program will impair the ability of local school boards to perform their governmental function.

A. Impringement on Local Decision-Making.—The ability of local school boards to perform their governmental functions is tied directly to their capacity to raise and spend local tax revenues. Therefore, to the extent that unemployment contributions are paid from the local tax base, such contributions, by definition, represent at least a potential impingement upon local decision-making. Especially now with school bond issues *failing* at the rate of 54 percent and tax levy increases also encountering difficulties, for many school districts that potential would be the reality of reduced services and limited wage increases.

Our position was well stated in the recent Supreme Court decision of *National League of Cities* v. *Usery*. In that case, the Court ruled that the federal Fair Labor Standards Act (FLSA) could not be applied to state and local employment because it would "operate to directly displace the States freedom to structure integral operations of traditional governmental function." Specifically, in dealing with the question of state and local sovereignty, the Court was particularly concerned with how the FLSA would affect (1) wages, (2) the basis upon which personnel would be employed, and (3) the manner in which the performance of services would be changed or diminished.

Mr. Chairman, it is our view that from the standpoint of local impact, section 115 of the House Unemployment Compensation amendments would have a strikingly parallel effect.[1]

For example, depending on the rate of unemployment, the Congressional Budget office currently estimates that the cost of state and local contributions would increase annually to a range of $922 million to $1.570 billion by fiscal year 1981. From a local perspective, a hypothetical school system educating 14,000 students at $22 million per annum might have in its employ about 1,000 full-time personnel and several hundred part-time persons. On a $6,000 wage

[1] Obviously from a legal standpoint the FLSA and the unemployment compensation amendments arise from different sections of the Constitution—the significance of which is not discussed in our testimony.

base, unemployment compensation payments could cost $200,000. If the taxpapers in our hypothetical school district voted for a 5 percent increase in the school budget—i.e., less than the rate of inflation—services would have to be cut, because unemployment compensation payments would absorb one-fifth of the increase.

Since local school districts spend most of their new money on wage increases, salaries can be directly affected by unemployment compensation contributions. Furthermore, unemployment compensation payments may affect the decision to hire certain full-time personnel (e.g., teacher aides) and could affect matters of educational policy such as class size.

B. Is state and local coverage madatory?—The House Report (94–755) attempts to by-pass these practical ramifications by contending that since coverage is optional, section 115 is not a tax on state government. However, section 115 also provides that any state which does not exercise its option loses its eligibility for participation in the Federal-State Unemployment Compensation system. We can envision that at least several states would consider the pressure to stay in the system mandatory. For those states, coverage of public employees would nnot be a free option.[2]

C. Increases in federal funding cannot cover the cost of unemployment compensation contributions.—One question which arises is whether future increases in federal funding can effectively offset the burdens which section 115 places on local school districts. The answer is in the negative on several grounds. First, from the period beginning in fiscal year 1973, federal aid to elementary and secondary education has not kept pace with the rate of inflation. Hence, increases of the magnitude required by section 115, over the rate of inflation, are not likely.

Second, and more importantly, federal aid is categorical and therefore must be spent for special services or is extended only under special situations. Therefore, for example, increases to ESEA Title I (aid for disadvantaged students) cannot be used to replenish the loss to the general fund caused by section 115. Nor would we want it to as a matter of policy.

In this connection, local school districts cannot offset this expense through General Revenue Sharing. Unless amended on the floor, pending General Revenue Sharing legislation does not provide for the direct participation of local school districts. Funding for that program is solely at the grace of the state, and, in the case of fiscally dependent school districts (i.e., 10 percent of all school districts), is also at the grace of the city or county unit.

D. State and local contributions should not be used to subsidize the unemployment system.—Although we have not seen data to that effect, proponents of public employee coverage have argued that state and local contributions would help reduce deficits in the system. To the extent that would occur, we would object to the local tax base being used to subsidize the private sector unemployment fund. More precisely, in requiring the establishment of state rates, the Federal program should not place public education in the position of competing with industry.

Mr. Chairman, because of the local sovereignty question raised by section 115, and the costs which it will pose for local school districts, we urge that you and the members of the Committee not include a similar provision in your bill.

II. Denial of unemployment benefits between academic terms

Mr. Chairman, our organization supports that portion of section 115 which denies unemployment benefits to school personnel between academic terms. We believe that it is beyond the point of debate that tax dollars should not be spent to compensate school employees during the summer vacation.

However, we do believe that one important aspect of section 115 does require clarification. Specifically, non-professional personnel are not eligible for benefits if they have a "reasonable assurance" of employment in the following semester. On the other hand, professional employees are not eligible for benefits if they have "a contract to perform services" in the following semester. While the latter provision is incorporated in the language previously applied to persons in higher education, it should be noted that in elementary and secondary education contracts are frequently not signed until the fall semester. We do not believe that federal

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[2] In *Steward Machine Company* v. *Davis* the U.S. Supreme Court upheld the basic unemployment compensation provisions on the grounds that joining the system was optional not a matter of impermissible duress. Contrary to the House Report, we believe that section 115 does not raise the same issue of joining the system, but the duress placed on a state not to leave the system.

legislation should give teachers a distincentive to negotiate before the end of summer, or, what could be construed to be strike payments in the following fall. Especially since job security is protected by state tenure laws[3] and due process requirements, we do not believe that professional personnel should be treated on a basis different than non-professional personnel.

With respect to non-professional personnel, we do not object to the optional nature of the provision. However, for the reasons outlined earlier in our statement, we would at this time object to mandatory payments two years hence.

CONCLUSION

Mr. Chairman, in summary, unemployment benefits for public employees is an issue which has substantial appeal. However, under our federal system of government, we believe that a national law requiring state and local contributions is inappropriate because of the impinging effect it would have on the operation of local government. Unlike section 115, we would support a national grants in aid program to assist state and local governments in the voluntary development of self-insurance plans. At the same time, we strongly support provisions which bar all school employees from receiving unemployment benefits during vacation periods when they have a "reasonable assurance" of being employed in the following term.

Mr. Chairman, we appreciate this opportunity to testify.

Senator GRAVEL. Our next witness is a panel composed of Samuel Dyer, Julius Kubier, and Paul Henkel.

STATEMENT OF SAMUEL DYER, OPERATING VICE PRESIDENT OF FEDERATED DEPARTMENT STORES, ON BEHALF OF CHAMBER OF COMMERCE OF THE UNITED STATES AND AMERICAN RETAIL FEDERATION

Mr. DYER. I am Samuel E. Dyer, operating vice president of Federated Department Stores. I am one of five employer members of the Federal Advisory Counsel on Unemployment Insurance for the U.S. Department of Labor.

I appear here to present the views of both the American Retail Federation and the Chamber of Commerce of the United States.

At the request of this committee for consolidation of testimony reflecting common viewpoints, we have put together a panel to present the employer support for the prompt passage of H.R. 10210, and the improvements which we seek in your legislation.

In addition to myself, we have on my left, Mr. Paul Henkel, manager of payroll taxes for the Union Carbide Corp. Mr. Henkel appears on behalf of the Council of State Chambers of Commerce where he serves as chairman of the social legislative committee.

On my right is Mr. Julius Kubier, who is the president of the Associated Industries of Oklahoma. Mr. Kubier is appearing on behalf of the National Association of Manufacturers, and the Oklahoma State Chamber of Commerce.

In order to facilitate the unanimous views of the business community, each member of the panel will discuss a major feature of the testimony.

Now, at this point, I would like to request that the written statements of each organization be incorporated in the hearing record.

Senator GRAVEL. They will be included in the record.

[3] Indeed, it is somewhat incongruous to say that teachers with contracts pending will be categorically considered unemployed under Federal law, but considered employed under state tenure laws in the following fall.

Mr. DYER. Mr. Henkel will now present our unanimous recommendations to solve the financial problems now facing the unemployment insurance system.

STATEMENT OF PAUL P. HENKEL, CHAIRMAN, SOCIAL LEGISLATIVE COMMITTEE, COUNCIL OF STATE CHAMBERS OF COMMERCE

Mr. HENKEL. Mr. Chairman, the matter of financing unemployment insurance benefits was, for a long time, a sole concern of State unemployment tax revenues. Federal unemployment tax revenues have historically financed only State administrative costs for unemployment insurance, repayable loans for States with depleted reserves and Federal share of the Federal-State extended benefit program.

The FSB program providing benefits for 40 to 65 weeks changed this historical concept, and required that its costs be financed by employers through the Federal unemployment tax mechanism.

Business and industry disagree with this funding mechanism, as it has no relation to experience rating and unemployment insurance, and the benefits relate to welfare rather than unemployment insurance.

In recent times, the financing of greater State benefit costs have become increasingly difficult, but the matter of financing additional Federal unemployment costs, especially those generated in the recent recession poses an even more greater problem.

When the FSB program expires on March 31, 1977, it will have accumulated a deficit of $5.6 billion. This amount far exceeds the original cost estimates of the program.

Business and industry strongly urge that this program be ended, not extended, and further, that the indebtedness be financed from Federal general revenues, as the Senate originally planned, and as recommended by the Federal Advisory Council on Unemployment Insurance, the National Manpower Commission, and Interstate Conference of Employment Security Agencies.

We urge this committee to add a provision to H.R. 10210 to effectuate this.

Although some States have borrowed heavily to finance their recent benefit costs, these loans will be repaid through future Federal unemployment taxes extending well into the 1980's. Employers generally recognize and are resigned to this, but they find the idea of funding an additional $5.6 billion repugnant.

We surmise that the 1975 State borrowing data submitted by the U.S. Department of Labor to the House Ways and Means Committee last year was overstated to establish a need for a federally mandated $6,000 taxable wage base for the States, and the 1975 Federal borrowing data was understated to minimize the Federal financing problem and the cost to the FSB program.

Business and industry do not agree that the States must be forced to go to a $6,000 taxable wage base to cure their financing problem.

Last year, 13 States raised their wage base about $4,200. Currently, there are States that have done so. This indicates that the States are capable of self-determination.

It is our opinion that if the Congress were to permit each State to set its own wage base—and we urge that this be done—that the States will do an even better job than under the current situation,

since some States have been waiting for, or are expecting, Congress to make a decision in this matter.

We have presented, in our prepared statement, an alternate proposal to the financing of the taxes as provided in H.R. 10210, as developed by the UBA, Inc., an employer-sponsored research group, and based on realistic future wage level estimates from the Congressional Budget Office, which are supported by industry-based economists.

The proposal calls for general revenue financing of the FSB program, a 5,400 wage base in 1978 and a net FUTA tax rate of 6 to 10 percent in 1977 and 7 to 10 percent in 1978 through 1981.

Table 5 of the council's prepared statement indicates that under these assumptions, a surplus of $3 billion in the FUTA funds could be generated by the end of fiscal year 1982. The business groups represented here support this proposal, because it would solve the problem of financing through deficits, and it would, because of the lower wage base, leave the States with the necessary flexibility to restore the solvency of their State funds when necessary. It provides for greater interim FUTA tax revenues than H.R. 10210.

It would also permit those States which do not have unmanageable recession unemployment benefit costs to retain their normal experience rating formula without drastic change.

We urge the committee to give this alternative serious consideration.

Thank you.

Senator GRAVEL. Thank you.

Mr. DYER. Mr. Kubier will now discuss our support of the House decision to reject a Federal benefit standard and create a national study commission.

STATEMENT OF JULIUS E. KUBIER, PRESIDENT, ASSOCIATED INDUSTRIES OF OKLAHOMA, INC., ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. KUBIER. Mr. Chairman, thank you. We appreciate the opportunity provided us.

The position of the business community is very well known. The unusualness of the common agreement can be noted from the points in the statements filed and the materials filed with the committee.

We believe in retaining the cooperative Federal-State nature of the program. Therefore, we object to mandated Federal standards in any form.

Such standards fly directly in the face of each State's legislative powers to adopt benefits and tax levels to meet local conditions and serve, as adopted, as the proverbial camel with his nose in the tent.

Each one of these further minimizes State effects and ultimately will eliminate the State system.

The House rejected the Federal benefit standard by a 2 to 1 majority. We urge the continued exclusion of this standard.

We really do not need it, because each State has at least one or more benefit increases in the maximum benefit amounts since 1969. In Oklahoma, the maximum benefit amount is increased over 50 percent in this period of time.

The average benefits have increased faster than the Consumer Price Index throughout the country. In many States, Federal standards would mandate higher benefit and cost levels than are necessary.

In some of these States, the benefit levels are already sufficiently high as to be counterproductive. It is evident that a standard determination of any description in Federal law is inconsistent.

There are still three, in this particular bill, H.R. 10210. One, no pay to illegal aliens; two, you cannot pay benefits to professional athletes; three, you cannot deny benefits to a woman simply because she is pregnant.

This is the camel in the door, and it will progress, because each State can now make this determination; many States have.

In addition, by the lengthening of the wage base in the bill, you do raise benefits in some States. Particularly, a State like Oklahoma, you would raise the maximum amount because of our particular formula, by 42.87 percent over what it now is.

The inclusion of any standard will lead to eventual Federal takeover.

The three just mentioned should be rejected. The inclusion of the Commission is a good step forward. The provisions mandated for a study deserve our support, particularly those of fraud or other abuses. However, we feel the list should be expanded to include unintentional overlap, counterproductive disincentives to work, and so forth.

We have a good example in Oklahoma that is something rather different, in my experience. A series of newspaper articles in July highlighted a series of fraud cases that had been filed, where the investigation disclosed such willful misrepresentations as to amount to fraud.

There were 122 cases filed in Oklahoma County in July alone, 174 in August. I hope to have copies of the newspaper articles to file with the committee, but they have not yet arrived. I would ask permission to submit them and make them a part of the record.

Senator GRAVEL. When they are received, so ordered.

[The material referred to was subsequently received for the record:]

[From the Daily Oklahoman, July 29, 1976]

CRACKDOWN BEGINS ON JOBLESS BENEFITS—CHECK CHEAT CHARGES HIT 7 IN COUNTY—THEY'RE FIRST OF 50 TO 100, OFFICIAL SAYS

(By Judy Fossett)

The Oklahoma County district attorney's office and the Oklahoma Employment Security Commission began a joint crackdown on unemployment check cheaters by filing charges against seven alleged offenders on Wednesday.

J. C. Fishburn, an attorney with the state employment office, said the seven are the first of 50 to 100 Oklahoma County residents he expects will eventually be charged.

Fishburn said that last year 500 applicants who received unemployment checks while actually working bilked the state out of approximately $250,000.

STATEMENTS FALSE?

The seven persons charged Wednesday received a total of $7,410 after allegedly making false statements—saying they were unemployed—to obtain unemployment compensation.

Although each was charged with receiving only one check illegally, Asst. Dist. Atty. Mark Blasdel said each received benefits for as many as eight weeks and some for as many as 25.

DEFENDANTS NAMED

Named in the charges and the amount of the check each received are Richard L. Brown, $78; Carl J. Newton, $53; Mary R. Motts, 1320 NE 40, $86; Bobby W. Hamilton, 3121 N Phillips, $57; Nathaniel Wilburn, 1125 NE 16, $78; Gwen M. Starr, 1820 Corinne Drive, $38, and Michael C. Strotter, 332 NW 87, $86.

Blasdel said the charge against the seven is a misdemeanor, punishable by a $20 to $50 fine and 30 days in jail per offense.

Fishburn said he tried to get the late Dist. Atty. Curtis P. Harris to file charges in similar cases in the past, but that nothing was ever done.

"Two years ago I submitted several cases for consideration. They asked me to hold the rest until these were typed up and that they would call me.

"I'm still waiting for that call," Fishburn said.

The attorney said he contacted new county prosecutor Andrew M. Coats after Coats' appointment as Harris' successor about prosecuting unemployment check cheaters. He said Coats assured him the alleged offenders would be prosecuted.

Coats announced last week the creation of a new department in his office to handle cases of this type and named newly appointed assistant Larry Joplin to head the department.

Fishburn said he submitted 10 cases to the district attorney's office, and seven were selected for prosecution.

Blasdel explained that in two of the cases, the people involved had made partial restitution. He said no decision has been made in the third case which will not be prosecuted.

Fishburn said that in the period between July 1, 1975, and June 30, 1976, the department's fraud unit investigated 1,500 cases.

In half of those cases, the problem that prompted the investigation turned out to be a change in status of the applicant and not fraud, Fishburn said.

Many of the other questioned cases show there was no error, and that the applicant was not working those weeks for which he was paid.

Fishburn said only about one-third of those checked actually showed fraud.

He said cheaters are contacted and asked to make restitution for the checks they received illegally. If restitution is not made and if the cheater ever again applies for unemployment benefits, he is disqualified from receiving checks for 51 weeks and then a certain amount is withheld from his checks to pay back the money he owes.

Fishburn said that of the $250,000 the state lost to cheaters last year, it got $104,000 of it back—one-third through restitution and the remaining two-thirds by holding back a certain amount of a recipient's benefits.

"We're serving notice on people that the district attorney's office will be filing charges against them," Blasdel said.

[From the Oklahoma Journal, Thursday, July 29, 1976]

JOBLESS FRAUD CASES FILED

100 OTHERS CHECKED FOR PROSECUTION

(By Larry Cannon)

Seven defendants were charged in Oklahoma County District Court Wednesday with illegally obtaining unemployment checks.

When appointed DA, Andrew Coats promised to attack white collar crime, and he appeared to be doing just that, saying, "These matters came to our attention and the violators will be prosecuted.

"I am strongly opposed to the abuse of the unemployment compensation system."

State Employment Security Commission officials say fraudulent losses of unemployment funds have ranged upwards of a quarter-million dollars per year.

Commission Attorney J. C. Fishburn said Wednesday there are between 50 and 100 other violations being processed in Oklahoma County against other offenders.

He said these cases also will be presented to Coats for prosecution.

Coats said, "As these cases come to our attention, we will see the law is followed.

"I will personally see that offenders are punished, because they are depriving much needed funds from those deserving citizens who are legally entitled to them."

Coats said he hadn't realized the magnitude of the apparent violations until Wednesday's misdemeanor complaints were presented to his office.

The new DA immediately assigned assistant Mark Blasdel as special prosecutor on the upcoming campaign and directed him to cooperate fully with state officials.

Blasdel said the seven persons charged Wednesday were named in single incidents.

However, the assistant said the defendants had received from 8 to 25 illegal checks each. Each of these checks constitutes a separate offense, Blasdel said, and can be prosecuted individually.

These checks represent a loss of more than $7,400 to the state fund, Blasdel said.

Specifically, the defendants were accused Wednesday of "Making a false statement to obtain unemployment compensation," under provisions of Title 40, Section 226(a) of the Oklahoma Statutes.

The charges is a misdemeanor. It carries a possible $50 fine, but offenders can also receive up to 30 days in the county jail for conviction on each individual offense, Blasdel said.

Fishburn said, "To my knowledge this is the first time that such offenders have been charged in Oklahoma County. We are already working, and have almost completed investigations on between 50 and 100 other offenders. These will be presented to the district attorney, when completed."

The commission attorney said the current list of violations began surfacing during a "post-audit" conducted of the period July 1, 1975, through June 30, 1976.

"We discovered there were more than 1,500 wrongful payments made throughout Oklahoma, through illegal misrepresentations," the attorney said.

Approximately half of these appear prosecutable, the official explained.

Slightly more than $104,000 of the $250,000 lost last year has been recovered, Fishburn said.

"One-third of this was in cash, and the remaining two-thirds was recovered by offsetting payments the clients would otherwise have been entitled to."

Fishburn said the commission has decided on a "get-tough" policy.

Each of these individuals has been notified of the irregularities in their accounts, Fishburn said. "Some of them have come forward with repayments but we plan to punish those who don't."

Those defendants charged Wednesday were identified as a Richard L. Brown and Carl Newton, addresses unknown; Mary R. Motts, 1300 block NE 40; Gwen M. Starr, 1800 block Corinne Drive; Bobby W. Hamilton, 3100 block N. Phillips; Nathaniel Wilburn, 1100 block NE 16, and Michael G. Strotter, 300 block NW 87.

Blasdel said arrest warrants will be issued for each of the defendants, none of whom was in custody.

Under the Oklahoma criminal code, misdemeanor offenders are arraigned and proceed directly to trial without a preliminary hearing.

Because of the crowded September docket already scheduled, Blasdel said, "These trials will probably be set for October."

Mr. KUBIER. This may not seem like a lot, but it indicates trouble in the delivery system that need to be corrected. These cases are pending for trial, and more are being filed every day.

If you have any questions, we would be glad to try to answer them.

Senator GRAVEL. Thank you. I have no questions.

Mr. DYER. I will now discuss our recommendations on proposed coverage extensions, and changes in the economic triggers governing the extended benefit programs. I will also mention our concerns about some administrative problems.

With respect to coverage, the American business community believes that the benefits of unemployment compensation should be extended to the largest feasible number of employees. Therefore, we generally support the provisions of H.R. 10210.

However, this committee might well consider raising the coverage requirements for agricultural employees, both in terms of the number of employees and the amount of payroll required.

With respect to trigger mechanisms, employers are unanimously opposed to the trigger mechanisms proposed in H.R. 10210.

This bill provides for the extended benefit program to trigger in in a State whenever, one, the national insured unemployment rate is 4.5 percent or two, the State insured unemployment rate is 4 percent.

These rates are too low. This committee should take a hard look at the additional costs which these rates will produce. Since the trigger concept was originally conceived in 1970, the Congress has acted to change or modify the trigger mechanisms on seven different occasions. This alone indicates a serious problem with triggers.

None of the combinations that have been tried since 1970 have proved satisfactory. The original law was too strict and the modifications are too little.

Unfortunately, H.R. 10210 would make permanent one of these unsatisfactory solutions by permanently eliminating the 120-percent factor.

This is not the result envisioned for the extended benefit program and should not be permitted to occur.

Since, under current law, problems are not expected to manifest themselves until 1980, we recommend that H.R. 10210 be amended to direct that the national study commission address this matter and make recommendations in sufficient time to avoid these problems.

In the meantime, the Congress would be justified in setting the trigger low enough to provide benefits needed, but high enough to prevent unnecessary costs.

Several suggestions to accomplish these results are to be found in our full, written statement.

Other problems that concern us are in the administrative area. While the unemployment compensation program has functioned well during the recent recession, some administrative problems have surfaced. Among these is the lack of attention by the employment service to finding jobs for claimants.

For instance, according to the GAO, during the fiscal year 1975, there were 18.5 million applicants to the employment service, and only 17 percent, or 3 million, were placed in a job.

Many of these jobs were of short duration.

Worst of all, 10.8 million, or 58 percent of the applicants, did not receive job referral, counseling, testing, or any other kind of employment service at all.

Most of the job referrals provided by the employment service are for nonclaimants. Job referrals for nonclaimants exceeded job referrals for claimants by a ratio of 3 to 1.

The employment service is financed almost entirely by unemployment compensation taxes, yet it provides little service for unemployment compensation claims.

We urge the committee to make sure that the national study commission closely examines this problem. It should recommend some means to improve the ability of the employment service to find jobs for claimants.

In summary, I would like to briefly give you the view of the employer community.

We would like to emphasize these points:

One: We support H.R. 10210 without any benefit standard.

Two: We strongly recommend that the cost of the Federal supplemental benefit program be transfered to general revenue.

Three: The Federal supplemental benefit program should be permitted to expire, as scheduled, on March 31, 1977.

Four: We support an increase of taxable wage base to $5,400, however, this increase should be made optional for the States.

Five: We support a gradual tax rate increase to 0.6 percent in 1977 and 0.7 percent in 1978, but receding to 0.55 percent after 1981.

Six: The obligation of the States to repay loans should not be modified or forgiven.

Seven: The trigger mechanisms are too low and should be modified by this committee.

Eight: And finally, we support the creation of a national study commission.

On behalf of my colleagues here at the table, I want to express our appreciation for this opportunity to present our views. We will be happy to answer any question that you might have.

Senator GRAVEL. I have no questions.

[The prepared statements of the previous panel follow:]

STATEMENT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, SUBMITTED BY SAMUEL E. DYER

SUMMARY

I. This statement on the Unemployment Compensation Amendments of 1976 (H.R. 10210) is submitted for the membership of the Chamber of Commerce of the United States, 1615 H Street, N.W. Washington, D.C. 20062. The membership of the National Chamber includes over 60,000 business enterprises, including over 3600 trade and professional associations, local state chambers of commerce.

II. Summary of Principal Points

A. General

1. The National Chamber supports enactment of the Unemployment Compensation Amendments of 1976 (H.R. 10210). We urge the Committee on Finance to favorably report this bill and the amendments we offer and to seek expeditious approval by the Senate and Congress of the United States.
2. We oppose any amendments to this legislation which would have the effect of (a) establishing a federal benefit standard, or (b) extending the life of the Federal Supplemental Benefits program, and/or (c) raising the payroll tax over the increase mandated by H.R. 10210. Approval of any of the above suggestions would completely erode our support of H.R. 10210.
3. Employment has begun to expand and the fundamental question before us is how we are to repay federal advances and replenish depleted reserves without adversely affecting the rate of inflation, the growth in employment and our still tenuous economic recovery.

B. Recommendations on Financing

1. Although the unemployment insurance system is not generating adequate revenues, the lack of revenues is not a problem for all of the trust funds that comprise the system. Only the federal trust funds and those of a minority of the states are experiencing this problem.
2. We concur in the House of Representatives decision that only a moderate increase in payroll taxes should be authorized. Should this increase prove inadequate, there would be ample opportunity to consider more thoroughly any additional changes needed. Moreover, the National Study Commission will be reviewing this situation indepth and the Congress can anticipate possible suggested revisions from this source.
3. The National Chamber believes taht the financing provisions of H.R. 10210 can be improved.
4. First, we believe that FSB liabilities should not be a payroll tax responsibility. Because this is welfare assistance, it should be financed from general revenues and we so recommend.
5. Second, adequate provisions already exist under current law to assure the repayment of $3.2 billion of loans advanced to the States. As long as these provisions remain intact, there is no

need to make provision in H.R. 10210 to assure repayment of this indebtedness.

6. It is possible to repay the remaining indebtedness of the federal trust fund by raising the federal taxable wage base to $5,400 in lieu of $6,000 as called for in H.R. 10210. Moreover, the scheduled increase in the net federal tax rate can be phased into effect in increments of 1/10 of one percent rather than by the abrupt forty percent increase mandated by H.R. 10210.
7. H.R. 10210 will create unnecessary and highly disruptive tax problems in every state because it would require every state to raise its taxable wage base, although revenue deficiencies are a problem in only a minority of states. We urge you to make the increase in the taxable wage base to $5,400 an optional matter with the states.
8. There is yet another aspect to resolving the revenue shortfall problem and that is to assure that benefit payouts are not excessive, are commensurate with need, and are not abused by claimants. This entails tightening up of the economic triggers, rejection of benefit standard proposals, and improving fraud detection and placement activities of state administrators.

C. Opposition to Benefit Standard
1. The National Chamber is opposed to a federal unemployment compensation benefit standard.
2. We concur in the overwhelming rejection of this suggestion by the U.S. House of Representatives and urge the Senate to do likewise.

D. Coverage Extensions
1. A major feature of H.R. 10210 is the proposed extension of unemployment insurance coverage to most American workers not now receiving this income protection in the event of involuntary joblessness. Broad unemployment insurance coverage is in the public interest and should be encouraged whenever it can be undertaken with a minimum of program disruption. In general, we support the extensions of coverage for agricultural, domestic, and state and local employees as contained in H.R. 10210.

STATEMENT

I am Samuel E. Dyer, Operating Vice President for Federated Department Stores headquartered in Cincinnati, Ohio. I appear in behalf of the Chamber of Commerce of the United States. I am one of five employer representatives presently serving on the U.S. Department of Labor's Federal Advisory Council on Unemployment Insurance. I am the past chairman of the National Chamber's Unemployment Compensation Subcommittee and I am a member of the Chamber's Employee Benefits Committee.

I welcome this opportunity to express our support of H.R. 10210, the Unemployment Compensation Amendments of 1976, and to recommend certain improvements. But, we oppose any amendments to this legislation which would have the effect of (a) establishing a federal benefit standard, or (b) extending the life of the Federal Supplemental Benefits program, and/or (c) raising the payroll tax over the increase mandated by H.R. 10210. Approval of any of these amendments would require us to oppose H.R. 10210.

JOBLESS BENEFITS

In May of 1975, the government reported that 9.2% of the workforce was unemployed. This amounted to 8½ million persons out of work, the greatest number of jobless persons in the history of our country and the highest percentage of our workforce since before World War II.

Since then, these numbers have moderated to a point where about 7.9% of the workforce, or about 7½ million workers, are considered unemployed (See Exhibit 1). The improvement in the jobless figures is expected to continue at a moderate pace throughout the remainder of this decade.

From a low of less than two million per week in 1973, the number of people drawing unemployment compensation (UC) increased dramatically to an average of 6 million per week in 1975, and is now averaging under 5 million per week. The duration of unemployment has followed a similar pattern rising from an

average of nine weeks in 1974 to over 16 weeks in 1975 before falling to the current average of 15.8 weeks. Benefit payments rose from $5 billion in FY 1974 to over $17 billion in FY 1976 (Exhibit 2).

The most dramatic byproduct of the current severe economic circumstances is the highly successful response of the unemployment insurance (UI) program. Nearly all aspects of the system (with the notable exception of fraud control and placement activities) have functioned as planned.

The essential idea of UI is to accumulate reserves in times of high unemployment at a relatively low cost per employee so as to not hinder employment. Then when joblessness rises, these reserves can be used to alleviate the hardships of jobless workers and cushion the impact of their loss of purchasing power on local economies. Should the high levels of joblessness continue and deplete reserves, the system is designed to automatically draw on federal reserves and/or general revenue accounts. The use of reserves in lieu of increased taxes encourages the stabilization of employment. Reserves are then replenished and loans repaid when employment grows.

Employment is now growing and the fundamental question before us is: How are we going to repay federal advances and replenish depleted reserves without adversely affecting the rate of inflation, the growth in employment and our still tenuous economic recovery.

The House of Representatives has approved H.R. 10210, the Unemployment Compensation Amendments of 1976 which proposes one solution. By and large, we favor the proposed limited increase in payroll taxes. However, some features of H.R. 10210 (including the payroll tax financing provisions) should be revised. We also are concerned with suggestions from other sources to substantially raise this payroll tax increase and/or increase UC benefits. We oppose both suggestions.

FUNDING PROBLEMS

There is a general agreement that the level of financing under current law is not sufficient to meet program needs. In addition, there is some dispute whether the payroll tax increase provided for in H.R. 10210 would be adequate to repay current indebtedness and meet future costs. The dispute is traceable to the economic assumptions underlying the positions being advanced.[1]

It must be remembered that our economy remains in a stage of cautious recovery. Accordingly, each payroll tax increase should be examined for its effect on employment, inflation and growth in real GNP *as well as* its remedial effect on trust fund deficits. Economic projections are just helpful hypotheses, but taxes, jobs and inflation are real facts of life.

The Congressional Budget Office (CBO) calculates that the payroll tax increase in H.R. 10210 could be expected to increase the rate of inflation by 1/10 of 1% but have little impact on real growth on Gross National Product (GNP). The House Ways & Means Committee report (Report No. 94-755) suggests that the payroll tax in H.R. 10210, as cleared by the Committee, would have a dampening effect on employment. In addition, employment, inflation and GNP are also being influenced by increases in Social Security payroll taxes as well as mushrooming costs for other fringe benefits. The National Chamber's 1975 Fringe Benefit survey to be published soon shows that total fringe benefit costs have risen by more than $750 per employee since 1973. This is more than a 23% increase. Total fringe benefit costs cannot be ignored in setting unemployment payroll taxes because they bear directly on the ability of American employers to pay this added cost. Where the ability does not exist, layoffs will likely result and the financing solution becomes self defeating.

FUNDING PROBLEMS DISTINGUISHED

Although the UI system is not generating adequate revenues, the lack of revenues is not a problem for all of the trust funds that comprise the system. Only the federal trust funds and those of a minority of the states are experiencing this problem. When designing a solution, it is important to note this distinction. Likewise it is vital to recognize that causes for these deficits will differ from fund to fund, particularly so between the federal and the state trust funds.

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[1] We use the economic projections prepared by the Congressional Budget Office as opposed to OMB-DOL estimates for our recommendations on financing.

Actually, the federal trust fund is three separate trust funds. The Federal Unemployment (FUA) against which states with depleted reserves borrow and the Extended Unemployment Compensation Account (EUCA), which finances the federal benefit responsibilities under the Extended Unemployment Compensation (EB) program and the Federal Supplemental Benefits (FSB) program, are depleted and have been forced to draw on the general funds of the Treasury. The third, an administrative account, has ample funds and reserves.

1. The loan account deficit

The U.S. Department of Labor (DOL) reports that FUA is $3.2 billion in debt and, under present law or H.R. 10210, this indebtedness will still be approximately $3 billion as of September 30, 1981 (See Exhibit 3).[2]

Under present law and H.R. 10210, the borrowing states must either repay advances within two years or their employers automatically incur an escalation in their federal unemployment tax liability. The maximum escalation is sixfold increase. Since present law adequately provides for repayment of indebtedness, we are puzzled by its inclusion in the DOL description of the deficit.

2. The benefit account deficit

DOL also states the EUCA will be $7.7 billion in debt on September 30, 1976 (See Exhibit 3). Under present law this indebtedness will rise to $10 billion September 30, 1981 according to DOL. Under H.R. 10210, this indebtedness would fall to $5.1 billion, $500 million less than the total cost of FSB.

3. General revenue financing

If this Committee's recommendation to use general revenues to finance FSB had been accepted when the Congress approved H.R. 6900 (Public Law 94-45), the payroll tax increase proposed by H.R. 10210 would produce a surplus in EUCA by 1981. Accordingly, we urge the Finance Committee to again recommend general revenue financing of the indebtedness arising from the FSB program.

General revenue financing of FSB is a fundamental feature of the Chamber's recommendations on solving the revenue problems of the UI system. This suggestion is consistent, not only with earlier decisions of this Committee, but also with recomendations advanced by the Federal Advisory Council on Unemployment Insurance, the National Manpower Policy Commission, the Interstate Conference of Employment Security Administrators, the Upjohn Institute for Employment Research, and a majority of the witnesses who appeared before the House Ways & Means Committee during its lengthy hearings.

The rationale for this recommendation is the recognition that the FSB program is more in the nature of welfare than unemployment insurance. The joblessness that FSB subsidizes bears little relationship to one's former employment and is, in most instances a function of macroeconomic forces or the claimant's lack of job skills. Therefore the use of employer payroll taxes to finance FSB is improper.

4. FSB extension

The FSB program accounts for $4.5 billion of the current $7.7 billion deficit. By the time FSB expires on March 31, 1977, it will total $5.6 billion, representing the most significant cause of the EUCA deficit. It has been suggested that FSB be extended. We oppose extension because of its obvious effect of increasing EUCA indebtedness, but would oppose extension under general revenue financing as well. Presently, only 15 States are participating fully in FSB (See Exhibit 4). The need for FSB has passed.

5. Program triggers

Although FSB has been a major factor in the indebtedness of EUCA, it has not been the only factor. Benefit responsibilities under the Extended Unemployment Compensation (EB) program have also contributed to the deficit, largely because of the unsatisfactory triggers which now govern the availability of these benefits.

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[2] In providing these data, DOL did not furnish the economic assumptions underlying the estimate. Therefore we cannot substantiate whether the data represent continuance of existing indebtedness or new indebtedness accruing which offsets repayment of prior indebtedness. In any event, we question its validity.

As originally conceived in 1970, the Federal-State Extended Unemployment Act established a "permanent" program of thirteen additional weeks of benefits whenever a seasonally adjusted national insured unemployment rate (NIUR) of 4.5% existed for three consecutive months, *or* an average unadjusted state insured unemployment rate (SIUR) of 4% existed for 13 consecutive weeks and this SIUR was 20% higher than the corresponding 13 week period in the two preceding years (the so-called 120% factor).

Since then, the Congress has temporarily waived or modified these triggers on seven occasions. On most such occasions Congress simply waived the 120% factor or, at state option, lowered the NIUR. Presently, a state can participate in the EB program if there is a 4% NIUR or a 4% SIUR. On April 1, the waiver expire and the original law will again be effective.

None of the combinations that have been tried since 1970 has proven satisfactory. The original law was too strict and the modifications far too liberal. Unfortunately, H.R. 10210 would make permanent one of these unsatisfactory solutions by permanently eliminating the 120% factor.

This would not increase EB costs immediately because under both CBO and Office of Management and Budget (OMB) projections, the NIUR would exceed the trigger level of 4.5% until FY 1979. After FY 1979, the new SIUR would produce additional costs of $764 million in the second half of FY 1980 and $883 million in FY 1981. It is expected that only a few states with structural unemployment problems would be drawing these extra benefits, although employers in all states would be contributing taxes for this program. Moreover, these same states would be constantly in, while many others would constantly be out of the program.

This is not the result envisioned for the EB program and should not be permitted to occur. Since, under current law or H.R. 10210, the problems are not expected to manifest themselves until 1980, we recommend that no changes be made in current law and that H.R. 10210 be amended to specifically direct the National Study Commission, proposed in Title IV, to address the matter and make recommendations in sufficient time to avoid these problems.

STATE FUND DEFICITS

There is much uncertainty as to the extent of the revenue crisis ahead for state trust funds. This uncertainty derives mainly from the fact that state UI revenues depend on tax policy decisions by state legislatures. These decisions are influenced in turn by such factors as employment and unemployment, trust fund solvency, competition and the incentives or disincentives inherent in the federal law.

Of these factors, Congress can influence only the latter by the decisions it makes on H.R. 10210. Therefore, in solving the problems presented by the state trust fund deficits, Congress must fashion an approach that recognizes this limitation and these several factors:

First, trust fund deficits are a problem only in a minority of the states (See Exhibit 5). Consequently, any solution should be designed to aid only the borrowing states while avoiding disruption of the tax program of the non-borrowing states. This can be accomplished by specifying that tax changes in the Federal Unemployment Tax Act (FUTA) not be mandatory on the states.

Second, among the borrowing states, the magnitude of the deficit problem varies. For example, Michigan has borrowed $571 million, while Florida has borrowed $10 million. Florida has already repaid its loan without changing the tax provisions of its law. Michigan, on the other hand, is expected to make major revisions in both benefit and tax provisions of its law in hopes of repaying its loan some time by 1990. Obviously, each state will have to design a solution that best meets its needs and abilities, for no one tax scheme will work well in every state.

Recognizing this responsibility of the states, Congress has generally structured the federal law to allow the states the maximum freedom in finding solutions to their problems. The concern of Congress in enacting H.R. 10210 should not be to find a means to solve state problems but to insure the continuation of state flexibility by not erecting federal barriers to state solutions.

H.R. 10210 not only creates some barriers to state solutions, it creates needless problems as well. Among the barriers is the continued tying of the state wage base to the federal wage base. Congress could make a tremendous improvement

in the federal-state relationship by not making mandatory upon the states any increase in the federal taxable wage base. This would avoid tax problems in the 30 or so States that are not experiencing financial difficulties while adding those states having problems.

We also recommend no further changes in the repayment provisions for those states which have borrowed from the federal trust fund. Further waiver or forgiveness of this indebtedness would only encourage those states to delay much-needed financial reforms.

FINANCING RECOMMENDATIONS SUMMARIZED

H.R. 10210 would resolve the financing problem of the UI system by a moderate increase in payroll taxes. We concur in the House of Representatives' decision that only a moderate increase in payroll taxes should be authorized. Should this increase prove inadequate, there would be ample opportunity to consider thoroughly any additional changes. Moreover, the National Study Commission will review this situation in depth and will offer suggestions to the Congress.

Title II of H.R. 10210 sets forth the financing solutions approved by the House. In essence, only two changes of substance would be made. First, the taxable wage base, on which both the federal and state tax liability of employers is computed, would be raised from $4,200 to $6,000 as of January 1 1978. Second, the net federal tax rate would be increased from .5% to .7% on January 1, 1977, reverting to .5% in 1982 or the year after all advances to EUCA had been repaid, whichever comes first.

This solution can be improved upon. The financing provisions of H.R. 10210 are premised on an incorrect assumption—that additional payroll taxes are needed to repay the indebtedness attributable to the FSB program and the borrowing by some twenty states. It is incorrect for these reasons.

First. FSG liabilities should not be a payroll tax responsibility. Because this is welfare assistance, it should be financed from general revenues and we so recommend. If this recommendation is accepted, the indebtedness of EUCA would be reduced by $5.6 billion, allowing for a smaller tax increase than proposed in H.R. 10210.

Second, we have noted that adequate provision already exists under current law to assure the repayment of $3.2 billion of loans to the states. As long as these provisions remain intact, there is no need for a provision in H.R. 10210 to assure repayment.

Given points one and two above, it becomes possible to repay the remaining indebtedness of the federal trust fund by raising the federal taxable wage base to $5,400, in lieu of the $6,000 called for in H.R. 10210. Moreover, the scheduled increase in the net federal tax rate can be phased into effect in increments of .1% rather than by the abrupt 40% increase mandated by H.R. 10210. Exhibit 6 presents revenue and cost data in support of this financing plan.

Our third observation about H.R. 10210 is that it will create unnecessary and highly disruptive tax problems in every state because it would require every state to raise its taxable wage base. We have already noted that revenue deficiencies are a problem in only a minority of states. Therefore, it would be a mistake to require every state to make changes in its tax provisions. This can be avoided quite simply by unlinking the federal wage base from that of the states. We urge this Committee to make the $5,400 taxable wage an optional matter with the states.

To protect against an abuse of the states' responsibility, we advise against easing the repayment provisions imposed upon states that fail to raise their taxes sufficiently to repay their indebtedness.

There is yet another aspect to resolving the revenue shortfall problem and that is to assure that benefit payouts are not excessive, are commensurate with need, and are not abused by claimants. This entails tightening up of the economic triggers, rejection of benefit standard proposals, and improving upon fraud detection and placement activities of state administrators.

We have already set forth our recommendation for having the National Commission review the problem of economic triggers and will discuss our recommendations on benefit standards and program abuse later.

ADVANTAGES OF CHAMBER FINANCING PROPOSAL

Our recommendations have several advantages, as follows:

1. The anticipated deficit in the federal trust fund would be reduced by $5.6 billion as a result of switching financing of FSB from employer UI taxes to general revenues.

2. Because of the more moderate increase in the taxable wage base, the total tax increase would be distributed more equitably among employers.

3. The smaller increase in the tax base and phased increase in the tax rate will not cause an undue increase in employer tax liabilities at a time when employers face substantial cost hikes for all fringe benefits.

4. There would not be an excessive inflationary impact or any dampening impact on employment.

5. By separating the federal and state wage base, state tax structures remain unaffected.

6. As a by-product of separation of the wage base, responsibility and control of financing of state trust funds is shifted to the states.

7. Experience rating formulas are preserved without federal intervention.

8. The concept of UI as a short term program for those temporarily and involuntarily unemployed and financed by employers remains intact.

BENEFIT STANDARD OPPOSED

We are opposed to a federal UC benefit standard for a number of reasons.

A federal benefit standard strikes at the very heart of the state control and responsibility. Such a standard would necessarily require additional standards on eligibility, qualification duration and so forth. Ultimately, all decisions would be federal decisions—a completely federalized program.

While we advocate benefit adequacy, we do not advocate a uniform national benefit as suggested by a federal benefit standard. By itself, the standard would prove to be a failure. Just as we cannot sell but one size suit or one size shoe because it is the national average size, so too is a national benefit standard inadequate to meet the diversity of circumstances from claimant to claimant and from state to state.

The recent record of the states in improving their benefit levels shows that there is no need for a federal benefit standard. For example, between 1969 and 1975 average jobless benefits increased by 52% compared to an increase in wages of only 39%. This increase also outpaced the 47% growth in the cost of living as well. Contrary to popular belief, UC benefits have not been a victim of inflation (See Exhibit 7).

Since July of 1969, every state has provided for one or more increases in UC benefits. Forty-six jurisdictions have upped their maximum benefit by 50% or more and 24 states by 100% or more. In this same period, 13 states adopted benefit escalator clauses which automatically raise benefits as wages rise. This brings the number to 35 states that use (or soon will use) escalator benefit formulas (See Exhibit 8).

Cost considerations must also be weighed. They are particularly significant, given twenty insolvent states and given the concern about how to end the spreading bankruptcy. This is certainly no time to aggravate that problem with a mandatory benefit standard.

Exhibit 9 shows the cost of 66⅔% benefit standard, had such a standard been in effect in 1975. Note that costs would have been increased by as much as $193 million in California. Of the 20 borrowing states, 16 would have incurred annual cost increases of $460 million.

The above are just some of the considerations that weigh heavily against the inclusion of a federal benefit standard in H.R. 10210. We concur in the overwhelming rejection of this suggestion by the House. We hope the Senate will do likewise.

COVERAGE RECOMMENDATIONS

A major feature of H.R. 10210 is the proposed extension of UI coverage to most American workers not now eligible. Broad coverage is in the public interest and should be encouraged whenever it can be accomplished with a minimum of program disruption.

H.R. 10210 would expand coverage of the UI laws in three major areas: agriculture, domestic workers, and state and local government (See Exhibit 10).

Agricultural workers.—The bill would extend coverage to agricultural workers of employers with four or more employees in 20 weeks or who paid $10,000 or more in wages in any calendar quarter. However, it would exclude from coverage for two years nonresident aliens admitted temporarily to the United States to perform contract agricultural work under sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act. Under H.R. 10210, the farm operator would be deemed the employer of farm labor supplied by a crew leader, unless the crew

leader was registered under the Farm Labor Contractor Registration Act, or the laborers operated and serviced mechanized farm equipment.

We generally concur in this expansion of coverage but we do anticipate some unusual problems resulting therefrom. First, we fully expect many farm employers to have negative balance tax accounts since the seasonal nature of this work will result in many claimants. Second, family farms incorporated under Subchapter S of the Internal Revenue Code will find that the federal law will require the payment of UI taxes while state law will prevent family members from drawing benefits. This could be remedied by raising the coverage requirements slightly.

Domestic workers.—H.R. 10210 would extend coverage to domestic workers of employers who paid $600 or more in wages in any calendar quarter.

We support this extension. Social Security experience and state UI experience suggest that this coverage is feasible. Moreover, the addition of UI taxes to Social Security taxes will be one more step in providing protection to the least protected class of American employees.

State and local government workers.—Coverage would be extended to approximately 8 million state and local government workers leaving only a few special groups uncovered. The coverage extension would prohibit payments of benefits to school employees between academic terms if the employees were under contract for both terms. States would also be permitted for two years to prohiibt benefit payments between school terms to nonprofessional employees who reasonably expect re-employment in the next term.

We support this coverage and concur in the proposed method for having states pay for the administrative costs of state and local government coverage (Sec. 212(a)). Without such a provision, the state and local government employees would be serviced by the system without paying anything except their benefit costs. They would get a free ride from employer-paid FUTA taxes for all administrative costs connected with processing claims and maintaining the public employment service.

ADMINISTRATIVE SHORTCOMINGS

The high claim level upon the unemployment insurance system not only adversely affected trust fund solvency, it also revealed serious shortcomings in how the system prevents abuse and aids claimants to obtain new employment.

We will not go into the abuse and fraud that has been uncovered, since this has been amply treated by the media. However, we do feel obliged to call the Committee's attention to a report of the General Accounting Office (GAO).

In testimony to the Subcommittee on Manpower and Housing of the House Committee on Government Operations, the GAO revealed that of 18.5 million applicants to the U.S. Employment Services (USES) in FY 1975, only 3.1 million or 17% were actually placed in a job. Moreover, 10.8 million of applicants (58% of the total) did not receive job referral, counseling, testing or employment service of any kind.

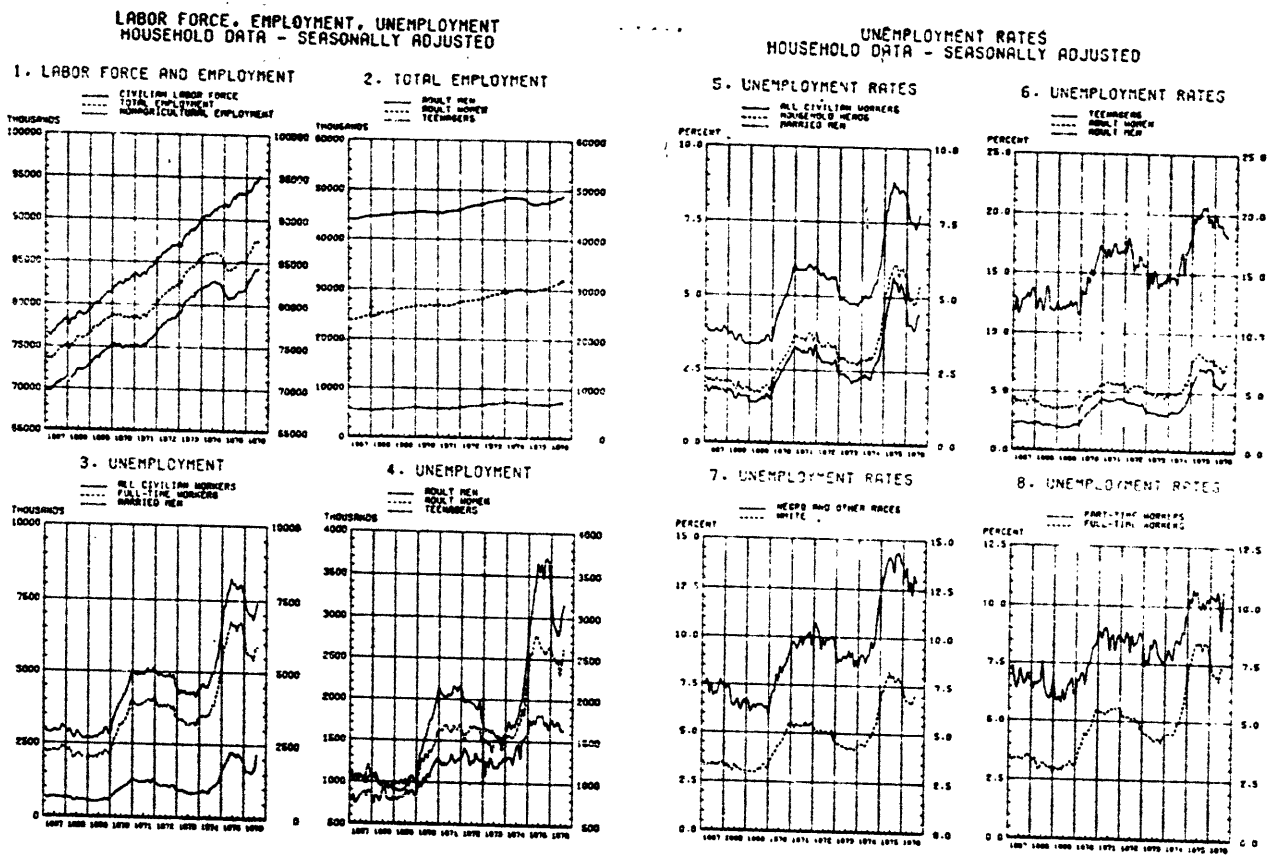
In absolute numbers, GAO reported that non-agricultural job placements by USES have actually declined. Even more disturbing is the GAO finding that the so-called work test which links unemployment claims to workforce attachment is not all that it is said to be. The GAO found that USES had relatively little success in finding jobs for claimants. Indeed, it makes little effort to do so, as reflected by the fact that non-claimants receiving referrals exceeded the level of claimants by almost three to one. Despite the fact that USES is funded almost entirely by unemployment insurance taxes, it provides little assistance to unemployment claimants.

This is another abuse at which the National Commission should take a long, hard look.

CONCLUSION

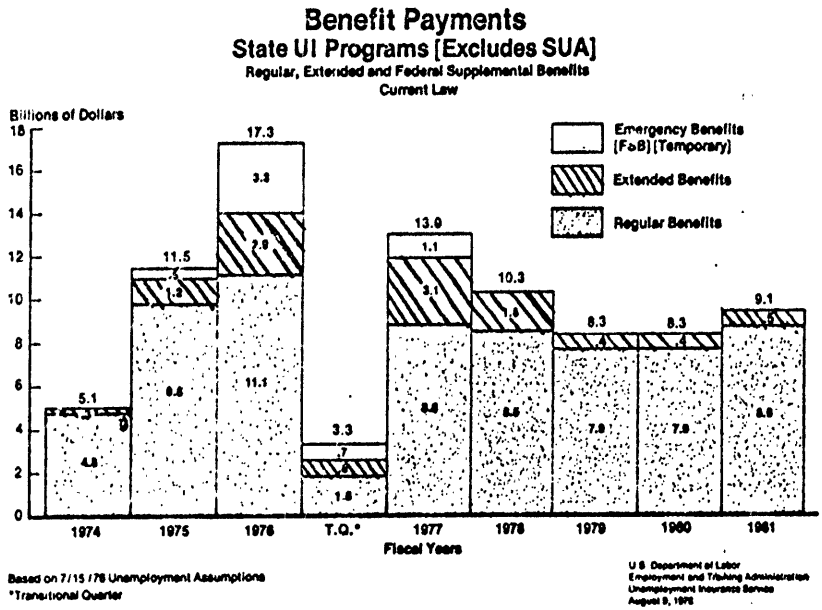
We thank the Committee for giving us this opportunity to express our views on H.R. 10210. We urge you to approve this bill and incorporate the amendments we have offered so that constructive steps may begin toward rehabilitating our nation's unemployment insurance program.

EXHIBIT 1



Source: U.S. Department of Labor, Bureau of Labor Statistics, July 1978 employment report.

EXHIBIT 2



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.

Source: Committee print, staff data, and materials on H.R. 10210.

EXHIBIT 3

AMOUNT OWED TO GENERAL FUND OF THE TREASURY BY THE UNEMPLOYMENT TRUST FUND

[Amount owed as of Sept. 30; in billions]

	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

Source: U.S. Department of Labor.

EXHIBIT 4

FEDERAL SUPPLEMENTAL BENEFIT PROGRAM PARTICIPATION

[As of July 31, 1976]

Nonparticipating States (31):

Colorado	Maryland	South Carolina
District of Columbia	Minnesota	South Dakota
Delaware	Mississippi	Tennessee
Florida	Missouri	Texas
Georgia	Nebraska	Utah
Idaho	New Hampshire	Virginia
Indiana	New Mexico	West Virginia
Iowa	North Carolina	Wisconsin
Kansas	North Dakota	Wyoming
Kentucky	Ohio	
Louisiana	Oklahoma	

13-week participation (5):

Alabama	Arkansas	Oregon
Arizona	Montana	

26-week participation (15):

Alaska	Maine	New York
California	Massachusetts	Pennsylvania
Connecticut	Michigan	Rhode Island
Hawaii	Nevada	Vermont
Illinois	New Jersey	Washington

EXHIBIT 5

ADVANCES TO STATES FROM FEDERAL UNEMPLOYMENT ACCOUNT

[In millions per calendar year]

States	1972	1973	1974	1975	Through Aug. 15, 1976	Total
Connecticut	$31.8	$21.7	$8.5	[1] $190.2 [1]	$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

EXHIBIT 6

ESTIMATED FUTA COSTS REVENUES, AND BALANCES, H.R 10210

[In billions of dollars]

Fiscal year	Cost	Revenue [1]	Cumulative balance
Transition quarter			−7.7
1977	4.0	1.8	[2] −4.3
1978	2.2	2.5	−4.0
1979	1.6	3.1	−2.5
1980	1.5	3.3	−.7
1981	1.6	3.6	+1.3
1982	[3] 1.6	3.3	+3.0

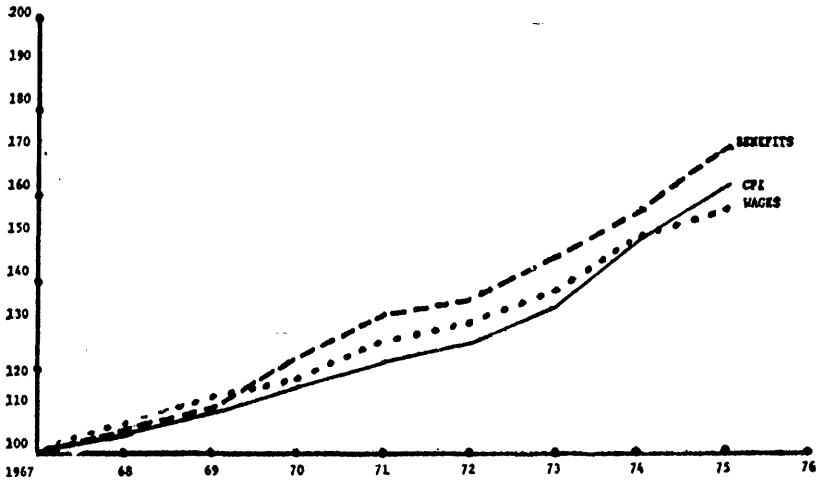
[1] Based on wage and salary projections by Congressional Budget Office, Fiscal Analysis Division, July 31, 1976 forecast Revenues reflect a $5,400 taxable wage base effective Jan. 1, 1978, and increase in the tax rate to 0.6 percent effective Jan. 1, 1977; 0.7 percent effective Jan. 1, 1978 through Dec. 31, 1981; and a rate of 0.55 percent effective Jan. 1, 1982.
[2] Adjusted to reflect deduction of the $5,600,000,000 cost of the FSB program.
[3] Estimated by UBA, Inc.

EXHIBIT 7

INDEX

UI Benefits, Wages and Consumer Prices

1967–1975 (1967=100.0)



Source: COCUSA

Exhibit 8.—States using benefit escalator formula

States:	Escalator percentage
Arkansas, District of Columbia, Delaware, Iowa, Louisiana, North Dakota, Pennsylvania, South Carolina, West Virginia, Wisconsin	66⅔
Utah	65
Minnesota (not to exceed $116)—South Dakota	62
Colorado, Connecticut (percent of average production wage)—Idaho, Kansas, Montana, Puerto Rico, Rhode Island, Vermont	60
Massachusetts	57.5
Oklahoma, Oregon	55
Maine	52
Illinois (excluding dependents' allowance), Kentucky, Nevada, New Jersey, New Mexico, Washington, Wyoming	50
Ohio (has an "escalator" which ties this increased benefit maximum to the percentage increase in the state's average weekly wage)	--

EXHIBIT 9

ESTIMATED 1975 ANNUAL COST OF 66⅔ BENEFIT STANDARD

State	Cost	State	Cost
Alabama [1]	$4,000,000	Montana [1]	4,900,000
Alaska	8,000,000	Nebraska	5,500,000
Arizona	19,000,000	Nevada [1]	7,200,000
Arkansas [1]	[2] 0	New Hampshire	560,000
California	193,000,000	New Jersey [1]	130,000,000
Colorado	2,000,000	New Mexico	3,000,000
Connecticut [1]	16,000,000	New York	181,000,000
Delaware [1]	[2] 0	North Carolina	[2] 0
District of Columbia [1]	[2] 0	North Dakota	[2] 0
Florida	3,000,000	Ohio	75,000,000
Georgia	3,000,000	Oklahoma	3,000,000
Hawaii [1]	[2] 0	Oregon [1]	16,000,000
Idaho	1,600,000	Pennsylvania [1]	[2] 0
Illinois [1]	7,000,000	Rhode Island [1]	4,000,000
Indiana	98,000,000	South Carolina	[2] 0
Iowa	[2] 0	South Dakota	800,000
Kansas	6,900,000	Tennessee	6,500,000
Kentucky	23,000,000	Texas	46,000,000
Louisiana	[2] 0	Utah	500,000
Maine [1]	5,000,000	Vermont [1]	5,800,000
Maryland [1]	22,000,000	Virginia	7,700,000
Massachusetts [1]	31,000,000	Washington [1]	28,000,000
Michigan [1]	79,000,000	West Virginia	[2] 0
Minnesota [1]	5,300,000	Wisconsin	[2] 0
Mississippi	6,900,000	Wyoming	1,300,000
Missouri	73,000,000		

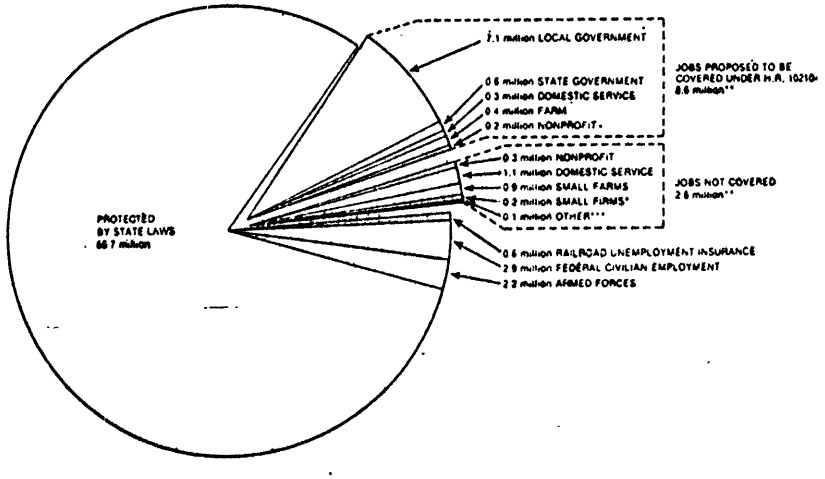
[1] Has received advances from Federal unemployment account.
[2] Already meets standard, therefore no increase cost.

Source: COCUSA.

EXHIBIT 10

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

CALENDAR YEAR 1974



*Based on State unemployment insurance laws coverage provisions as of December 31, 1974.
**Excludes clergymen and members of religious orders, student nurses, interns, and students employed in schools where enrolled.
***Excluded from coverage under definition of employee and agriculture.

U.S. Department of Labor
Employment and Training Administration
Unemployment Insurance Service
September 9, 1975

STATEMENT OF AMERICAN RETAIL FEDERATION, BY SAMUEL E. DYER

I am Samuel E. Dyer, Operating Vice President for Federated Department Stores headquartered in Cincinnati, Ohio. I am one of five employer representatives presently serving on the U.S. Department of Labor's Federal Advisory

Council on Unemployment Insurance, and a member of the Employee Relations Committee of the American Retail Federation.

I am here today to present the views of the American Retail Federation on the Unemployment Compensation Bill, H.R. 10210. The American Retail Federation is made up of state retail associations in all of the 50 states and the District of Columbia, as well as 32 national retail associations. Through these associations, the Federation represents 1,000,000 retail companies. They employ over 11,000,000 full and part-time workers, representing well over 10% of the nation's work force.

As a labor-intensive industry, retailing is very much concerned with the integrity of the unemployment compensation system. This system has been—and is—one of the nation's most successful programs for income maintenance. It is based upon a federal-state relationship, in which they are equal partners. During the recent recession, the system functioned exceptionally well.

We believe in the federal-state partnership, therefore; we are very pleased to have this opportunity to testify in support of H.R. 1210. First however, we urge several amendments, and oppose any amendments which would erode the integrity of this system, or place an undue burden on the payroll tax.

Retailing's views, in general, have been set forth in my detailed statement in behalf of the U.S. Chamber of Commerce. The purpose of this statement is to highlight the views of the American Retail Federation and to indicate our major concern: adequate financing of the Federal-state programs, and unequivocal opposition to federal standards.

Consistent with the above principles, we urge the enactment of H.R. 10210 by the 94th Congress. We have the following suggestions for amendments to insure adequate financing without an undue burden on the employer payroll tax:

1. General revenue financing.—This Committee should adopt an amendment which would transfer the financing of Federal Supplemental Benefits from payroll tax revenues to general revenues. This amendment alone will eliminate about $5.6 billion of the anticipated deficit by 1982.

2. Federal supplemental benefits.—The Federal Supplemental Benefit program is the biggest contributor to the current deficit ($4.5 billion of $7.7 billion). The FSB program is scheduled to expire on March 1, 1977. By that time, as indicated above its total cost will be $5.6 billion. We believe that the program should not be extended beyond that date. It has served its purpose and should be phased out.

3. Taxable wage base.—With general revenue financing of Federal Supplemental Benefits, a more moderate increase in the taxable wage base to $5,400 will be sufficient to meet other financing needs and provide a surplus in the FUTA funds by 1981 (see Exhibit No. 1 attached).

4. Tax rate.—In order to adequately finance FUTA (assuming general revenue financing and an increase in the taxable wage base to $5,400), a tax rate increase will also be necessary; however, the increase would be to 0.6% effective January 1, 1977, and 0.7% effective January 1, 1978, through December 31, 1981. After 1981, the rate would be reduced to 0.55%.

5. Federal wage base v. State wage base.—Another major defect in the financing provisions of H.R. 10210 is that it continues to tie the state wage base with the federal wage base. This provision mistakenly assumes that state and federal financing problems are similar, when in fact, they are diverse. There are 52 state programs, each of which is unique. For example, some 21 states have exhausted their trust funds, or nearly so; however, some 31 states have not. By releasing the state taxable wage base to become a function of state law, the states would be better able to solve their individual problems, and the federal government could, with greater ease, adjust its taxable wages to meet changing needs. Accordingly, we strongly urge the Committee to make the federal taxable wage base increase optional for the states.

6. Summary of financing provisions.—Exhibit No. 1 is based upon the above recommendations, which are: (a) an increase in the taxable wage base to $5,400, effective January 1, 1978; (b) an increase in the tax rate to 0.6% on January 1, 1977 and 0.7% on January 1, 1978—returning to 0.55% in 1982; and, (c) most important—general revenue financing of FSB—exhibit No. 1 clearly reflects that at the end of 1982, a surplus of $3.0 billion will be available in the FUTA funds.

By a combination of wage base and tax rate increases, the burden of the additional employer tax will be more equitably distributed between high-wage and low-wage employers. Also, by divorcing the state and federal taxable wage

base, both the federal and state governments will have greater flexibility in solving the diverse and unique problems.

Retailing believes that these proposals are responsible ways to provide adequate financing for the federal trust fund. We further believe that general revenue financing of Federal Supplemental Benefits is not only necessary, but an appropriate means of meeting the fiscal burden involved in the additional unemployment costs resulting from the economic recessions. General revenue for FSB financing previously has been endorsed by this Committee; the Federal Advisory Council on Unemployment Compensation; the National Manpower Policy Commission; the National Conference of Employment Security Administrators; the Upjohn Institute for Employment Research; and nearly all of the witnesses before the House Ways and Means Committee during its indepth hearings on this bill.

The reason general revenue financing is more appropriate for FSB is that it is in the nature of a welfare program, rather than unemployment insurance. It must be remembered that those who become eligible for FSB have exhausted both regular and extended benefits, and are in their 40th week of employment. Unemployment of this duration has little, if any, relationship to the claimant's former employment. After 40 weeks, his unemployment is a function of the overall economy or the claimant's lack of needed job skills. Under these circumstances, forcing an employer to pay unemployment benefits beyond the 39th week is a gross misuse of the payroll tax.

There are several other concerns of retailing in H.R. 10210 which merit the consideration of this Committee:

Coverage

The American Retail Federation believes that the benefits of unemployment compensation should be extended to the largest feasible number of employees. We, however, are concerned with provisions of H.R. 10210 which extend coverage to agricultural labor. We believe that the coverage provisions could adversely affect many family farms, particularly those incorporated under Subchapter S of the Internal Revenue Code. This Committee might well consider raising the coverage requirements for agricultural employees, both in terms of the number of employees and the amount of payroll required.

Trigger mechanisms

H.R. 10210 provides for the extended benefit program to trigger in a state where: (1) the national insured unemployment rate is 4.5%; or (2) the state insured unemployment rate it 4%.

These rates are too low, and this Committee should take a hard look at the additional cost which these rates will produce. Since the trigger concept was originally conceived in 1970, the Congress has acted to change or modify the trigger mechanism on seven different occasions. This indicates a real problem with triggers. We believe the problem of trigger mechanisms should be referred to the National Study Commission for an in-depth review.

In the meantime, the Congress would be justified in setting the triggers low enough to provide benefits needed, but high enough to prevent unnecessary costs. This could be accomplished by raising the national trigger to 5% and the state trigger to 4½%.

Special unemployment assistance

We note that the coverage provisions of H.R. 10210 are to become effective on January 1, 1978. This is consistent with the time needed by the states to make this adjustment in their laws. We note further that the Special Unemployment Assistance (SUA) program, which is providing unemployment assistance to workers not now covered by state laws, is scheduled to expire on March 31, 1977. This will mean a nine-month gap between SUA coverage and regular program coverage. Since unemployment is expected to remain high during this period, we urge the Senate Finance Committee to amend H.R. 10210 to close this gap in coverage by extending the life of SUA until December 31, 1977.

Administrative problems

While the unemployment compensation program has functioned well during the recession, which has provided its most difficult challenge, some administrative problems have surfaced. Among these is the lack of attention by the Employment Service to finding jobs for claimants. For instance, according to GAO,

during fiscal 1975 there were 18.5 million applicants to the Employment Service—and only 17%, or 3.1 million, were placed in a job. Many of these jobs were of short duration. Worst of all, 10.8 million, or 58% of the applicants did not receive job referral, counseling, or any kind of employment service. Most of the job referrals provided by the Employment Service are for non-claimants. Job-referrals for non-claimants exceeded job referrals for claimants by a ratio of three-to-one.

The Employment Service is financed almost entirely by unemployment compensation taxes—yet, it provides little service for unemployment compensation claimants. We urge the Committee to make sure the National Study Commission closely examines this problem. It should recommend some means to improve the ability of the Employment Service to find jobs for claimants.

National Study Commission

One of the most productive provisions in H.R. 10210 is the establishment of a National Study Commission. The retail industry fully supports this provision. The Commission would be authorized to undertake a thorough review of the principles and objectives of the unemployment insurance program. Unemployment insurance legislation has been piecemeal and patchwork, since its inception. Many suggestions have been enacted into law, without supportive data, taking into account the complex federal and state relationship, or how the legislation does fit, or should fit, into other income maintenance programs.

Amendments opposed

Retailing believes that no amendments should be accepted by this Committee which would:

(1) Establish federal standards for state performance under the Unemployment Compensation laws—particularly benefit standards, because of the need for state autonomy and to avoid additional cost, which the program can ill-afford.

(2) Increase the taxable wage base beyond $5,400.

(3) Increase the tax rate beyond 0.7%.

(4) Moderate or forgive the obligation of states to repay in full the moneys borrowed from FUTA because such states had depleted their own trust funds.

Conclusion

In summary, the American Retail Federation supports H.R. 10210, with the amendments were have suggested, and without federal benefit standards. The inclusion of any federal benefit standard would completley alter the retail industry's support of H.R. 10210.

EXHIBIT NO. 1

ESTIMATED FUTA COSTS, REVENUES, AND BALANCES—H.R. 10210

[Dollar amounts in billions]

Fiscal year	Cost	Revenue [1]	Cumulative balance
TQ			−$7.7
1977	$4.0	$1.8	[2] −4.3
1978	2.2	2.5	−4.0
1979	1.6	3.1	−2.5
1980	1.5	3.3	−.7
1981	1.6	3.6	+1.3
1982	[3] 1.6	3.3	−3.0

[1] Based on wage and salary projections by Congressional Budget Office, Fiscal Analysis Division, July 31, 1976, forecast. Revenues reflect a $5,400 taxable wage base effective Jan. 1, 1978, and increase in the tax rate to 0.6 percent effective Jan. 1, 1977; 0.7 percent effective Jan. 1, 1978, through Dec. 31, 1981; and a rate of 0.55 percent effective Jan. 1, 1982.
[2] Adjusted to reflect deduction of the $5,600,000,000 cost of the FSB program.
[3] Estimated by UBA, Inc.

STATEMENT OF PAUL P. HENKEL, ON BEHALF OF MEMBER STATE CHAMBERS OF THE COUNCIL OF STATE CHAMBERS OF COMMERCE, BEFORE THE SENATE FINANCE COMMITTEE ON UNEMPLOYMENT COMPENSATION, H.R. 10210, SEPTEMBER 9, 1976

My name is Paul Henkel and I am Manager of Payroll Taxes for Union Carbide Corporation. I am Chairman of the Social Legislation Committee of the Council of State Chambers of Commerce and I am appearing on behalf of the member State Chambers of Commerce of the Council which are listed at the end of this statement as having endorsed it.

My testimony will emphasize two points:

1. No Federal benefit standards should be added to the bill by the Senate.

2. The taxable wage base should not be increased above the $6,000 contained in the bill as passed by the House. In fact, we will present statistics that indicate that a Federal base of $5,400 would be adequate. Only the Federal base should be increased, thus leaving each State free to determine what base is needed for its particular requirements.

DECISIVE HOUSE VOTE AGAINST FEDERAL BENEFIT STANDARDS

On July 20, 1976 by a vote of 281 to 113 the House defeated an amendment to add a Federal Benefit Standard to H.R. 10210. This overwhelming rejection of the benefit standard concept indicates that if the Senate should choose to add a benefit standard to the bill, this late in the session, it would seriously jeopardize the chances for the passage of the bill. Certainly, the State Chambers and other business groups would go all out to prevent the final enactment of any bill containing a benefit standard.

THE CASE FOR THE FEDERAL-STATE SYSTEM

State control of unemployment benefits is an essential element of the Federal-State employment security system. For Congress to set standards on benefit amounts, duration, eligibility and disqualifications would make the States mere administrative agents. This is precisely what labor union spokesmen proposed; in fact, they admittedly would prefer Federal administration. They view Federal standards as a step toward their ultimate objective.

Federal standards on eligibility and disqualifications would weaken the States' ability to combat abuses. This would bring the program into further public disrepute, especially after recovery from the present high levels of unemployment. Federal control would inevitably, we believe, lead to an undermining of the exprience rating tax systems that provide an important incentive for employers to cooperate with administrators in preventing abuses and to stabilize employment. Control of abuses helps keep the program sound for those who become unemployed "through no fault of their own" and who are "available for work." These are important "social insurance" concepts that, along with a wage-related benefit system, help distinguish unemployment compensation from welfare.

The determination of benefit amounts, duration, eligibility, and disqualification is an interrelated process. The AFL-CIO recognizes this and urges Congress to make the basic decisions in all these areas. Those who have had first-hand experience in amending State unemployment laws know that it is very difficult to tighten up State laws against abuses so that only those who are unemployed through "no fault of their own" receive benefits unless it is done at the same time benefits are increased.

We oppose the enactment of the Federal U. I. benefit standard because:

1. It is not necessary in achieving adequate benefit levels;

2. The standard being proposed is only an hypothesis and it does not insure the attainment of, and is not the exclusive way of achieving the stated objective: 50% of the claimants receiving half pay;

3. Twelve State unemployment insurance laws which provide dependency allowances would have to be drastically remodeled;

4. The standard would increase rather than minimize the disparity in the cost of U. I. benefits among the States;

5. Contrary to the assertions of the proponents of Federal standards which attempt to discredit the current State laws, unemployment insurance benefit levels have increased faster than average weekly wages in covered employment and faster than the Consumer Price Index;

6. A benefit standard could signal the destruction of the present Federal-State partnership in unemployment insurance and inevitably would lead to similar standards in all other facets of unemployment insurance;

7. We question the Congressional capability to do a better job than the State legislatures have done. It would be difficult for Congress to take over from the State legislatures the responsibility for correcting abuses and adequately dealing with benefit needs. Situations and economic conditions vary greatly in different parts of the country. Congress does not have the time to devote to this matter; most State legislatures consider UC each session. Many States have developed Advisory Committee and "Agreed Bill" procedures. This would be very difficult at the Federal level.

We believe the States have shown remarkable progress in increasing maximum weekly benefit amounts over the last ten, and more particularly, over the last six years. Further, we believe the more immediate problem of national concern is the restoration of the State unemployment insurance reserves, the repayment of Federal Title XII advances made to State unemployment trust funds, and the financing of Federal extended benefits. This will require greatly increased tax costs for employers extending into the 1980's even without any benefit standards being enacted. This is no time to adopt proposals that will greatly compound the financial problems of most State unemployment insurance programs.

We have appended hereto material (Tables I–III) developed by the UBA, an employer supported organization which is the research arm of the employer community in unemployment and workmen's compensation matters.

The salient facts in Table I of this material are that in the last ten, and in the last six years, the average weekly U. I. benefit has in both instances increased faster than average weekly wages and the Consumer Price Index!

For the average weekly benefit to increase faster than wages, the States maximum also must have increased faster than the average weekly wage. Thus, this is evidence that Federal benefit standards are not needed to force the States to increase their maximums.

The data in Table II have direct relevancy to the question of the need for and efficacy of the proposed Federal benefit standard. It is our view that the State laws are approaching reasonable and equitable levels; therefore, there is no need to enact Federal control legislation.

At this point, it should be noted that these improvements have been achieved with the support and aid of the employer community! Over the last six or seven years, this Council's Social Legislation Committee membership, the respective member State Chambers of Commerce of the Council, and other national and State employer groups have actively worked toward this end.

The salient facts concerning State maximum weekly benefit amounts in Table II are that since 1969:

46 States raised their maximum by 50% or more—the highest was 161%.

In terms of dollars

38 States raised their maximum by $40 or more;

48 States raised their maximum by $20 or more.

Thirty-five States use an "escalator" formula to set the maximum no less than 50% of statewide average wages (12 States use a 66⅔% escalator formula). It should be noted in 23 of the 35 States which have adopted an escalator formula, the State legislators have rejected the 66 two-thirds percent concept.

The data in Table III show a wide disparity in the States' average weekly wage (from a low of $108.00 to a high of $294.00). This disparity is reflected in the fourth column of the table showing the proposed Federal benefit standard as applied to each State. The disparity in the fifth and sixth columns is reflected in reverse effect. The States with lower maximums in relation to the Statewide average wages would need the greatest increase in those maximums to meet the proposed standard (in terms of absolute dollars and percentages).

A list of the States that would be most disadvantaged include eight major industrial States: California, Illinois, Indiana, Michigan, New Jersey, New York, Ohio and Texas. Three of these States have a variable maximum weekly benefit formula with dependency allowances. These eight States provide approximately 38% of the nationwide insured employment.

FEDERAL UC FINANCING

In September 1975, the Department of Labor apprised the House Ways and Means Committee that by the end of fiscal year 1977 the States would have to borrow $13.6 billion and $4.6 billion would have to be advanced to the Federal Extended Unemployment Compensation Account. Now in August 1976, the Department says that the States will have to borrow only $3.8 billion but the Federal Extended Unemployment Compensation Account will have to be advanced $10.1 billion. The latest figures exclude Supplementary Unemployment Assistance which is fully federally funded and presume there will be no Federal Supplementary Benefit extension.

We surmise that the September 1975 State borrowing data were overstated to press the need for a federally mandated $6,000 taxable wage base; and the federal borrowing data was understated to minimize the federal financing problem and

the cost of the Federal Supplement Benefit (FSB) program which we think is the greater problem. We believe that the Department of Labor "flipflop," which is illustrated in the following table, strengthens our position that only the Federal taxable base should be increased and not also the State base as proposed in H.R. 10210.

FEDERAL AND STATE BORROWING (EXCLUDES SUA)

(Based on current legislation with no FSB extension)—(In millions)

Time period	Federal [1]	State [2]	Total
Through Sept. 30, 1976	$7,700.0	$3,200.0	$10,900.0
Current projection by USDL through fiscal year 1977 (Aug. 9, 1976)	10,100.0	3,800.0	13,900.0
Projection through fiscal year 1977 presented by USDL and used by Ways and Means Subcommittee during mark-up session (Aug. 26, 1975)	4,600.0	13,600.0	18,200.0
Difference between Original and current projection (through fiscal year 1977)	+5,500.0	−9,800.0	−4,300.0

[1] Advance to extended unemployment compensation account.
[2] Advance from Federal unemployment account.

The Finance Committee print of Staff Data and Materials on H.R. 10210 issued last Friday, September 3, page 44–45 indicates that 21 States and Puerto Rico have on their own raised their taxable wage base above the $4,200 Federal base. When we testified before the House Ways and Means Unemployment Compensation Subcommittee in July of last year, 13 States had already raised their taxable wage base above the Federal base. This indicates that the States are capable of making their own determination of what their taxable wage base should be in terms of their own situation. We predict that if Congress were to indicate that it is going to leave each State free to set its own base, in light of its needs, the States will do an even better job than under the current situation since some States have been waiting for Congress to make the decision for them.

Because of the questionable credibility of the Department of Labor estimates, the UBA Inc., an employer sponsored research group, developed independent estimates based on Congressional Budget Office forecasts of future wage levels through 1982. The CBO projections in July 1976 were used, as was a historic 73% relationship between total wages and FUTA covered wages to develop the proposed FUTA wage base through 1982. This and further methodology used indicates that the base will rise 90% through 1982 and not the much lower percentage projected by the Department of Labor. (Again, the Department of Labor seems to understate data to support the need for an $8,000 rather than a $6,000 wage base limit.) The UBA has sought and has received substantiation from industry-based economists that the UBA approach is more realistic and more in line with expected wage increases.

Using this data, the UBA has developed alternative proposals for a $5,400 wage base effective in 1978. Table IV indicates that a positive balance of $900 million can be obtained by the end of calendar year 1982 and $1.6 billion by January 31, 1983. A positive balance of $1.3 billion can be obtained as early as 1981 if the Federal Supplemental Benefit (FSB) of $5.6 billion is paid from general revenue as assumed in Table V. The Senate has voted to use general revenue, rather than employer payroll taxes for this purpose in the past, but that was rejected by the House. We believe the Senate was correct.

We support this proposal because it could solve the problem of financing the Federal UC deficits and leave the States with the necessary flexibility to restore, where necessary, the solvency of their State unemployment funds. It would also permit those States which have not had unmanageable recession unemployment benefit costs to retain their normal experience rating formulae without drastic change. In any event, we see no need whatsoever for a FUTA taxable wage base more than $6,000.

EXTENDED BENEFIT TRIGGERS

We do not believe that the 4% seasonally adjusted trigger for extended benefits contained in H.R. 10210 is a proper answer. Analysis of how it would have worked in the past (1957–1973) reveals that some 17 States would have been triggered on more than 50% of the time. We believe that a better solution for

the trigger problem would be to keep the 120% provision operative, but an optional provision that would permit a State to waive the 120% provision of insured unemployment equaled or exceeded 6% should be added.

CONCLUSION

In conclusion, to sum up: No Federal benefit standard should be added to H.R. 10210. In view of the decisive House rejection of a benefit standard amendment, the addition of such a standard would seriously jeopardize the chances of this bill being enacted this session.

Only the Federal taxable wage base should be increased. Each State should be left free to make its own decisions as to its taxable wage base in terms of its own requirements. Also, each State should be given an option, in addition to the 120% requirement, to trigger extended benefits when unemployment equals or exceeds 6% in lieu of the inadequate provision in H.R. 10210.

The following State Chambers of Commerce have endorsed this statement:

Alabama Chamber of Commerce
Arkansas State Chamber of Commerce
Colorado Assoc. of Com. & Ind.
Connecticut Business & Ind. Ass'n.
Delaware State Chamber of Com.
Florida Chamber of Commerce
Georgia Chamber of Commerce
Indiana State Chamber of Commerce
Kansas Ass'n of Com. & Ind.
Kentucky Chamber of Com.
Maine State Chamber of Com.
Maryland State Chamber of Com.
Michigan State Chamber of Com.
Minnesota Assoc. of Com. & Ind.
Mississippi Economic Council
Missouri Chamber of Commerce
Montana Chamber of Commerce
New Jersey State Chamber of Com.
Empire State Chamber of Com.
Ohio Chamber of Commerce
Oklahoma Chamber of Commerce
Pennsylvania Chamber of Commerce
South Carolina Chamber of Commerce
Greater South Dakota Association
East Texas Chamber of Commerce
South Texas Chamber of Commerce
West Texas Chamber of Commerce
Tennessee Taxpayers Association
Virginia State Chamber of Commerce
West Virginia Chamber of Commerce
Wisconsin Association of Mfgs. & Com.

TABLE I.—INDEX OF CONSUMER PRICES, AVERAGE WEEKLY BENEFIT AMOUNT, AND AVERAGE WEEKLY WAGE IN STATE UNEMPLOYMENT INSURANCE COVERED EMPLOYMENT

[1967=100]

Year	Consumer price index	Average weekly benefit amount AWBA	Index	Average weekly wage (covered employment) AWW	Index
1960	88.7	$32.87	79.7	$93.34	78.4
1965	96.6	37.19	90.1	109.99	92.4
1966	97.2	39.76	96.4	114.51	96.2
1967	100.0	41.25	100.0	119.03	100.0
1968	104.2	43.43	105.3	126.61	106.4
1969	109.8	46.17	111.9	134.76	113.2
1970	116.3	50.13	122.0	141.13	118.6
1971	121.3	54.02	131.0	148.87	125.1
1972	125.3	56.76	137.6	155.30	130.5
1973	133.1	59.00	143.0	163.97	137.8
1974	147.7	62.25	155.8	176.60	148.3
1975	161.2	[1] 70.00	169.7	[1] 187.00	157.1
Percent increase:					
1960-75	81.7	113.0	113.0	100.3	100.3
1968-75	46.8	51.6	51.6	38.8	38.8

[1] Estimated.

TABLE II.—CHANGES IN UNEMPLOYMENT COMPENSATION MAXIMUM WEEKLY BENEFIT LEVELS[1]

State	Maximum WBA's		Increase	
	July 1969	August 1976	Amount	Percent
Alabama	$44	$90	$46	105
Alaska	60–85	90–120	30–35	50–42
Arizona	50	85	35	70
Arkansas	47	100	53	113
California	65	104	39	60
Colorado	71	114	43	61
Connecticut	76–114	100–165	34–51	45–45
Delaware	55	[2] 125	70	127
District of Columbia	63	139	76	121
Florida	40	82	42	105
Georgia	47	90	43	91
Hawaii	72	112	40	56
Idaho	56	99	43	77
Illinois	42–70	106–135	64–65	152–93
Indiana	40–52	69–115	29–63	73–121
Iowa	58	116	58	100
Kansas	55	101	46	83
Kentucky	52	87	35	67
Louisiana	50	[2] 90	30	60
Maine	52	79–119	27–67	52–129
Maryland	60	89	29	48
Massachusetts	[4] 57	101–152	[3] 44	[3] 77
Michigan	46–76	97–136	51–60	111–79
Minnesota	57	113	56	98
Mississippi	40	80	40	100
Missouri	53	85	32	60
Montana	42	94	53	124
Nebraska	48	80	32	67
Nevada	47–67	94	47–27	100–40
New Hampshire	54	95	41	76
New Jersey	65	96	31	47
New Mexico	53	78	25	47
New York	65	95	30	46
North Carolina	50	105	55	110
North Dakota	51	107	56	109
Ohio	47–66	95–150	40–84	102–127
Oklahoma	38	93	55	145
Oregon	55	102	47	85
Pennsylvania	60	125–133	65–73	108–122
Puerto Rico	36	55	19	53
Rhode Island	56–76	100–120	44–44	79–58
South Carolina	50	103	53	106
South Dakota	41	89	48	117
Tennessee	47	85	38	81
Texas	45	63	18	40
Utah	54	110	56	104
Vermont	56	96	40	71
Virginia	48	103	55	115
Washington	42	102	60	143
West Virginia	49	128	79	161
Wisconsin	66	122	6	85
Wyoming	53	95	42	79

[1] When 2 amounts are given, the higher amount includes allowances for dependents.
[2] Percentage used in "escalator" will increase to 63 percent effective July 1, 1977, and to 66⅔ percent effective July 1, 1978.
[3] Effective Sept. 1, 1976, maximum wba will be set by a 66⅔ percent "escalator" provision.
[4] Maximum augmented amount not given since augmentation was limited only by claimant's average weekly wage in 1969.

TABLE III.—CURRENT MAXIMUM WEEKLY BENEFIT AMOUNTS COMPARED TO MAXIMUM WEEKLY BENEFIT UNDER THE 66⅔ PERCENT PROPOSAL[1]

State	Average weekly wage calendar year 1974	Maximum WBA Aug. 1976	Percent of average weekly wage	Maximum WBA under 66⅔ percent proposal	Increase in maximum WBA under 66⅔ percent proposal	
					Amount	Percent
Alabama	$153	$90	59	$102	$12	13
Alaska	294	90–120	31–41	196	106–76	118–63
Arizona	173	85	49	115	30	35
Arkansas	137	100	(2)	(2)	(2)	(2)
California	189	104	55	126	22	21
Colorado	171	114	67	114		
Connecticut	189	110–165	58–87	126	[3] 16	[3] 15
Delaware	195	[4] 125	(2)	(2)	(2)	(2)
District of Columbia	201	139	(2)	(2)	(2)	(2)
Florida	161	83	51	107	25	32
Georgia	158	90	57	105	15	17
Hawaii	162	112	(2)	(2)	(2)	(2)
Idaho	151	99	66	101	2	2
Illinois	197	106–135	54–69	131	[3] 25	[3] 24
Indiana	180	69–115	38–63	120	51–5	74–4
Iowa	161	116	(2)	(2)	(2)	(2)
Kansas	155	101	65	103	2	2
Kentucky	161	87	54	107	20	23
Louisiana	160	[3] 90	(2)	(2)	(2)	(2)
Maine	141	79–119	56–84	94	[3] 15	[3] 19
Maryland	173	89	51	115	26	29
Massachusetts	172	101–152	59–88	115	[3] 14	[3] 14
Michigan	212	97–136	46–64	141	44–5	45–4
Minnesota	171	113	66	114	1	1
Mississippi	134	80	60	89	9	11
Missouri	171	85	50	114	29	34
Montana	149	94	63	99	5	5
Nebraska	155	80	52	103	23	29
Nevada	176	94	53	117	23	24
New Hampshire	149	95	64	99	4	4
New Jersey	191	96	50	127	31	32
New Mexico	147	78	53	98	20	26
New York	202	95	47	135	40	42
North Carolina	146	105	(2)	(2)	(2)	(2)
North Dakota	148	107	(2)	(2)	(2)	(2)
Ohio	190	95–150	50–79	127	[3] 32	[3] 34
Oklahoma	157	93	59	105	12	13
Oregon	186	102	55	124	22	22
Pennsylvania	182	125–133	(2)	(2)	(2)	(2)
Puerto Rico	108	55	51	72	17	31
Rhode Island	154	100–120	65–78	103	[3] 3	[3] 3
South Carolina	143	103	(2)	(2)	(2)	(2)
South Dakota	133	89	67	89		
Tennessee	151	85	56	101	16	19
Texas	163	63	39	109	46	73
Utah	154	110	71	103		
Vermont	150	96	64	100	4	4
Virginia	156	103	66	104	1	1
Washington	186	102	55	124	22	22
West Virginia	174	128	(2)	(2)	(2)	(2)
Wisconsin	173	122	(2)	(2)	(2)	(2)
Wyoming	168	95	57	112	17	18

[1] When 2 amounts are given, higher amount includes allowance for dependents.
[2] Benefit maximum currently (or scheduled to be) set at 66⅔ percent of State average weekly wage.
[3] Maximum with dependents' allowance replaces 66⅔ percent (or more) of State average weekly wage.
[4] Percentage used in "escalator" will increase to 63 percent effective July 1, 1977, and to 66⅔ percent effective July 1, 1978.
[5] Effective Sept. 1, 1976, maximum WBA will be set by a 66⅔ percent "escalator" provision.

TABLE IV.—ESTIMATED FUTA COSTS, REVENUES, AND BALANCES—H.R. 10210

[In billions]

Fiscal year	Cost	Revenue [1]	Cumulative balance
TQ			−$7.7
1977	$4.0	$1.8	−9.9
1978	2.2	2.5	−9.6
1979	1.6	3.4	−7.8
1980	1.5	3.8	−5.5
1981	1.6	4.1	−3.0
1982	[2] 1.6	4.4	[3] −.2

[1] Based on wage and salary projections by Congressional Budget Office, Fiscal Analysis Division, July 31, 1976, forecast. Revenues reflect a $4,400 taxable wage base effective Jan. 1, 1978, and increase the tax rate to 0.6 percent effective Jan. 1, 1977; 0.7 percent effective Jan. 1, 1978; and 0.8 percent effective Jan. 1, 1979.
[2] Estimated by UBA, Inc.
[3] Fiscal year 1982 ends Sept. 30, 1982. Tax collections during October 1982 based on 3d quarter 1982 wages are estimated at $1,100,000,000, thus leaving a positive balance of $900,000,000 at the end of calendar year 1982, in addition, another $700,000,000 will be collected in January 1983 based on 4th quarter 1982 wages so that by the end of January 1983, FUTA accounts would have a positive balance of $1,600,090,000.

TABLE V.—ESTIMATED FUTA COSTS, REVENUES, AND BALANCES—H.R. 10210

[In billions]

Fiscal year	Cost	Revenue [1]	Cumulative balance
TQ			−$7.7
1977	$4.0	$1.8	[2] −4.3
1978	2.2	2.5	−4.0
1979	1.6	3.1	−2.5
1980	1.5	3.3	−.7
1981	1.6	3.6	+1.3
1982	[3] 1.6	3.3	+3.0

[1] Based on wage and salary projections by Congressional Budget Office, Fiscal Analysis Division, July 31, 1976, forecast. Revenues reflect a $5,400 taxable wage base effective Jan. 1, 1978, and increase in the tax rate to 0.6 percent effective Jan. 1, 1977; 0.7 percent effective Jan. 1, 1978, through Dec. 31, 1981; and a rate of 0.55 percent effective Jan. 1, 1982.
[2] Adjusted to reflect deduction of the $5,600,000,000 cost of the FSB program.
[3] Estimated by UBA, Inc.

TESTIMONY ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

SUMMARY OF PRINCIPAL POINTS

(1) Wage base increase should be held to $5,400, with a sliding tax increase of 0.1% yearly to 0.8%, then reverting to 0.55% after five years or until all advances from general funds have been repaid. This would result in faster deficit reduction and a better distribution of the tax burden among different types of employers.

(2) Regarding the Extended Benefit trigger, the 120% requirement should be retained, but with the proviso that each state be allowed to adopt a higher trigger figure than the current 4% to cope with the effects of chronically high unemployment rates.

(3) NAM backs the list of items mandated for study by the National Study Commission under H.R. 10210. Particular attention should be given to fraud and abuse, and the Commission should also consider UC's work disincentive effects and overlap with other income maintenance programs, as well as the Extended Benefit trigger.

(4) NAM continues to oppose Federal benefit standards as an unnecessary and dangerous Federal intrusion into state control of UC programs.

(5) Any extension of the Federal Supplemental Benefits (FSB) program is undesirable. Employers should not have been taxed for benefits beyond the 39th week, as they have been under FSB, and should not be so taxed in the future.

STATEMENT

I am Julius E. Kubier, President of Associated Industries of Oklahoma. My organization is affiliated with the National Industrial Council, which is a part of the National Association of Manufacturers, and I also serve as Chairman of the National Industrial Council's Unemployment Compensation Advisory Committee. I appreciate and welcome this opportunity to appear today on behalf of the National Association of Manufacturers whose membership includes more than 13,000 companies—80% of whom employ fewer than 500 employees—primarily engaged in manufacturing.

American industry recognizes the need for a viable program of Unemployment Compensation. Such a program provides necessary assistance for those unemployed as a result of economic factors and serves to keep up consumer demand and speed recovery in times of economic recession. But high unemployment, combined with some abuse of the system and significant extensions of duration, has caused the UI system severe financial difficulties. Federal Unemployment Tax revenues were suddenly expected to cover an additional 26 weeks of benefits under the Federal Supplemental Benefits (FSB) program, as well as higher Extended Benefit outlays, growing state demand for large unemployment compensation loans, and accompanying administrative expenses. Small wonder that we are here today seeking a way out of the UC financial dilemma before the situation deteriorates even further.

The final form of the House-passed bill, H.R. 10210, approaches the financing problem with some degree of rationality. Proposed wage base increases were held down, tax rate increases were incorporated to reduce Federal Trust Fund deficits, and a National Study Commission was created and charged with the responsibility of analyzing the UI system, hopefully to correct some of its current aberrations. Most importantly, a proposal to establish Federal benefit standards was soundly defeated, proof that most Congressmen realized the absurdity of increasing benefit levels at a time when states cannot pay for current levels and must pay extra amounts to erase past deficits. But there are aspects of H.R. 10210 that deserve further consideration and refinement now that this legislation is on the Senate side.

First of all, adjustments are necessary in the wage base and tax rate figures. Instead of the $6,000 wage base and 0.7% tax rate, we advocate the $5,400 base with a tax increase to 0.6% the first year, rising 0.1% per year to 2.8%, then reverting to 0.55% after five years or until all advances from the general treasury have been repaid. The sliding tax rate coupled with a lower wage base would reduce the Federal Trust Fund deficit more quickly than would the H.R. 10210 formula, while spreading the tax burden more equitably among different types of employers.

Secondly, H.R. 10210 does not reach an adequate resolution of the extended benefit trigger problem. When Extended Benefits were initially established, they required the fulfillment of two criteria in order to trigger "on" within the state the additional 13 weeks of benefits the program provides. First, the statewide insured unemployment rate (IUR) had to reach 4 percent over a 13-consecutive week period, and second, the statewide IUR had to equal at least 120% of the average IUR of a corresponding 13 week period in both of the two preceding years. The program would trigger off when either of these standards was no longer met. However, this second standard has effectively been eliminated as a requirement, as Congress has seven times granted states the authority to waive it. The 120% factor was intended to operate as a check on the IUR factor, but its virtual elimination left no effective trigger "off" mechanism.

H.R. 10210 does not include the 120% factor for triggering Extended Benefit payments. We believe the 120% trigger should be preserved, but with the proviso that each state be allowed to adopt a higher trigger figure (say, 6%) as an "on" and "off" trigger in states with chronically high unemployment. Adoption of this proposal would provide a practical interim solution until the new National Study Commission can provide a permanent trigger device.

Regarding the Commission, we applaud the inclusion of the varied items mandated for study by H.R. 10210. The provision calling for examination of fraud and abuse in UC programs deserves particular support. The purposes of the Commission need to be enlarged further, however, to look into unintentional overlap with other income maintenance programs—for example, the situation of the retiree who draws UC payments while also collecting from Social Security or from a private pension. The work disincentive effects of UC should also be studied and,

as we noted before, a more responsive system for the payment of Extended Benefits should be developed.

The NAM position on Federal benefit standards is, I think, well known. Along with the rest of the business community, we are in favor of retaining the cooperative Federal-State nature of the program; therefore, we object to mandated Federal benefit standards in any form. We maintain that such standards fly directly in the face of the states' legislative power to adapt benefit and tax levels to local conditions, and serve as a disturbing precedent for further undermining state control of UI programs. Federal standards are not needed to force states to act—every state has provided one or more increases in benefit maximums since 1969, and average unemployment compensation benefits have increased at a rate faster than that of the Consumer Price Index. In many states, Federal standards would mandate higher benefit and cost levels than are needed to provide basic wage replacement. In short, we think it is evident that standards determinations are best left to the individual states and NAM is opposed to the inclusion of Federal benefit standards in any UC bill.

Finally, we are gratified to note that extension of the FSB program is not a part of H.R. 10210. NAM has frequently questioned the justification for taxing employers to pay benefits beyond the 39th week, and recent disclosures concerning fraud and abuse indicate that many UC beneficiaries have taken unintended advantage of the FSB program by purposely prolonging their unemployment. The UC system, with its temporary legislative appendages, has increasingly come to resemble permanent income maintenance for the once-employed, rather than an insurance program of temporary income maintenance for those legitimately connected with the work force. The end of FSB is a start toward bringing the UC system back to its original purposes, and we would oppose the inclusion of any FSB extension in the Senate's UC bill. We view the cost incurred through FSB as a federal liability which should never have been charged to employers and should not be so charged now.

In summary, we recognize the crucial need to solve the UC financing problem. H.R. 10210 is a large step in that direction, but it still requires adjustments in wage base, tax rate and Extended Benefit trigger mechanisms. In addition, no extension of FSB and no Federal benefit standards should be added to the bill in the Senate. NAM thanks you for your consideration of our suggestions.

Senator GRAVEL. Our next witness is Bert Seidman.

STATEMENT OF BERT SEIDMAN, DIRECTOR, SOCIAL SECURITY DEPARTMENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY JAMES O'BRIEN, ASSISTANT DIRECTOR, SOCIAL SECURITY DEPARTMENT

Mr. SEIDMAN. Thank you, Mr. Chairman.

My name is Bert Seidman, director of the Department of Social Security, AFL-CIO, and with me is Mr. James O'Brien, assistant director of that department, and is also a member of the Federal Advisory Council on Unemployment Insurance.

Mr. Chairman, we appreciate this opportunity to present the views of the American Federation of Labor and Congress of Industrial Organizations concerning H.R. 10210. The AFL-CIO with strong reservations, supports the major provisions of this bill designed to strengthen and improve the Nation's unemployment insurance system.

We have, as the hearing announcement requested, summarized our testimony. Our prepared statement discusses in fuller detail the issues we will mention here, as well as other issues omitted from this summary. We respectfully request that our full statement be included in the record of these hearings.

H.R. 10210 would, to a moderate degree, improve and modernize the existing permanent unemployment insurance program. Therefore, we

support the major provisions of H.R. 10210 but we also call for its substantial improvement.

With respect to coverage, the Emergency Jobs and Unemployment Assistance Act of 1974—Public Law 93-567, usually referred to as SIA—temporarily remedied one of the more glaring deficiences in the program. This measure furnished temporary unemployment insurance coverage to the 12 million workers who are still denied the protection of the permanent program.

H.R. 10210 would remedy a large part of this deficiency on a permanent basis. It would offer the protection of the regular program to most of the 12 million workers now excluded by extending coverage to many of the public employees, agricultural workers, and domestic workers who have been kept outside the system.

However, it would still leave uncovered approximately 40 percent of farmworkers and 75 percent of domestic workers. Therefore, in our detailed statement, we have made specific suggestions for broader coverage of farm and domestic workers than H.R. 10210 provides.

The 1970 employment security amendments extended unemployment compensation coverage to some public employees—workers in State hospitals and State institutions of higher education. Twenty-nine States have extended coverage of their program to substantially all State government employment. But only eight States cover susbtantially all local government employees.

This is the area of public employment in which job-loss protection is desperately needed now. H.R. 10210 would correct this glaring inequity by extending protection to most public employees. We urge the committee to include this provision in the bill you report.

We indicated earlier our support for this legislation with reservations. One of them concerns the lack of minimum Federal standards.

For many years, the AFL-CIO has urged enactment of a minimum Federal standard to provide jobless individuals an adequate weekly wage replacement; we favor a benefit standard that would gradually, in a series of steps, increase the payment to 66⅔ percent of former weekly wages with an upper limit in each State equal to at least 75 percent of the State average weekly wage.

We have insisted that along with the weekly benefit standard, there must also be qualifying and duration standards. A glaring gap in H.R. 10210 is that it does not include these essential minimum standards.

We urge this committee to add these vitally needed provisions.

The AFL-CIO is also concerned about the procedures involved in the imposition of disqualifications. Jobless workers subject to disqualification should be offered a fair hearing which they fail to receive in many cases under present procedures used in the States.

The courts, in recent years, have repeatedly criticized the State procedures and overruled and reversed the decisions of State adjudicators due to the lack of proper procedural safeguards. The AFL-CIO would like to require all the States to review their appeals procedures and revise them where necessary to make certain every claimant has an opportunity for a fair hearing in disputed matters.

A serious deficiency in the existing program relates to financing. The financing provisions of H.R. 10210 which would increase the

taxable wage base from $4,200 to $6,000 and increase the Federal tax rate from 0.5 to 0.7 percent for 5 years, fail to provide a solution to the problem of zero tax rates and token minimum tax rates that starve State funds of revenue.

This legislation also fails to face squarely the issue of State fund solvency. There is absolutely no requirement that the States maintain a fund at any minimum level.

We urge a return to the original concept of financing unemployment insurance, as modified by the 1939 amendments, that is, establishing parity between the unemployment insurance tax base and the social security tax base. This is needed to restore the financial soundness of the system and establish tax equity.

In subsequent years after general revenue advances have been repaid, if revisions are needed in the financial structure of the program, they should be considered at that time.

Sweeping changes are needed to the extended unemployment compensation program to make extended unemployment insurance protection potentially available to every jobless worker. The existing program should be abolished and replaced with a 100 percent federally financed extended unemployment compensation benefit program. This program should entitle every jobless worker to an additional 26-week Federal benefit period when his or her regular State benefits are exhausted.

Extended benefits should be coordinated with a comprehensive program of job counseling, training, upgrading of skills, rehabilitation services if needed, relocation assistance, and job placement.

We are practical enough to realize such a revision is unlikely to be made at this time, however, much it is needed. Although H.R. 10210 fails to go as far as we have recommended, it is a step in the right direction.

The AFL-CIO would also urge the committee to amend this bill to include improvements in the Emergency Unemployment Compensation Act of 1974—Public Law 93-572. This program of Federal supplemental benefits is due to terminate March 31, 1977. We urge that you extend the program for 1 year to March 31, 1978 because of the high levels of unemployment the Nation is still experiencing, and is likely to experience in the coming period.

Mr. Chairman, I have been listening with great interest to the previous witnesses and have been shocked that they simply have not referred at all to the needs of the unemployed workers and their families. And this will be, and I am sure is, the paramount concern of this committee as it looks at the need for amending H.R. 10210.

The AFL-CIO supports 10210 as a very modest start toward modernizing and improving the program. However, as we have indicated, we think that that bill needs substantial strengthening if the Nation's unemployment insurance system is to provide truly adequate protection for jobless workers and their families.

We urge enactment of this legislation with the improvements we have suggested without delay.

Thank you.

Senator GRAVEL. Thank you.

[The prepared statement of Mr. Seidman follows:]

STATEMENT OF BERT SEIDMAN, DIRECTOR, DEPARTMENT OF SOCIAL SECURITY, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

SUMMARY

Mr. Chairman, and members of the Committee, we appreciate this opportunity to present the views of the American Federation of Labor and Congress of Industrial Organizations concerning H.R. 10210. The AFL–CIO, with strong reservations, supports the major provisions of this bill designed to strengthen and improve the nation's unemployment insurance system.

We have, as the hearing announcement requested, summarized our testimony. Our prepared statement discusses in fuller detail the issues we will mention here as well as other issues omitted from this summary. We respectfully request that our full statement be included in the record of these hearings.

H.R. 10210 would, to a moderate degree, improve and modernize the existing permanent unemployment insurance program. Therefore, we support the major provisions of H.R. 10210 but we also call for its substantial improvement.

Coverage

The Emergency Jobs and Unemployment Assistance Act of 1974 (P.L. 93–567), usually referred to as SUA, temporarily remedied one of the more glaring deficiencies in the program. This measure furnished temporary unemployment insurance coverage to the 12 million workers who are still denied the protection of the permanent program.

H.R. 10210 would remedy a large part of this deficiency on a permanent basis. It would offer the protection of the regular program to most of the 12 million workers now excluded by extending coverage to many of the public employees, agricultural workers, and domestic workers who have been kept outside the system.

However, it would still leave uncovered approximately 40 percent of farm workers and 75 percent of domestic workers. Therefore, in our detailed statement, we have made specific suggestions for broader coverage of farm and domestic workers than H.R. 10210 provides.

The 1970 Employment Security Amendments extended unemployment compensation coverage to some public employees—workers in state hospitals and state institutions of higher education. Twenty-nine states have extended coverage of their program to substantially all state government employment. But only eight states cover substantially all local government employees.

This is the area of public employment in which job-loss protection is desperately needed now. H.R. 10210 would correct this glaring inequity by extending protection to most public employees. We urge the Committee to include this provision in the bill you report.

Weekly benefit amount

We indicated earlier our support for this legislation with reservations. One of them concerns the lack of minimum federal standards.

For many years, the AFL–CIO has urged enactment of a minimum federal standard to provide jobless individuals an adequate weekly wage replacement; we favor a benefit standard that would gradually, in a series of steps, increase the payment to 66⅔ percent of former weekly wages with an upper limit in each state equal to at least 75 percent of the state average weekly wage. We have insisted that along with the weekly benefit standard, there must also be qualifying and duration standards. A glaring gap in H.R. 10210 is that it does not include these essential minimum standards. We urge this Committee to add these vitally needed provisions.

Disqualifications

The AFL–CIO is also concerned about the procedures involved in the imposition of disqualifications. Jobless workers subject to disqualification should be offered a fair hearing which they fail to receive in many cases under present procedures used in the states. The courts, in recent years, have repeatedly criticized the state procedures and overruled and reversed the decisions of state adjudicators due to the lack of proper procedural safeguards. The AFL–CIO would like to see H.R. 10210 amended to include a provision that would require all the states to review their appeals procedures and revise them where necessary to make certain every claimant has an opportunity for a fair hearing in disputed matters.

Financing

A serious deficiency in the existing program relates to financing. The financing provisions of H.R. 10210, which would increase the taxable wage base from $4,200 to $6,000 and increase the federal tax rate from 0.5 to 0.7 percent for five years, fail to provide a solution to the problem of zero tax rates and token minimum tax rates that starve state funds of revenue. This legislation also fails to face squarely the issue of state fund solvency. There is absolutely no requirement that the states maintain a fund at any minimum level.

We urge a return to the original concept of financing unemployment insurance, as modified by the 1939 amendments, i.e., establishing parity between the unemployment insurance tax base and the social security tax base. This is needed to restore the financial soundness of the system and establish tax equity. In subsequent years after general revenue advances have been repaid, if revisions are needed in the financial structure of the program, they should be considered at that time.

Extended benefits

Sweeping changes are needed in the extended unemployment compensation program to make extended unemployment insurance protection potentially available to every jobless worker. The existing program should be abolished and replaced with a 100 percent federally financed extended unemployment compensation benefit program. This program should entitle every jobless worker to an additional 26-week federal benefit period when his or her regular state benefits are exhausted. Extended benefits should be coordinated with a comprehensive program of job counseling, training, upgrading of skills, rehabilitation services if needed, relocation assistance, and job placement.

We are practical enough to realize such a revision is unlikely to be made at this time, however much it is needed. Although H.R. 10210 fails to go as far as we have recommended, it is a step in the right direction.

The AFL–CIO would also urge the Committee to amend this bill to include improvements in the Emergency Unemployment Compensation Act of 1974 (P.L. 93–572). This program of Federal Supplemental Benefits (FSB) is due to terminate March 31, 1977. We urge that you extend the program for one year to March 31, 1978 because of the high levels of unemployment the nation is still experiencing and is likely to experience in the coming period.

Conclusion

Modernization of the unemployment compensation system has been too long delayed. The AFL–CIO supports H.R. 10210 as a very modest start toward modernizing and improving the program to meet the realistic needs of the nation's jobless for the remainder of the 1970's and beyond. However, as we have indicated, H.R. 10210, as passed by the House of Representatives, needs substantial strengthening if the nation's unemployment insurance system is to provide truly adequate protection for jobless workers and their families.

We urge enactment of this legislation, with the improvements we have suggested, without delay.

STATEMENT

Mr. Chairman, and members of the Committee, we appreciate this opportunity to present the views of the American Federation of Labor and Congress of Industrial Organizations concerning H.R. 10210. The AFL–CIO, with strong reservations, favors and supports the major provisions of this bill designed to strengthen and improve the nation's unemployment insurance system.

Just a few days ago, President Meany expressed the serious concern organized labor shares with other responsible individuals and groups over the continued high levels of unemployment in this nation. President Meany commented on the August, 1976 Labor Department unemployment figures as follows:

"In the two years of Mr. Ford's presidency the official unemployment rate has risen from 5.5 percent to 7.9 percent. That means there are 2½ million more Americans unemployed now than when he took office. There are one million fewer manufacturing workers and 600,000 fewer construction workers employed today.

"That is the official, understated record. An honest count, which includes those too discouraged to seek work and those forced into part-time jobs because full-time jobs are not available, is worse. By that count, unemployment today is 10.5 percent or 10.1 million jobless."

Organized labor is convinced the economic situation is getting worse, not better.

Unemployment among adult men increased approximately 300,000 in the past two months.

An additional 140,000 teenagers became jobless in the same period. This raised the unemployment rate for this group to 19.1 percent.

Construction unemployment, already at depression levels, has increased by approximately 225,000 workers since May.

Unlike the official government figures, the AFL–CIO formula realistically includes the number of persons who are too discouraged to seek work and those who are forced to work part-time because fulltime jobs are not available. The Bureau of Labor Statistics counts only those who are fully unemployed and are actively seeking work. Even at the official rate of 7.9 percent, current joblessness matches the peak of the 1958 recession.

Approximately 3.7 million workers were employed part-time "for economic reasons" in August, BLS reported. While the government fails to count the time they spend not working as part of the nation's jobless rate, the AFL–CIO uses the conservative measure of 50 percent of their time as unemployed.

The BLS report showed that total employment in August increased by only 74,000 to 88 million, seasonally adjusted. The civilian labor force, meanwhile, rose by 154,000 to 95.5 million workers.

The jobless rate among construction workers declined slightly from 17.7 to 17.1 percent over the month. Among workers in the wholesale and retail trades, the rate rose from 8.5 percent to 9 percent. The rate for farm workers declined from 12.4 percent to 10 percent.

The average duration of unemployment remained high for the third straight month at 15.5 weeks in August. The number of workers jobless less than 5 weeks increased, and there was also an increase in the number of very long-term unemployed—those out of work 27 weeks or more.

Organized labor has consistently advocated and supported legislative efforts to expand jobs and put people back to work. We still favor this approach to solving the problem of joblessness. But now and in the future for the worker who are jobless, whether they are many or few, the nation must have an effective system of unemployment compensation.

H.R. 10210 would improve and modernize the existing permanent unemployment insurance program to a moderate degree. The AFL–CIO has been urging the Congress to enact improvements of this nature, and others which we hope you will include in the bill you report, for a long time. Therefore, we support the major provisions of H.R. 10210 but call for its substantial improvement.

Coverage

The enactment of the Emergency Jobs and Unemployment Assistance Act of 1974 (P.L. 93–567), usually referred to as SUA, temporarily remedied one of the more glaring deficiencies in the program. This measure furnished temporary unemployment insurance coverage to the 12 million workers who are still denied the protection of the permanent program. H.R. 10210 would remedy this deficiency on a permanent basis. It would offer the protection of the regular program to most of the 12 million workers now excluded by extending coverage to many of the public employees, agricultural workers, and domestic workers who have been kept outside the system.

Agricultural employment.—H.R. 10210 would extend unemployment compensation coverage to approximately 700,000 farm workers. This provision in H.R. 10210 to extend the protection of the program to farm workers is long overdue. It would furnish approximately 59 percent of workers employed as farm labor with income protection they have been denied for 40 years.

The AFL–CIO has, as a matter of long-standing policy, urged extension of the program to all farm workers. This legislation is a move in that direction. Extending coverage to all farm workers would benefit farm workers, farm employers, and agricultural communities. It would help stabilize the farm workforce; it would reduce the labor turnover cost and recruitment cost. Farm workers, who now work in both covered and uncovered employment, would be more apt to remain in the farm workforce if their total employment was covered and used to determine eligibility for benefits. The worker would then be able to maintain his home and family without seeking demeaning public assistance, as he must now do all too often.

Farm workers are entitled to the same legislative protection as all other workers. Because unemployment insurance is a very important aspect of this protection, the extension of coverage to farm workers was one of the major

recommendations in the Report of the National Advisory Commission on Food and Fiber.

Three jurisdictions—Hawaii, Minnesota, and Puerto Rico—have extended the coverage of their programs to farm workers; the other states should be required to do no less. We urge this Committee to extend unemployment insurance protection to every farm worker in the nation on a permanent basis by amending the provisions of H.R. 10210 to cover farm employers of one or more workers at any time. If the Congress does not wish to apply coverage to farm employers of one or more workers at any time, it should at least extend coverage to employers of four or more workers in 20 weeks in the calendar year or who paid wages of $5,000 in any calendar quarter.

Domestic Workers.—We urge this Committee to include the coverage of domestic workers as proposed in H.R. 10210 who, though needing social insurance protection to the same extent as other workers, are usually the last to be covered by labor and social legislation. Indeed, their need for unemployment compensation protection is, in many cases, greater than the need of other working people. Domestic workers are frequently the sole breadwinner in their families.

H.R. 10210 would extend coverage only to domestic workers employed in the largest households. The bill uses a payroll standard to limit coverage to workers employed by an employer who paid cash remuneration of $600, or more, for domestic service in any calendar quarter in the year. This payroll limitation would cover only 25 percent of domestic workers; it would still leave the majority of domestic workers outside the system. Total domestic worker employment involves approximately 1.3 million workers; H.R. 10210 would extend coverage to a mere 300,000 of these workers. The AFL-CIO urges this Committee to lower the payroll limit in order to increase the extent of coverage.

Four states now cover domestic workers under their programs. The District of Columbia and New York use a $500 quarterly payroll to limit coverage. Hawaii has gone further in extending coverage by setting the payroll limit at $225 in a calendar quarter, and Arkansas covers domestic workers if the quarterly payroll is $500 or the employer had three or more workers employed in domestic work.

We would favor a revision in H.R. 10210 setting the payroll limit at the level used in Hawaii, and we hope the Committee will amend the bill in this manner. Although such a change would not provide complete domestic worker coverage—most day workers would still be excluded—further extensions of coverage could be made based on studies the Secretary could be requested to undertake.

Public Employees.—The 1970 Employment Security Amendments furnished coverage to some public employees—workers in state hospitals and state institutions of higher education—but it completely overlooked the needs of other state workers and millions of county and municipal workers and employees of other political jurisdictions. For example, maintenance workers employed by local school districts face the same risk of unemployment as maintenance workers in state institutions of higher education. Workers in city and county hospitals suffer the same hardships, if unemployed, as workers in state hospitals. Similar comparisons could be made between workers in public and private employment relative to highway workers, sanitation workers, library workers, utility workers, and others. Unemployed public employees must feed, clothe, and house their families at all times and in the same manner as other workers. The landlord and the grocer cannot and do not suspend demands for payment simply because a jobless worker happens to be a public employee.

The Congress has recognized the devastating impact of unemployment on federal workers. It has acted as a responsible employer and an understanding legislative body by enacting legislation to provide unemployment compensation protection for federal workers. Workers employed by other political jurisdictions deserve the same protection.

In fact, a majority of states—twenty-nine—have recognized the importance of unemployment insurance protection and extended coverage of their program to substantially all state government employment. However, the states have failed to go far enough in terms of political subdivisions. Only eight states cover substantially all local government employees. This is the area of public employment in which job-loss protection is desperately needed now. H.R. 10210 would correct this glaring inequity in the existing program and extend unemployment insurance protection to most public employees. Enactment of this provision would measurably improve the program, and we urge the Committee to include this amendment in the bill you report.

Weekly benefit amount

We indicated earlier our support for this legislation with reservations. One of our reservations concerns the lack of minimum federal standards. This Committee, I am certain, is well aware of organized labor's long-standing support for minimum federal benefit standards. For many years, we have urged enactment of a minimum federal standard to provide jobless individuals an adequate weekly wage replacement; we favor an upper limit in each state equal to at least 75 percent of the state average weekly wage. We have insisted that along with the weekly amount standard, there must also be qualifying and duration standards. All three of these standards are essential for the operation of an efficient and just program. H.R. 10210 fails to include provisions related to these three areas of the program.

Unemployment compensation has become increasingly important to indivduals, industries, and communities since the 1930's. An individual wage replacement benefit of one-half prior weekly earnings, provided by most existing state programs, is a carry-over from a long past era which fails to meet the needs of today's economy.

This Committee will be told, at some point in its deliberations, that unemployment compensation benefits are tax free. This is a generality that fails to reflect the actual situation. Unemployment compensation benefits are income tax free, but for workers with large families income taxes are a light burden compared to other more regressive tax levies. Benefit payments are subject to every other tax imposed on consumers. Sales taxes are almost universal today—state and local. This form of taxation was rare in the 1930's. Every purchase unemployed workers or their families make, to which a sales tax applies, must be paid with a benefit dollar. State and local property taxes are not suspended or waived because the family breadwinner is unemployed. Special district taxes of all types—water district, sewer district, school district, etc.—are common today, but were seldom used in the 1930's. Thus, the 50 percent wage replacement benefit structure developed in the 1930's is obsolete today.

In addition, there are other non-deferrable and important expenses a worker must meet in the 1970's that were uncommon or nonexistent in the 1930's. Workers must maintain health insurance protection for their families, car payments for transportation to and from work and to seek work, insurance on a home and its possessions, payments for expenses of the children in school such as school lunches and, in many cases, transportation costs. These are economic burdens a jobless worker cannot ignore and many of them cannot begin to adequately meet under the present benefit structure of state programs.

The problems workers face trying to live in the 1970's with benefits appropriate to some bygone era have been extensively surveyed and documented. What do jobless workers do when they cannot subsist on a 50 percent weekly wage replacement benefit? They use up their savings. They borrow money. They move to less costly housing or move in with parents or relatives. They sell what they can. They seek help from friends. Some of them, if they can bring themselves to it and many cannot, will ask for help from public or private welfare or assistance agencies. In short, they are forced to do the very things that the unemployment compensation program is supposed to prevent.

Unemployment insurance benefits will not really meet the basic needs of jobless workers and their families unless the individual weekly benefit amount replaces not less than 66⅔ percent of the worker's full-time weekly wage up to at least 75 percent of the state average weekly wage. Individual benefits of at least 66⅔ percent of weekly wage loss are needed to cover non-deferrable living expenses and maintain normal family living standards. The State of New Jersey has for many years provided an individual wage replacement benefit equal to 66⅔ percent of former wages, and it is time the other states be required to meet this level of benefit adequacy. An income reduction of more than 33⅓ percent is far too great a burden to place on jobless workers in this nation who are unemployed through no fault of their own.

The existing deficiencies in the program have become more apparent in recent years and have become more significant. In the past few years, repeated efforts have been made to modify the program to meet special problems. These efforts have alarmed some objective observers of the program.

The W. E. Upjohn Institute for Employment Research, a nonprofit organization concerned with causes and effects of unemployment, published a study on April 1, 1971, entitled "Income for the Unemployed—the Variety and Fragmentation of Programs." The study contains the following passage in its conclusions:

"The fragmentation of programs that provide income support for the unemployed causes differences between programs in terms of their purposes, benefit levels, coverage, eligibility conditions, etc., and thereby produces confusion and some inequities. Fragmentation also presents problems of duplication of benefits and of administrative coordination. The limitations of programs in their scope and coverage leave large numbers of the unemployed with no income support at all."

The AFL–CIO is certain that unemployment, due to defense cut-backs, environmental problems, energy shortages, and other causes, will continue to stimulate well-meaning efforts to provide special unemployment compensation protection leading to even more fragmentation. The single most effective method for solving this problem would be enactment of a minimum federal benefit standard to provide individuals with a 66⅔ percent wage replacement benefit up to the maximum amount which should also be raised to an adequate level.

We strongly urge revising this legislation to raise the state maximum benefit amounts to 75 percent of the state average weekly wage. And, as we have emphasized earlier in this statement, we urge that the individual weekly benefit formula be increased to 66⅔ percent of former weekly wages up to the state maximum to provide a greater measure of protection of the living standards of unemployed workers and their families. If the Committee feels it is inappropriate to raise benefits to this level now, we suggest that the benefit standard be established in steps over a period of years. And we urge you to begin by taking a first step with the passage of this legislation.

This first step might require an individual weekly benefit of 55 percent of former weekly wages by January 1, 1978, and a state maximum benefit of 60 percent of the state average weekly wage by the same date. Subsequent increases could be required in this legislation that would eventually raise the benefit structure of the program to the desired level.

But improving the benefit standard, however essential, is not enough unless minimum standards for eligibility and duration are also established.

Duration provisions

A standard on benefit duration is essential to modernization of the program. The maximum regular benefit duration period varies from a low of 20 weeks in Puerto Rico to a high of 36 weeks in Utah. The maximum duration period in the majority of state programs is 26 weeks. It would be a mistake, however, to assume the majority of jobless workers qualify for 26 weeks of benefits.

In some states, the average potential duration of benefits is as low as 19 weeks; while in others, average potential duration is as high as 30 weeks.

The AFL–CIO insists that any worker, who has worked for a reasonable period and is out of a job, should be entitled to regular benefits for at least 26 weeks and extended benefits after that if he or she still can't find work. Unfortunately, H.R. 10210 fails to establish a reasonable standard for benefit qualification and benefit duration.

The AFL–CIO urges this Committee to include in any unemployment compensation legislation it approves a minimum federal standard that would assure every covered worker with 20 weeks of work, or the equivalent, 26 weeks of unemployment compensation protection. This standard is vital if the present abuses in this area of the program are to be corrected. The states could, of course, establish other qualifying requirements for less labor force attachment and shorter duration periods, but these requirements should be consistent with the basic standard established by Congress.

Disqualifications

Organized labor has always accepted the proposition that public programs must be guided by rules and regulations, but the rules and regulations must be reasonable. Disqualifications in the unemployment compensation program should be remedial and not punitive. The existing practices in some states of imposing excessive disqualifications to reduce or minimize the cost of the program to employers will only be corrected through the enactment of a minimum federal standard that requires the states to treat all jobless workers with equity in case a disqualification is imposed.

Disqualifications should be limited to a period relevant to the type of law, rule, or regulation violation: if a worker refuses a job offer "without good cause" in any one week, for example, then, at most, that worker's disqualification should be only for that week. If a worker fails to report to the agency at the proper time and place, the disqualification should be limited to the week of failure to

report; additional weeks should not be imposed in all cases as they are all too often at this time. In no event, however, should the period of disqualification exceed six weeks.

In a very minor fashion, H.R. 10210 recognizes the problem of unreasonable disqualifications, and it does contain a modest proposal to limit the imposition of a disqualification in cases related to pregnancy. This provision of the bill merits the support of this Committee.

The reason for limiting the penalty to six weeks is that in a fairly good job market, six weeks is about the span of a normal period of unemployment. However, at any given time, there is no assurance a good labor market will prevail for individual workers. When the penalty for a disqualifying act is extended for a substantial period of weeks—and this is frequently the case—jobless workers may be condemned to their entire period of unemployment without unemployment compensation.

In these cases, the greater part of the economic hardship is caused by the slackness of the labor market, not by anything the worker may have done. This is the condition unemployment compensation was designed to prevent. Only by limiting disqualification periods to a maximum of six weeks can the penalty for a disqualifying act be applied equitably. Jobless workers should not be penalized for economic conditions over which they have no control.

A standard of this nature would allow the states ample leeway to impose disqualifications consistent with the seriousness of each case, and it would eliminate present abuses that completely strip jobless workers of their total earned right to unemployment compensation benefits.

The AFL–CIO is also concerned about the procedures involved in the imposition of disqualifications. Jobless workers subject to disqualification should be offered a fair hearing which they fail to receive in many cases under present procedures used in the states. The courts, in recent years, have repeatedly criticized the state procedures and overruled and reversed the decisions of state adjudicators due to the lack of proper procedural safeguards. The AFL–CIO would like to see H.R. 10210 amended to include a provision that would require all the states to review their appeals procedures and revise them where necessary to make certain every claimant has an opportunity for a fair hearing in disputed matters.

Financing

A serious deficiency in the existing program relates to financing. The Social Security Act of 1935 imposed a 3 percent excise tax on total payrolls in covered employment which the Congress thought would adequately finance the program. Almost from the day of enactment, employers started to undermine this sound financial base, and deprive the system of revenue, but at the same time to take full advantage of the 90 percent tax credit. This has been accomplished through application of extremely low and even zero tax rates, a complete disregard for fund solvency, and insistence upon the maintenance of a low taxable wage base.

The AFL–CIO is convinced that without minimum federal standards for financing the program employers will continue to pressure state legislators to underfinance the program. Under-financing serves two purposes from the employer's point of view. It permits the maintenance of low contribution rates, and it maintains the reserve fund at such low levels state legislators are reluctant to raise benefits for fear of depleting the fund.

The Department of Labor has for many years measured the adequacy of the unemployment insurance reserve funds maintained by the states. The Department's measure of solvency or reserve adequacy is based upon past experience. This experience indicates that an unemployment insurance reserve fund of at least 1½ times the highest benefit-cost ratio experienced in a state for a 12-month period during the past several business cycles is the minimum required. This is the reserve needed at the beginning of a downturn in the business cycle so that adequate funds may be available for the payment of benefits. (Benefit expenditures as a percent of total covered payrolls equals the benefit-cost ratio.)

The lack of federal standards has resulted in the financial erosion of the system over a 40-year period to the detriment of unemployed workers, their communities, and the economic stability of the nation. The latest Department of Labor data available reveal that during 1974 more than one-half the total wages in covered employment were excluded from the tax base, and in addition, the average employer tax rate was less than 1 percent of total payroll.

The Administration has suggested to the Committee a dual approach to the problem of financing—an increase in the tax base and a simultaneous increase

in the federal tax rate. The taxable wage base would be fixed at $6,000 and the Federal Unemployment Tax Act (FUTA) rate increased temporarily from 3.2 percent to 3.4 percent.

In future years after general revenue advances to the loan fund are repaid, the FUTA rate would be reduced from its temporary level of 3.4 percent to its present level of 3.2 percent.

This is a weak and timid approach to adequate program financing. A $6,000 taxable wage base, which is all the program would be left with after the advances are repaid, will return the system to its present status. A large proportion of the wages in covered employment will escape the tax. In 1974, the average annual wage in covered employment was $9,183; it is higher now and can be expected to increase in the future. This proposal would perpetuate the erosion of the tax base that occurred from 1939 (a fixed $3,000) to 1970 (a fixed $4,200) and from 1970 to the present. Under these fixed tax bases, less than 50 percent of covered wages were subject to the tax, and these conditions helped bring about the present situation.

The financing provisions of H.R. 10210, which would increase the taxable wage base from $4,200 to $6,000 and increase the federal tax rate from 0.5 percent to 0.7 percent for five years, fail to propose a solution to the problem of zero tax rates and token minimum tax rates that starve state funds of revenue. This legislation also fails to face squarely this issue of state fund solvency. There is absolutely no requirement that the states maintain a fund at any minimum level, although for years the Department of Labor has advocated the use of its standard as a guide for states to use to measure the adequacy of their funds.

A return to the original program financing—as modified by the 1939 amendments establishing parity between the unemployment insurance tax base and the social security tax base—is needed at this time to restore the financial soundness of the system and establish tax equity. In subsequent years after general revenue advances have been repaid, if revisions are needed in the financial structure of the program, they should be considered at that time.

The manipulation of the original intent of the Congress for adequate funding of the program at the time it was originally enacted is directly related to the inadequacies of the program in 1976.

The financing of the unemployment insurance should be placed on a firm and adequate foundation by enactment of minimum federal standards.

The problem of adequate unemployment insurance financing will only be corrected by federal legislation. The AFL-CIO urges this Committee to reaffirm the original intent of Congress and reassert the original sound financial concepts upon which the system was built by revising the financing provisions contained in H.R. 10210 to increase in a series of steps over a period of years the taxable wage base to the social security level and to apply the tax rate to total wages in covered employment.

Extended benefit program

A major problem of the unemployment compensation system is the existing extended benefit program for the long-term unemployed. Enactment of H.R. 10210 would modify the operation of this program, and it should be modified. This program has failed every test to which it has been exposed at both the state and national level. It depends upon complex and unresponsive trigger mechanisms related to unemployment levels which are supposed to make the program operative in individual states or throughout the nation.

This trigger approach to the problems of long-term unemployment is the most inefficient solution to the problem that could be adopted. The problems of long-term jobless workers need to be remedied at the time the worker is unemployed. They ought not to be tied to state and national levels of unemployment.

That is why the trigger approach to the problems of long-term unemployment makes no sense. A worker who is the victim of long-term unemployment needs income protection whenever he is jobless and regardless of the level of area or state or national unemployment.

Sweeping changes are needed in the extended unemployment compensation program to make extended unemployment insurance protection potentially available to every jobless worker. The existing program should be abolished and replaced with a 100 percent federally financed extended unemployment compensation benefit program. This program should entitle every jobless worker to an additional 26-week federal benefit period when his regular state benefits are exhausted. Extended benefits should be coordinated with a comprehensive program of job counseling, training, re-training, upgrading of skills, rehabilitation services if needed, relocation assistance, and job placement.

We are practical enough to realize such a revision is unlikely to be made at this time however much it is needed. Although H.R. 10210 falls to go as far as we have recommended, it is a step in the right direction.

The national trigger under the federal-state extended benefit program would remain at an insured unemployment rate (IUR) of 4.5 percent, but would be based on a moving 13-week period instead of three consecutive months. The state trigger would be an IUR of 4 percent, seasonally adjusted, measured over a moving 13-week period. The present 120 percent trigger requirement would be eliminated.

The permanent extended benefit program, due in large measure to the 120 percent trigger requirement, has been a disappointment to jobless workers, the Department of Labor, state administrators, and the Congress. We urge you to support the provisions of H.R. 10210 in this regard because they represent a modest step toward permanent program improvements to meet the needs of the long-term unemployed.

The AFL–CIO would also urge the Committee to amend this bill to include improvements in the Emergency Unemployment Compensation Act of 1974 (P.L. 93–572). This program of Federal Supplemental Benefits (FSB) is due to terminate March 31, 1977. We urge that you extend the program for one year to March 31, 1978 because of the high levels of unemployment the nation is still experiencing.

In addition, this program should be modified in terms of duration and triggers. At present, the triggers for this program are based only on insured unemployment rates in the states. If the rate of unemployment in a state reaches 5 percent, 13 weeks of FSB become payable. If the rate reaches 6 percent, an additional 13 weeks of FSB become payable, for a total of 26 weeks.

Legislation introduced in the Senate by Senator Williams and Senator Javits—S. 3262—would amend this program. This legislation would establish a national trigger that would operate in conjunction with the state triggers to make 65 weeks of benefit payments available.

The AFL–CIO would urge you to adopt this concept from S. 3262 and establish a national program of at least a 52-week duration period to become effective October 1, 1976. The trigger for this program should not require an insured rate of unemployment greater than 5 percent and the trigger should be computed in the manner specified in section 301 of S. 3262.

Conclusion

Modernization of the unemployment compensation system has been too long delayed. The AFL–CIO supports H.R. 10210 as a very modest start toward modernizing and improving the program to meet the realistic needs of the nation's jobless for the remainder of the 1970's and beyond. However, as we have indicated, H.R. 10210, as passed by the House of Representatives, needs substantial strengthening if the nation's unemployment insurance is to provide truly adequate protection for jobless workers and their families.

We urge enactment of this legislation, with the improvements we have suggested, without delay.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS POLICY RESOLUTION ON UNEMPLOYMENT INSURANCE—RESOLUTION NO. 109 ADOPTED OCTOBER 1975

Millions of jobless workers in the current recession have found the nation's fragmented unemployment insurance ssytem woefully inadequate to meet their needs.

Millions of workers are not covered at all, except temporarily on a stop-gap basis under hastily-enacted legislation.

Additional millions who expected to be eligible have been disqualified from benefits by harsh and capricious state laws and regulations.

Extended benefits, though available now, would expire at lower overall unemployment rates, leaving the long-term jobless, most of whom would not be eligible for welfare, with no income whatsoever.

Employer tax payments are so pitifully low that state unemployment insurance funds will require more federal bail-outs or jobless workers will be deprived of benefits altogether.

The AFL–CIO has long supported federalization of the unemployment insurance program with full protection of the job rights and employment conditions of all state employees who presently administer the program. Until that goal is

achieved, we favor enactment of federal minimum standards for eligibility, benefit amounts, benefit duration, disqualifications and other essential features of the program.

Therefore, the AFL-CIO calls upon the Congress to promptly enact legislation which will:

1. Extend coverage to all wage and salary workers on a permanent basis. We also call for appropriate action to give some form of unemployment insurance protection to new entrants and reentrants into the labor force.

2. Establish minimum federal benefit standards of at least 66⅔ percent of the worker's weekly wage (or the equivalent) up to no less than 75 percent of the state average weekly wage. Dependent allowances may supplement, but not substitute for, the minimum basic benefit.

3. Provide for regular benefit duration requiring not more than 20 weeks of work for at least 26 weeks of benefits.

4. Establish a maximum disqualification period of six weeks. We reaffirm our opposition to disqualification of participants in labor disputes. If such unjust disqualifications are imposed over our opposition, we insist they be limited to a maximum of six weeks.

5. Prohibit any reduction or cancellation of a worker's benefit rights or base-period wages.

6. Abolish the existing triggered extended unemployment compensation program. Until economic prosperity is restored, all jobless workers, including those temporarily covered under Special Unemployment Assistance, should be eligible for at least 65 weeks of benefits. In permanent legislation, federally-financed extended benefits of at least 26 weeks should be available to all workers who exhaust their regular benefits. Extended benefits should be coordinated with a comprehensive program of job counseling, training and retraining, upgrading of skills, rehabilitation services if needed, voluntary relocation assistance and job placement.

7. Restore the financial solvency of the system by:

Raising the taxable wage base immediately to the state average wage and, in steps, to the OASDHI (Social Security) level.

Setting a minimum standard of adequacy that state reserve funds would be required to meet and maintain.

Eliminating experience-rating altogether or, at the very least, reducing the minimum range between maximum and minimum tax rates, prohibiting zero rates and permitting states, when appropriate, to reduce tax rates for all employers on a basis other than experience-rating.

Encourage states to eliminate the waiting week by requiring it be compensated retroactively after a few weeks of unemployment.

Guarantee unemployment insurance recipients the right to a hearing before before benefits are cut off. The U.S. Supreme Court has already established this right for welfare recipients.

The glaring defects in the present inadequate and fragmented system of unemployment insurance must be corrected immediately with permanent improvements in the program so that unemployment insurance can truly meet the needs of all jobless workers and thus contribute to the welfare of the entire nation.

Senator GRAVEL. Mr. William B. Welsh.

STATEMENT OF WILLIAM B. WELSH, EXECUTIVE DIRECTOR FOR GOVERNMENTAL AFFAIRS, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES

Mr. WELSH. Mr. Chairman, I am William B. Welsh, executive director for governmental affairs of the American Federation of State, County, and Municipal Employees. Our union currently has over 700,000 members and represents over 1.2 million State and local government employees.

I submit for the record a comprehensive statement which discusses our views and concerns about this bill in detail. Once again, we appear before the congressional committee to point out the disparity between the protections of public and private workers.

State and local employees do not want to be treated any differently than private sector workers—only on an equal basis. In the case of unemployment compensation, public workers do not have the same protections as private workers—over two-thirds of them are not covered today under State unemployment laws.

However, the unfortunate reality of the situation is that the second-class treatment of public employees goes well beyond the area of unemployment compensation. It spills over to such areas as occupational safety and health, social security, pension reform, and collective bargaining. In each of these areas, public workers are also treated as a separate class of American workers; they do not have the same protections as workers in the private sector.

H.R. 10210 would remedy this second-class treatment of public workers insofar as their eligibility for coverage and benefits under the Federal-State unemployment insurance system is concerned. It would also help restore the solvency of the depleted State unemployment insurance funds by temporarily increasing the Federal payroll tax rate and the taxable wage base for private employers.

The latest U.S. Labor Department figures show that some 8.3 million public workers out of a total State and local government work force of 12 million are not covered under State unemployment insurance laws. They are only eligible for coverage under the Special Unemployment Assistance program, a temporary Federal program that is due to expire at the end of this year unless Congress once again extends it.

This program only provides a maximum of 39 weeks of unemployment benefits, while public workers who are covered under State law and all private sector and Federal employees may be eligible for up to 65 weeks of regular, extended, and emergency unemployment benefits.

Only eight States—Connecticut, Florida, Hawaii, Michigan, Minnesota, Ohio. Oregon, and Wisconsin—cover all public workers on a mandatory basis under their State unemployment insurance laws. In the other 42 States, coverage is inconsistent. It is not uncommon, for example, to find State workers covered on a mandatory basis, while local workers are only covered if the local jurisdiction chooses to do so.

This fundamental inequity in the Federal-State unemployment insurance system would be eliminated if H.R. 10210 were enacted.

This brings me to the issue of cost. In previous testimony before the House Ways and Means Subcommittee on Unemployment Compensation, a number of public employer groups have claimed that the cost of universal coverage would be prohibitive. However, the U.S. Labor Department's latest cost survey of existing public employee coverage and our survey of recent cost experience in States that currently provide mandatory State and local employee coverage show that the long-range cost has remained reasonably low, despite some understandable increases during recessionary periods.

This is especially true when the cost of public employee coverage in these States is compared with the cost of private sector coverage. The facts are that the experience in four key States shows that the cost of private sector coverage averaged almost 7 times greater than the cost of public employee coverage.

The results of these surveys are detailed in our supplemental statement. Particular attention should be focused on the low cost of public

employee coverage during 1975, which was at the height of the current recession and the year in which public section layoffs peaked.

Before closing this testimony, I would like to address myself to the constitutional validity of a Federal standard requiring universal public employee coverage. This issue has been raised recently in light of the U.S. Supreme Court's decision in the *National League of Cities'* case.

In the opinion of the AFSCME counsel, which is detailed in our supplemental statement, and of the U.S. Department of Labor Solicitor, it is clear that the constitutional basis for unemployment compensation coverage is wholly different than the *National League of Cities'* decision, which rests on the power of the Congress to regulate interstate commerce.

H.R. 10210 relies on the taxing and spending power of Congress for its constitutional authority. It would simply add a reasonable condition to be met by any State that chooses to participate in the Federal-State unemployment insurance system.

Mr. Chairman, this concludes my testimony. I would like to thank you for this opportunity to present our views and concerns here today and look forward to working with you toward enactment of H.R. 10210.

Senator BROCK [presiding]. Thank you very much. I appreciate your testimony. I do not have any questions.

I hear none from other members.

We appreciate your appearance very much.

[The prepared statement of Mr. Welsh follows:]

SUPPLEMENTAL STATEMENT OF WILLIAM B. WELSH, EXECUTIVE DIRECTOR FOR GOVERNMENTAL AFFAIRS, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO

UNEMPLOYMENT COMPENSATION: EXTENSION OF COVERAGE

H.R. 10210—The Unemployment Compensation Amendments of 1976—would correct some of the blatant inequities that currently exist in the present federal-state unemployment insurance system and would help restore the solvency of the depleted state unemployment insurance funds.

Of vital concern to us is that this bill would also establish a federal standard which would provide coverage for state and local government workers on the same basis as private sector and federal government workers.

I cannot think of any arguments that have been made over the years that justify the existence of the federal-state unemployment insurance system for private sector and federal government workers that are not applicable to state and local government workers. If there are social and economic benefits underlying unemployment compensation for private and federal workers, they are equally applicable to workers who are laid off from state and local employment.

Coverage: A question of equity

It is unfortunate that the Special Unemployment Assistance program (SUA) is the only mechanism that provides most public workers with protection against unemployment. The facts of the matter are that SUA was established because most of the states have refused to cover public workers on a mandatory basis. In 1974, during the onset of the current recession, Congress recognized this major deficiency in the federal-state unemployment insurance system. As a temporary, stop-gap measure, Congress created SUA to mitigate the impact of unemployment on the record number of public sector lay-offs that it anticipated and actually have occurred since that time.

Public employment has changed in recent years, as the current recession has demonstrated very clearly. The idea that public jobs are the most secure form of employment is no longer valid—it has become a myth. The facts of the matter

are that public employees have been applying for unemployment compensation in unprecedented numbers, typified by—not limited to—the massive layoffs in Buffalo, Detroit, New York City and State, and Philadelphia.

Most states have *not* responded to this changing trend in public employment. Very few have amended their unemployment laws to cover public workers. Most of them are still taking the outmoded view that public jobs are the most secure form of employment.

This is reflected in the U.S. Labor Department's latest estimate that some 8.3 million out of a total state and local government work force of 12 million are not covered under state unemployment insurance laws. These are the public workers who would be covered if H.R. 10210 is enacted.

According to the latest U.S. Labor Department count, only eight states—Connecticut, Florida, Hawaii, Michigan, Minnesota, Ohio, Oregon, and Wisconsin—cover state and local workers on a mandatory basis. Public employee coverage in the other 42 states is inconsistent, as the following table clearly demonstrates.

States that provide public employee coverage	Types of coverage for—		Number of States that provide this coverage
	State employees	Local employees	
Connecticut, Florida, Hawaii, Michigan, Minnesota, Ohio, Oregon, and Wisconsin.	Mandatory	Mandatory	8
Arizona, California, Delaware, Nebraska, New Hampshire, New York, Rhode Island, South Dakota, Texas, Utah, Virginia, and Washington.	do	Elective	12
Arkansas, Idaho, Illinois, Iowa, Louisiana, Montana, Oklahoma, and Pennsylvania.	do	No coverage	8
Kentucky	Elective	do	1
Alaska, Maryland, Missouri, Nevada, North Dakota, Tennessee, and Wyoming.	do	Elective	7
Kansas and Vermont	No coverage	do	2
Alabama, Colorado, Georgia, Indiana, Maine, Massachusetts, Mississippi, New Jersey, New Mexico, North Carolina, South Carolina, and West Virginia.	do	No coverage	12
Total			50

Source: "Comparison of State Unemployment Insurance Laws," U.S. Department of Labor, 1975.

This hodgepodge of public employee coverage under the federal-state unemployment insurance system is absurd. It has resulted in a series of blatant inequities which deny coverage to state and local workers. At the same time, this system serves as a front line of protection against unemployment for virtually all other American workers.

The coverage provisions under the Louisiana state unemployment insurance law illustrate this very fundamental inequity in our unemployment insurance system. Under the Louisiana law, coverage is mandatory for state employees, but nonexistent for local government workers. As a result, we find the following disparities in coverage and benefit eligibility for different categories of workers:

1. A clerk working for the state of Louisiana is covered under the state unemployment law and, thus, may be eligible for up to 65 weeks of state, extended, and emergency unemployment benefits.

2. A clerk, doing comparable work for the city of New Orleans, is only eligible for up to 39 weeks of unemployment benefits under SUA because local government workers are not covered under the state unemployment law.

3. A clerk, doing comparable work for a private corporation in New Orleans, may be eligible for up to 65 weeks of unemployment benefits because private sector workers are mandatorily covered under the state unemployment law.

4. A clerk, doing comparable work for the federal government in New Orleans, also may be eligible for up to 65 weeks of unemployment benefits because federal employees working in Louisiana (or any other state) are mandatorily covered under the state unemployment law.

This situation is not unique to Louisiana; it is also indicative of the coverage problem in 41 other states. And the only way this could be remedied is by adding another standard to the Federal Unemployment Tax Act, as H.R. 10210 seeks to do, which would provide universal coverage for all state and local workers.

It should also be noted that this nationwide inconsistency in public employee coverage has created an inequitable situation for private employers in states that do cover public workers. Where public workers are covered under state law, state and local governments must absorb this cost. However, in the vast majority of states where public workers are not covered, these workers are covered under SUA, which is paid for by the federal government out of general tax revenues. Thus, private employers in states providing public employee coverage are being taxed twice to finance unemployment benefits. First, their federal unemployment payroll tax contribution is used to pay the administrative costs for operation of their state's unemployment insurance program and for part of the cost of the federal-state extended benefits program. And second, their federal income tax payments (and I might add those of individual taxpayers in these states) are being used to finance SUA, because that program is being paid for out of general tax revenues.

This inequity is also dealt with and remedied by H.R. 10210. Under this bill, all public workers would be covered under the permanent federal-state unemployment insurance system, thus eliminating the need for the SUA program.

Cost of public employee coverage

This brings me to the key issue of cost. During the series of hearings in 1975 and 1976 convened by the House Ways and Means Subcommittee on Unemployment Compensation representatives of public employer groups have claimed that the cost of universal public employee coverage would be prohibitive.

The facts of the matter are, however, as the U.S. Labor Department's 1973 survey shows, nationwide the cost of public employee coverage was very low. Benefits paid to state workers were only 0.23% of covered wages in state government employment, and 0.25% of covered wages in local government employment. In that same year, the cost of benefits paid was 0.79% of total wages for all regular state unemployment insurance programs across the country.

While the unemployment situation in the public and private sectors for 1973 is not the same as it is today, recent estimates by the New York State Department of Labor show that if local employee coverage under the state's unemployment insurance law were made mandatory, the cost would be minimal. The cost of such coverage today for local New York jurisdictions (expressed as benefits paid out as a percentage of covered local payroll) would be approximately 0.4%, if it were financed on a reimbursement basis. This by no means can be considered prohibitive.

In order to further confirm the fact that the cost of universal public employee coverage would be very low, we conducted our own survey of five midwest and eastern states that currently cover state and local government workers on a mandatory basis. We reviewed the recent cost experience of public employee coverage in Connecticut, Michigan, Minnesota, Ohio, and Wisconsin and compared it with the cost experience for private sector workers covered under each of these states' unemployment insurance laws.

The data for this survey was supplied by the unemployment insurance agencies of each of the five states and the results are detailed in the tables that appear in Appendix I of this statement. In each case, the cost of public employee coverage, expessed as benefits paid out as a percentage of total state and local payroll, was extremely low, especially when compared to private sector cost experience. In fact, the cost of private sector coverage averaged 6.8 times greater than the cost of public employee coverage in four out of the five states surveyed. (Ohio was not included in this average because private sector data was not available by the time this statement was printed.)

Special attention should be given to the cost data for 1975, which was the height of the current recession and the year when public sector layoffs reached their peak. As the data in Appendix I and in the table below show, although there was a noticeable increase in the cost of public employee coverage in these states during 1975, it was well outpaced by the dramatic rise in the cost of private sector coverage.

BENEFITS PAID OUT AS A PERCENTAGE OF COVERED PAYROLL IN 1975

States surveyed	State and local coverage	Private sector coverage
Connecticut	0.35	3.37
Michigan	.22	3.54
Minnesota	.20	1.70
Ohio	.17	(1)
Wisconsin	.28	2.20

[1] Not available.

The results of our cost survey updates the U.S. Labor Department's 1973 survey and should finally put to rest the claim that the cost of public employee coverage is prohibitive. Actually, the cost of public employee coverage has been consistently low prior to and during the worst recession since the Great Depression and has been by far less than private sector coverage. Based upon this cost experience, we expect the cost to remain low as the economy improves.

Constitutionality of public employee coverage

Before concluding this testimony, there is one final issue that must be addressed—that is, the constitutionality of a federal requirement that all State and local workers be covered on a universal basis under the federal-state unemployment insurance system. This issue is of special importance now in light of the recent U.S. Supreme Court decision in *National League of Cities v. Usery*.

Our legal counsel assessed the *National League of Cities'* decision in terms of its impact on the provisions in H.R. 10210 that would extend unemployment insurance coverage to public employees. The details of their findings are presented in Appendix II of this statement. They concluded that the *National League of Cities'* case in no way affects the constitutional validity of the proposed extension of the federal unemployment compensation law to cover public employees who are currently excluded from coverage.

The constitutional basis for unemployment insurance legislation, whether it be H.R. 10210 or the original legislation that was enacted as part of the Social Security Act, is wholly different from that which was at issue in the *National League of Cities'* case. In the *National League of Cities'* case, the court held that the power of the Congress to regulate Interstate Commerce did not encompass a law by which the states were compelled to adhere to federally-established minimum wage and maximum hour standards for their own employees. With respect to unemployment insurance, such legislation is based on the taxing, and spending powers of Congress, and H.R. 10210 would simply add another to the reasonable conditions to be met by any state that *chooses* to participate in the basic unemployment insurance program. Such voluntary participation would entitle private employers in the state to a 2.7 percent federal tax credit and entitle the state to receive federal monies for administering its unemployment insurance program.

This conclusion was reaffirmed by William Kilberg, Solicitor of Labor, in his June 28, 1976 Memorandum of Law on this very issue. In his introductory remarks, he summarized his findings as follows:

"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."

Summary

In closing, I would like to stress once again the fact that the absence of a federal standard requiring all the states to provide universal coverage of state and local government workers has created a grossly unfair unemployment insurance system. It denies coverage to a particular segment of the American work force—namely public employees (and I might add to domestic and agricultural workers as well)—at a time when it has been so sharply demonstrated that these workers have as great a need for such protection as private sector and federal employees. Such coverage, as provided for by H.R. 10210, is clearly constitutional, is cost-effective, and will restore a measure of equity to a federal-

state unemployment insurance system that, to date, has failed to serve as the front line of protection against the demeaning impact of unemployment on all American workers.

APPENDIX I—COMPARISON OF THE PURE BENEFIT COST OF MANDATORY STATE AND LOCAL EMPLOYEE COVERAGE WITH MANDATORY PRIVATE SECTOR COVERAGE

	Connecticut[1]					
	State and local government			Private sector		
Calendar year	Benefits paid out	Total State and local government covered payroll	Benefits paid out as percentage of covered payroll	Benefits paid out	Total private sector covered payroll	Benefits paid out as percentage of covered payroll
1972[2]	[3] $3,462,365	$1,154,700,000	0.30	[3] $174,180,400	$8,612,100,000	2.02
1973	2,702,845	1,277,200,000	.21	117,546,769	9,604,200,000	1.22
1974	3,303,451	1,397,500,000	.24	163,364,543	10,457,900,000	1.56
1975	5,704,637	[4] 1,611,200,000	.35	353,270,471	[4] 10,475,600,000	3.37

[1] State government employee coverage is financed on a reimbursement basis. Local government employee coverage is financed either on a reimbursement basis or on an experienced rating basis, depending upon the local jurisdiction's option.
[2] Mandatory coverage for local as well as State government employees commenced by calendar year 1972.
[3] Benefits paid out include regular State unemployment insurance benefits and the State's share of extended benefits.
[4] Third and fourth quarter payroll figures for calendar year 1975 are estimates.

Source: Employment Security Division, Connecticut Labor Department.

COMPARISON OF THE PURE BENEFIT COST OF MANDATORY STATE AND LOCAL EMPLOYEE COVERAGE WITH MANDATORY PRIVATE SECTOR COVERAGE

	Michigan[1][2]					
	State and local government			Private sector		
Calendar year	Benefits paid out	Total State and local government covered payroll	Benefits paid out as percentage of covered payroll	Benefits paid out	Total private sector covered payroll	Benefits paid out as percentage of covered payroll
1974	[3] $2,473,864	[3] $1,148,774,199	0.22	$494,555,867	$27,742,254,294	1.78
1975	8,373,850	3,665,921,264	.22	968,404,962	27,301,321,003	3.54

[1] State government employee coverage is financed on a reimbursement basis. Local government employee coverage is financed either on a reimbursement basis or on an experienced rating basis, depending upon the local jurisdiction's option.
[2] Benefits paid out include regular State unemployment benefits and the State's share of extended benefits.
[3] Calendar year 1974 figures only reflect mandatory State employee coverage; mandatory local employee coverage commenced in calendar 1975 and is included in the Michigan data for that year.

Source: Employment Security Commission, Michigan Department of Labor.

COMPARISON OF THE PURE BENEFIT COST OF MANDATORY STATE AND LOCAL EMPLOYEE COVERAGE WITH MANDATORY PRIVATE SECTOR COVERAGE

	Minnesota[1]					
	State and local government			Private sector		
Calendar year	Benefits paid out	Total State and local government covered payroll	Benefits paid out as percentage of covered payroll	Benefits paid out	Total private sector covered payroll	Benefits paid out as percentage of covered payroll
1974[2]	[3] $3,535,079	$1,805,572,253	0.20	[3] $100,007,665	$9,938,784,131	1.01
1975	4,188,692	2,140,886,396	.20	173,852,236	10,532,203,710	1.65

[1] State and local government employee coverage is financed on a reimbursement basis.
[2] Mandatory coverage for local as well as State government employees commenced in calendar year 1974.
[3] Benefits paid out inlcude only regular State unemployment insurance benefits.

Source: Minnesota Department of Manpower Services.

COMPARISON OF THE PURE BENEFIT COST OF MANDATORY STATE AND LOCAL EMPLOYEE COVERAGE WITH MANDATORY PRIVATE SECTOR COVERAGE

	Ohio[1]					
	State and local government			Private sector		
Calendar year	Benefits paid out	Total State and local government covered payroll	Benefits paid out as percentage of covered payroll	Benefits paid out	Total private sector covered payroll	Benefits paid out as percentage of covered payroll
1974[2]	[3] $2,051,219	$3,819,843,022	0.05	(4)	(4)	(4)
1975	7,089,241	4,217,141,296	.17	(4)	(4)	(4)
1976[5]	2,547,379	1,137,574,399	.22	(4)	(4)	(4)

[1] State and local government employee coverage is financed on a reimbursement basis.
[2] Mandatory coverage for local as well as State government employees commenced in calendar year 1974.
[3] Benefits paid out include only regular state unemployment insurance benefits.
[4] Not available.
[5] Data for calendar year 1976 reflects 1st quarter experience only.

Source: Ohio Bureau of Employment Services.

COMPARISON OF THE PURE BENEFIT COST OF MANDATORY STATE AND LOCAL EMPLOYEE COVERAGE WITH MANDATORY PRIVATE SECTOR COVERAGE

	Wisconsin[1]					
	State and local government			Private sector		
Calendar year	Benefits paid out	Total State and local government covered payroll	Benefits paid out as percentage of covered payroll	Benefits paid out	Total private sector covered payroll	Benefits paid out as percentage of covered payroll
1972[2]	[3,4] $3,133,000	$831,140,000	0.38	[3] $90,867,000	$9,446,242,000	0.96
1973	3,546,000	946,706,000	.37	78,907,000	10,691,352,000	.74
1974	4,040,000	1,646,416,000	.24	109,056,000	11,815,104,000	.92
1975	6,339,000	2,255,449,000	.28	269,049,000	12,241,562,000	2.20

[1] State and local government employee coverage is financed on a reimbursement basis.
[2] Mandatory coverage for local as well as State government employees commenced in calendar year 1972.
[3] Benefits paid out include only regular State unemployment insurance benefits.
[4] Benefits paid out to State and local government employees are estimates.

Source: Employment Security Division, Wisconsin Department of Industry, Labor, and Human Relations.

APPENDIX II

LAW OFFICES, ZWERDLING AND MAURER,
Washington, D.C.

CONSTITUTIONAL BASIS FOR UNIVERSAL PUBLIC EMPLOYEE COVERAGE UNDER THE FEDERAL-STATE UNEMPLOYMENT INSURANCE SYSTEM[1]

The decision of the Supreme Court in *National League of Cities* v. *Usery* in no way affects the constitutional validity of the proposed extension of the Federal unemployment compensation law to cover additional employees of the States and their subdivisions.

The constitutional basis for this legislation is wholly different from that which was at issue in the NLC case. There, the Court held that the power of the Congress to regulate interstate commerce did not encompass a law by which the States were compelled to adhere to federally-established minimum wage and maximum hour standards for their own employees. Here, the legislation is based on the taxing and spending powers of Congress, and would simply add another

[1] Prepared by the Office of the General Counsel, American Federation of State, County, and Municipal Employees, AFL-CIO, June 25, 1976, A. L. Zwerdling, General Counsel.

to the reasonable conditions to be met by any State that chooses to participate in the basic, permanent unemployment compensation program so as to entitle private employers in the State to the 2.7 percent tax credit and entitle the State to the Federal grant for administering its unemployment insurance program.

In *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937), the Supreme Court upheld the original law establishing the Federal-State Unemployment Compensation Program. That law enacted a payroll tax of 3.0 percent on private sector employers, and allowed a credit of up to 90 percent of the tax, or 2.7 percent, for contributions paid into a State unemployment fund under a State unemployment compensation law found to meet the conditions for approval that the Federal law established. Additionally, a State which had an approved compensation law could apply under the Act for a grant of funds to be used by the State in the administration of its law, and those grants would issue upon a finding that the State law contained the required provisions. In *Steward Machine*, the Court held that this law was within the power of Congress under Article I, Section 8, Clause 1, of the Constitution "[t]o lay and collect Taxes . . ., to pay the Debts and provide for the common Defense and general Welfare of the United States. . . .[1] Under that power, Congress was entitled to prescribe conditions for a tax credit that it found were related in subject matter to activities "fairly within the scope of national policy and power" and which would "assure a fair and just requital for benefits received" (301 U.S. at 590, 598). The conditions established by the law "[were] 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." (Id. at 593.) And "inducement or persuasion does not go beyond the bounds of power" (id. at 591).

To the argument that the Federal unemployment provisions infringed upon States' rights in violation of the Constitution, the Court replied that "[n]o officer or agency of the national government can force a compensation law upon [a State] or keep it in existence." (Id. at 595.) Mr. Justice Cardozo, writing for the Court, pointed out that the States have power to make contracts and to consent to an offer by the Federal Government of a Federal tax credit and grant. By enacting a state unemployment compensation law meeting Federal statutory standards, he wrote, a State "is seeking and obtaining a credit of many millions [against the Federal unemployment tax] in favor of her citizens out of the Treasury of the nation. *Nowhere in our scheme of government—in the limitations expressed 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 598, emphasis added.)

It must be emphasized that neither the original Federal unemployment compensation law, the present law, nor the proposed amendment imposes any tax upon the States or their subdivisions. And it is relevant to remind ourselves that, as inadequacy of the basic program has required repeated action by Congress temporarily extending benefits for those in the regular program, so also Congress has been impelled by the circumstances of growing unemployment among those *not* so covered—chief among them, employees of States and their subdivisions—to enact a Special Unemployment Assistance Program which has been wholly federally funded. The SUA program, which was contained in the Emergency Jobs and Unemployment Assistance Act of 1974, P.L. 93-567, and was extended by P.L. 94-45, is due to expire at the end of 1976. It is within the "fair margin of discretion" permitted Congress (301 U.S. at 594) now to determine as a matter of fiscal and social policy that the burden of meeting the needs of State and local government employees who become unemployed must no longer be borne solely by the Federal Government but, henceforth, should be shared by those States that choose to participate in the Federal program, and thus receive its benefits.

Senator BROCK. Next we will have Dale Lestina, legislative specialist, National Education Association.

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[1] The author of the majority opinion in the *NLC* case made clear the inapplicability of that decision to laws enacted pursuant to this delegated power. "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, § 8, cl. 1, or § 5 of the Fourteenth Amendment." *NLC* v. *Usery*, — U.S. ——, ——, slip op. at 18 n. 17.

STATEMENT OF DALE LESTINA, LEGISLATIVE SPECIALIST, NATIONAL EDUCATION ASSOCIATION

Mr. LESTINA. Mr. Chairman, my name is Dale Lestina, legislative specialist representing the National Education Association.

NEA is grateful to the committee for this opportunity to discuss our perception of unemployment and unemployment compensation.

NEA is the largest public employee union in the Nation, representing 1.9 million teachers and other educators. We have 50 State affiliates and over 9,000 local units.

At its 1976 NEA representative assembly, the 7,866 voting delegates unanimously adopted the resolution supporting teacher inclusion under permanent unemployment compensation at State and Federal levels.

They also adopted a separate new business item urging the specific passage of H.R. 10210.

During the past few years, unemployment in all sectors has declined dramatically. Education is no exception.

The U.S. Office of Education predicts that, within the next few years, reductions in the total teaching positions throughout the United States will exceed 103,000. Present Federal law provides that a State must meet or exceed the Federal requirements in order to participate in a joint Federal-State unemployment compensation system.

Even though the Federal law allows the option to cover non-Federal public employees, only a very few States have elected to mandate coverage for all teachers.

The majority of States have a patchwork of unemployment compensation programs for public employees with some requiring coverage for local employees and some teachers, but not for others.

Some allow local governmental officials the option to provide coverage for local teachers and local employees, and others provide neither mandatory nor voluntary coverage for these workers.

It has been our experience that school boards do not voluntarily provide unemployment compensation coverage for their employees.

We estimate that, of the 2.2 million teachers in the United States, only 425,000, or 19.5 percent, are presently covered by permanent unemployment compensation protection. During this critical job market, this represents a real problem for the 18.5 percent that remain.

Now, many teachers have attempted to gain unemployment compensation protection through bargaining. Virtually all local government units refuse unemployment compensation coverage for teachers unless they are specifically mandated to do so by statute.

The 93d Congress enacted the special unemployment assistance, or SUA program, which provides a temporary Federal program of special unemployment compensation for teachers and other workers who are presently not covered by the Federal statute.

Teachers in 42 States are now covered by this statute. The NEA supports the extension of this coverage for an additional year, for as presently written, H.R. 10210 will not go into effect until January 1978.

SUA is scheduled to expire this December. If SUA is not extended for 1 year, we would be uncovered for the year 1977. However, for the

long run, we would much prefer the establishment of a system providing mandatory permanent coverage for teachers and other public employees under a single committee's jurisdiction, as provided in H.R. 10210.

I would like to touch on another major issue which may be of concern to members of the committee as they consider H.R. 10210.

In NEA's judgment, the Supreme Court's decision in the *National League of Cities* v. *Usery* does not apply to H.R. 10210. In support of our position, we have attached a letter concerning the opinion of our general counsel and have also included a quote from the Congressional Record from July 1, 1976, by William J. Kilberg, U.S. Department of Labor.

We close by paraphrasing his conclusion. The *National League of Cities* v. *Usery* is not applicable to the provision as proposed in H.R. 10210 on unemployment compensation coverage for State and local government employees. Mr. Kilberg cites two major reasons.

The Fair Labor Standards Act amendments concerning the minimum wage were enacted under the commerce laws. The employment compensation provisions come under the taxation and general welfare, or spending power provisions, of our Constitution.

The Supreme Court specifically excluded statutes enacted under the spending power and the 14th amendment from holding in the *National League of Cities* v. *Usery* decision.

The second major conclusion and reason, the major Fair Labor Standards Act amendments were regulatory in nature with no options provided the States. The unemployment compensation provisions as proposed by H.R. 10210 permits the States the option.

States are not forbidden choice. Choice is the essence of the Federal-State unemployment compensation system. States can opt in or out.

In our judgment there are two viable options in which State and local public employees can choose to provide unemployment compensation benefits.

One would be to pay the unemployment compensation tax, as private employers do, or its equivalent fee, or two, reimburse the unemployment compensation trust fund at the State level, paying for their own record of unemployment compensation benefits.

It appears that the second option would be the more economical for the public employer.

Either of these approaches is acceptable to the NEA.

In conclusion, Mr. Chairman, NEA wholeheartedly supports coverage of all public employees under the Federal Unemployment Tax Act as provided in H.R. 10210. We think that in the interest of fairness and equity it is wise to include Federal schoolteachers under the sections of the act which already provides coverage to employees of institutions of higher education.

Thank you for this opportunity to testify.

Senator BROCK. Thank you very much.

I have no questions. Personally, I am sympathetic. We will see what will happen.

Mr. LESTINA. I appreciate that. Thank you.

[The prepared statement of Mr. Lestina follows:]

STATEMENT OF THE NATIONAL EDUCATION ASSOCIATION ON UNEMPLOYMENT COMPENSATION COVERAGE FOR TEACHERS AND OTHER PUBLIC EMPLOYEES PRESENTED BY DALE LESTINA, LEGISLATIVE SPECIALIST

Mr. Chairman and Members of the Committee, I am Dale Lestina, Legislative Specialist representing the National Education Association. We are grateful to Chairman Long and the Members of the Committee for this opportunity to discuss our perception on unemployment during this trying time in our nation's history.

NEA is the largest public employee union in the country, representing some 1.9 million teachers and other educators. NEA has 50 state affiliates and over 9,000 local units. At the 1976 NEA Representative Assembly the 7,866 voting delegates unanimously adopted the following resolution:

"76-51. UNEMPLOYMENT COMPENSATION

"The National Education Association supports the inclusion of educators in unemployment compensation legislation at the state and federal levels."

During the past three years employment in all sectors has declined dramatically. Education is no exception! Six years ago educators were participating in a booming job market. Today, teaching positions are at a premium. Many experienced, qualified teachers are laid off and are unable to locate new positions. Most want to teach, but they will settle for any job inside or outside of education.

The U.S. Office of Education predicts that within the next six years, reductions in total teaching positions throughout the United States will exceed 103,000. Teachers are laid off as a result of decreased enrollments, tight money, rejection of millage elections, and inflation.

Present federal law provides that a state must meet or exceed the federal requirements in order to participate in the joint federal-state unemployment compensation system. Even though federal law allows states the option to cover nonfederal public employees, only eight states have elected to mandate coverage for all teachers. Another eight states plus Puerto Rico require coverage for some local public employees but not for others. Twenty-one states allow local governmental officials the option to provide coverage their local public employees. Thirteen states, however, provide neither mandatory nor voluntary coverage for local public employees.

We note with dismay that approximately one-half of those states which allow optional coverage of local employees mandate coverage for state employees. Even more distressing are those states which mandate coverage for state employees but provide absolutely no provision for local employees. To add insult to injury, several states have adopted laws which provide coverage to some public school employees and not others, depending upon the size of the city in which the public employee works or the type of job held.

It has been our experience in states which provide elective local coverage that unless the bargaining agent secures the coverage as a part of the negotiated agreement, school boards do not voluntarily provide unemployment coverage for their employees. We estimate that of the 2.2 million teachers in the United States, only 424,981—19.5 percent—are presently covered by permanent unemployment compensation protection. During this critical job market this presents a real problem for the 80.5 percent who remain.

Many teachers employed by local school jurisdictions encounter an additional problem in gaining unemployment compensation protection. There are essentially two kinds of school boards—fiscally independent (authority to levy taxes), and fiscally dependent (financial decision must be ratified by a higher legislative body). Twenty-one states have school boards which are partially or totally dependent. If a local education association within such a state desires unemployment compensation protection for its members, the association must not only make its arguments to the local school board, but also must win its arguments with the city or county council. Virtually all local governmental units refuse coverage for teachers unless they are specifically mandated to do so by state statute.

The 93rd Congress enacted the Special Unemployment Assistance (SUA) program, PL 93-567, which provides a temporary federal program of special unemployment compensation assistance for workers who are presently not covered by the federal statute. Teachers in 42 states are now covered by this statute. NEA supports the extension of this coverage for an additional year. However, for the long run, we would much prefer that a system providing mandatory, permanent coverage for teachers be established.

There is a growing practice which is patently unfair to teachers. Because of so-called "continuing contract laws," many school districts have adopted a policy of giving all teachers notices of termination pending receipt of state and/or federal funds. School boards currently can do this with impunity because they are not financially responsible for unemployment benefits. Teachers know that ultimately most of them will be reemployed for the coming year. However, there is no assurance of that fact and many of these teachers want to seek and should be provided unemployment compensation benefits. Mandatory coverage of teachers under the Federal Unemployment Tax Act (FUTA) will dramatically curtail this contemptible practice of non-rehire since public employers would then be forced to expend funds for unemployment compensation benefits. In our judgment, there are two viable options from which state and local public employers can choose to provide unemployment compensation benefits: (1) to pay the unemployment compensation tax as private employers do; or (2) to reimburse the state fund, paying only for their own record of unemployment compensation benefits. Either of these approaches is acceptable to NEA.

I'd like to touch on a major issue which may be of concern to Members of this Committee as you consider HR 10210. In NEA's judgment, the Supreme Court decision in *National League of Cities* v. *Usery* does not apply to HR 10210. In support of our position we offer the attached letter concerning the opinion of our General Counsel and the following quote from the *Congressional Record* (July 1, 1976, p H7198) by William J. Kilberg, Solicitor of Labor, U.S. Department of Labor.

"*National League of Cities* v. *Usery*, 96 S.Ct. 2465, 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 Fourteenth 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 vitually 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 United States 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 United States Constitution."

Mr. Chairman, NEA wholeheartedly supports coverage of all public employees under FUTA as provided in HR 10210. We think that it is wise to include public school teachers under the sections of the act which already provide coverage to employees in higher education.

Thank you for this opportunity to testify.

NATIONAL EDUCATION ASSOCIATION,
Washington, D.C., June 28, 1976.

Re: HR 10210

Mr. ALAN ROTHENBERG, Esq.,
Minority Counsel, Subcommittee on Unemployment Compensation, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. ROTHENBERG: You have requested our opinion as to the effect that the Supreme Court's decision in *National League of Cities* v. *Usery*, issued

June 24, 1976, might have on the provisions of HR 10210 which are designed to provide permanent unemployment compensation coverage for state and local government employees under certain conditions. For a number of reasons which are outlined below, we do not believe that the Court's decision will have any effect on the Bill as presently drafted.

At issue in the *National League of Cities* case was the validity of the 1974 amendments to the Fair Labor Standards Act (FLSA) which extended the coverage of that Act to almost all categories of State and local government employees. The FLSA and the amendments in question were enacted by the Congress pursuant to its power "to regulate Commerce . . . among the several States", under Article I, S.8, cl.3, of the Constitution. The Supreme Court found in *National League of Cities* that the attempted direct regulaion of the wages and hours of employees of the states and their subdivisions, while unquestionably affecting commerce, constituted too great an interference with the sovereignty of the states to be permitted under the federal system of government embodied in the Constitution, especially the Tenth Amendment thereto. The decision, however, was expressly limited to the effect on state governments of legislation enacted pursuant to the Commerce Clause. The Court left open the question of the validity of laws adopted under other Constitutional provisions which might have an effect on the sovereignty of states and their subdivisions:

"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, S.8, cl.1, or S.5 of the Fourteenth Amendment." Slip opinion at page 18, footnote 17.

The Federal Unemployment Tax Act (FUTA) and the amendments to that Act proposed in HR 10210 find their Constitutional authority—not in the Commerce Clause—but rather in Art. I, S.8, cl.1, the Taxing and Spending Power, which was expressly mentioned in the Court's comment as to the reach of its decision. In 1937, the Court explored and upheld the authority of Congress to enact the original Unemployment Compensation Act under Art. I S.8, cl.1. *Steward Machine Co. v. Davis*, 301 U.C. 548 (1937). Thus, by its own terms, the *National League of Cities* decision does not apply to FUTA or to the proposed amendments.

There is an additional reason why *National League of Cities* would not invalidate the legislative scheme embodied in HR 10210. The rationale for the decision was specifically based on the fact that the FLSA amendments imposed upon state and local governmental employers the minimum wage and maximum hour requirements of the Act. The governmental employers had no discretion or option; they were required to adhere to the amendments. It was the obligatory nature of the legislation which ran afoul of the Court's views of state sovereignty. The Court expressed its holding as follows:

"We hold that insofar as the challenged amendments operate *to directly displace* the States' freedom to structure integral operations in areas of traditional functions, they are not within the authority granted Congress by the Commerce Clause." Slip opinion page 18 (emphasis added).

Later the Court stated:

"Congress may not exercise that power so as to force *directly* upon the States its choices as to how essential decisions regarding the conduct of integral governmental operations are to be made." Slip opinion page 21 (emphasis added).

Legislation which does not compel a state to act in a particular manner would not violate the decision's proscription. This point was made by Justice Brennan who, in his dissenting opinion, stated that "Congress may nevertheless accomplish its objective—for example by conditioning grants of federal funds upon compliance with minimum wage and overtime standards, c.f. *Oklahoma v. United States Civil Service Commission*, 330 U.S. 127, 144(1947) . . ." (dissenting opinion, at 24-25). In the case cited by Justice Brennan, certain federal funds were withheld from a state pursuant to the terms of the federal Hatch Act when the state refused to discipline a state employee for violating provisions of that Act. Answering contentions that such a legislative provision constitutes an invasion of the state's sovereignty and violated the Tenth Amendment, the Court replied that while the United States might not be able to regulate directly the activities of state officials, "it does have the power to fix the tenure upon which the money allotments to states shall be disbursed." 330 U.S. at 143. The Court held that the Tenth Amendment did not forbid such an exercise of power and it stated that

"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." 330 U.S. at 144.

The scheme of the FUTA and the amendments in question is similar to that of the Hatch Act and dissimilar from that of the 1974 amendments to the FLSA. No state is required to provide unemployment compensation to any public employee. Every state is free to stay out of the Federal Unemployment Compensation System. However, if a state wishes to obtain the benefits of federal credits and assistance for its programs, it must adhere to certain minimum standards—one of these being under HR 10210 the inclusioin of public employees under the state's system.

The FUTA amendments contained in HR 10210 do not contain the element of "direct interference' 'or "force" essential to the *National League of Cities* holding. In *Stewart Machine Co. v. Davis*, supra, the Supreme Court confronted this issue directly in upholding the constitutionality of FUTA as originally passed. The claim was made in that case that the conditioning of federal credits on compliance with the minimum standards of FUTA constituted coercion of the states in contravention of the Tenth Amendment and of restrictions implicit in the federal form of government. The Court rejected this argument, stating:

"Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed," citation omitted. In a like manner every rebate from a tax when conditioned upon conduct is in some measure a temptation. But to hold that motive or temptation is equivalent to coercion, is to plunge the law in endless difficulties.

"Nowhere in our scheme of government—in the limitations expressed or implied of our Federal Constitution—do we find that a state is prohibited from assenting to conditions that will assure a fair and just requital for benefits received." 301 US at 389–90, 598.

The fact that state and local employees would be covered under HR 10210 does not in any way change the holding of the *Steward* case. The state is not taxed for coverage of such persons, nor is it compelled or forced to include them in coverage. The state is always free to make the choice to exclude such persons and to accept the loss of federal benefits. HR 10210 is valid under *Steward;* it is unaffected by *National League of Cities.*

One final point. As noted, the Supreme Court in *National League of Cities* was concerned with the effect of legislation on "integral governmental operations." Wages and hours of governmental employees, performing governmental functions, fall within this area. But, by definition, coverage of such individuals under unemployment compensation laws would not affect the "integral operations of government." On the other hand, the exclusion of such persons from state unemployment compensation systems could cause a large drain on the federal budget. The federal government thus has a strong interest in legislation in the area. This fact . . . is a further reason why the unemployment compensation law is not in the same category as the wage and hour law considered by the Supreme Court.

I hope this information will be helpful to you. Please let us know if we can be of any further assistance.

Sincerely,

STEPHEN M. NASSAU,
Associate General Counsel.

Senator BROCK. We have Mr. C. H. Fields, assistant director, national affairs, American Farm Bureau Federation, and Bruce Von Forell, chairman, Agricultural Labor Committee, American National Cattlemen's Association.

STATEMENT OF C. H. FIELDS, ASSISTANT DIRECTOR, NATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATION

Mr. FIELDS. I will make my statement brief, and file the statement for the record.

We are glad to have an opportunity to be here to speak for 2.5 million member families across the country. We do recognize the

necessity of legislation at this time to do something about the solvency of the funds. We believe the program is burdened with abuse and fraud and we question the advisability of expanding coverage in this program at this time until a study is completed by the Commission and we can learn more about the fraud and abuse and what can be done about it.

By the way, we think title IV should be strengthened so that the Commission is charged specifically with looking into fraud and abuse and try to alleviate those problems.

If the Congress is intent upon extending unemployment compensation to agriculture, the following points need to be taken into consideration before such action is taken.

First of all, the costs, which in some States ranges up to 5 percent of the payrolls would have to be passed along to consumers. The limited profit margin in agriculture will not permit that to be absorbed. Farm workers are now covered by the SUA and we do not have any data, we cannot obtain any data, on the results of what that program has been, and how many farmworkers have taken advantage of it, what the costs have been, and so forth.

We think we ought to have some data on that before we take the action to extend the program to agriculture.

Agriculture is a highly seasonal business. Experience with other seasonal industries would indicate that an overdraft will occur in some States. Some phases of agriculture where large numbers are employed on a seasonal or temporary basis will not pay enough into the fund to finance the benefits.

As presently written, H.R. 10210 would adversely affect closely-held family-owned farming operations which have four or more employees, although a typical work force may consist entirely of the farmer himself and members of his family. In this case, of course, the corporation becomes the employer and the farmer himself and members of his family becomes the employee.

The conditions under which many seasonal workers are employed in agriculture make it extremely difficult for farmers to keep accurate records and make necessary reports. Hundreds of thousands of these workers are local high school or college students, local housewives, or persons holding other full-time or part-time jobs who work in agriculture for only a few days each year.

Many of these workers will not be eligible for benefits. If Congress desires to cover these temporary workers, we think the SUA program is the best approach.

Farmers are already overburdened with Federal and State regulations, Government reports, and bureaucratic excesses. If they are brought into this program, this will add to the burden.

While it may be true that only a small percentage of the total number of farms would be affected by this bill, this percentage will vary considerably among the States and even more widely among commodity groups. It does ont take a very large farming operation producing fruits and vegetables, for example, to have the four or more employees during 20 weeks to pay out $10,000 in wages.

We therefore recommend that agricultural coverage be deleted from this bill at this time. If this cannot be achieved, we recommend that title I be amended either to increase the minimum standard of coverage

from four or more employed during any 20 weeks or $10,000 in wages paid during a quarter to 10 or more employees employed during any 20 weeks, or $20,000 paid during a quarter, or an alternative approach would be to exempt seasonal workers in agriculture, with a seasonal worker defined as one who works less than 100 days during a calendar year for an agricultural employer.

Our estimate is that more than half of the nonfamily agricultural workers would still be covered under alternative A, but only 5 percent of all agricultural employees would be affected.

Thank you, Mr. Chairman.

Senator BROCK. Thank you very much.

I agree that we should raise the level of exemption. I am not sure that you will get as big as exemption as you would like.

The 10 employees was what we tried to get in our exemption.

Mr. FIELDS. That is why we selected that.

Senator BROCK. That is something I strongly pressed for. It is a realistic figure, in my opinion.

I would think that it would be better if you had 10 on the average throughout the year rather than at any point in time during the quarter.

Mr. FIELDS. I do not know what that would do for administrative difficulties.

Senator BROCK. It would be very complicated to do that.

[The prepared statement of Mr. Fields follows:]

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION, PRESENTED BY C. H. FIELDS, ASSISTANT DIRECTOR, NATIONAL AFFAIRS

SUMMARY OF PRINCIPAL POINTS

Statement of C. H. Fields, American Farm Bureau Federation.

(1) The Unemployment Compensation program is burdened with widespread fraud and abuse, and coverage should not be extended to other groups of workers until the program is studied in depth and ways of reducing fraud and abuse are worked out.

(2) Title IV should be amended and strengthened to clearly charge the National Commission on Unemployment Compensation with the responsibility to investigate fraud and abuse and recommend ways of alleviating it.

(3) Agricultural coverage should be deleted from the bill for reasons explained in the statement.

(4) If such deletion cannot be achieved, it is recommended that Title I be amended either to (a) increase the minimum standard of coverage from four or more workers employed during any twenty weeks or $10,000 in wages paid during a quarter to ten or more employees employed during any twenty weeks or $20,000 paid during a quarter or (b) exempt seasonal workers in agriculture (with a seasonal worker defined as one who works less than 100 days during a calendar year for an agricultural employer).

STATEMENT

We appreciate this opportunity to present the views of the American Farm Bureau Federation on unemployment compensation and its extension to agricultural employment.

Farm Bureau is the largest general farm organization in the United States, with a membership of 2,505,258 families in 49 states and Puerto Rico. It is a voluntary, nongovernmental organization representing farmers and ranchers who produce virtually every agricultural commodity that is produced on a commercial basis in this country.

The voting delegates of the member State Farm Bureaus to the 57th annual meeting of the American Farm Bureau Federation in January, 1976, adopted the following policy on unemployment compensation:

We favor retention of experience rating policies and the preservation of state responsibility to determine eligibility and benefits in unemployment insurance.

We are concerned about abuses of the unemployment compensation program by both employers and employees, many of whom use this program as a regular part of their employment planning.

We support revisions of the Act to reduce abuses and to protect benefits to workers who are actually in need of them.

Because of the difficult problems involved in the application of the Act to small farms and the employment of temporary and seasonal workers, we oppose extension of the Act to agriculture until a workable, fiscally sound program is developed.

Accordingly, we offer the following comments and recommendations regarding H.R. 10210:

(1) We recognize the necessity of legislation at this time to restore the solvency of the state and federal trust funds.

(2) We believe the UC program is burdened with widespread abuse and fraud on the part of both employers and employees and that the extent of this abuse has not been fully revealed to the public.

(3) Because of this widespread abuse and the fiscal insolvency of the trust funds, we believe the Congress should refrain from any extension of coverage at this time.

(4) Instead, Title IV should be amended and strengthened to clearly charge the National Commission on Unemployment Compensation with the responsibility to investigate fraud and abuse in the program and to recommend ways of alleviating it.

(5) If the Congress is intent upon extending unemployment compensation to agriculture, the following points need to be taken into consideration:

(a) The cost, ranging up to 5 percent of farmworker payrolls, will have to be passed along to consumers. The limited profit margin in agricultural production will not permit it to be absorbed by producers.

(b) Farmworkers are now covered by the Special Unemployment Act, financed from the General Fund. No data is available on the operation of this program as it affects agriculture. It would appear wise to know how many farmworkers have taken advantage of this coverage, what the cost has been, the variation among various agricultural commodities, geographic regions, the effect on migrancy, etc.

(c) Agriculture is a highly seasonal business. Experience with other seasonal industries would indicate that an overshaft will occur in some states. Some phases of agriculture, where large numbers of workers are employer on a seasonal basis, will not pay enough into the fund to finance the benefits that will accrue.

(d) As presently written, H.R. 10210 would adversely affect closely held, family-owned farming corporations, nearly all of which have four or more employees, even though a typical work force may consist entirely of the farmer himself and members of his family. Such a farmer would thus pay the tax on himself and members of his family, with little or no possibility of being eligible for benefits.

(e) The conditions in which many seasonal workers are employed in agriculture make it extremely difficult for farmers to keep accurate records and to make the necessary reports. Hundreds of thousands of these workers are local high school or college students, housewives, or persons holding other full-time or part-time jobs who work in agriculture only for a few days each year. Many of these workers will not be eligible for benefits. If Congress desires to cover these temporary workers, we think the Special Unemployment Act is the best approach.

(f) Farmers are already overburdened with federal and state regulations, government reports, and bureaucratic excesses. If they are mandated to participate in the UC program, this burden will be greatly increased.

(g) While it may be true that only 6 or 7 percent of the total number of farms would be affected by H.R. 10210, this percentage will vary considerably among the states and even more widely among commodity groups. It does not take a very large farming operation producing fruits and vegetables, nursery, and certain other crops to employ four persons during twenty weeks or to pay out $10,000 in wages during a quarter.

(6) We, therefore, recommend that agricultural coverage be deleted from the bill. If this cannot be achieved, we recommend that Title I be amended either to

a) increase the minimum standard of coverage from four or more workers employed during any twenty weeks or $10,000 in wages paid during a quarter to ten or more employees employed during any twenty weeks or $20,000 paid during a quarter or b) exempt seasonal workers in agriculture (with a seasonal worker defined as one who works less than 100 days during a calendar year for an agricultural employer).

Our estimate is that more than half of the nonfamily agricultural workers would still be covered under alternative a) but that only about 5 percent of all agricultural employers would be affected, primarily in the larger operations that are in a better situation to cope with the legal and accounting problems that will be created by the UC program.

Senator BROCK. Mr. Von Forell.

STATEMENT OF BRUCE VON FORELL, CHAIRMAN, AGRICULTURAL LABOR COMMITTEE, AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION

Mr. VON FORELL. My name is Bruce Von Forell. I am a rancher from Wyoming. Presently, I serve as chairman for the Agricultural Labor Committee of the American National Cattlemen's Association, which is referred to as the ANCA.

I am pleased that this committee afforded the beef cattle industry an opportunity to speak before this committee.

With respect to the committee's desire for brevity, I would like to summarize the ANCA's statement on this subject. However, I would request that the full prepared statement appear in the record as submitted.

The ANCA is a national trade association for the beef cattle industry, representing more than 250,000 cattlemen throughout the United States. The ANCA serves all sectors of the beef cattle industry, basic producers, feed lot operators, and breeders.

The beef cattle industry is the largest segment of American agriculture. It is important to this issue at hand today that the committee understand the unique economic factors which distinguishes the beef cattle industry from the more typical margin added industries in light of economic impact that this measure will have on the beef cattle industry.

Retailers or wholesalers can add profit margins to the costs of material and labor and other costs of doing business. Cattlemen, like other agricultural producers, cannot set a price for their product. They cannot post a price tag on steers. They accept or reject bids made by packers and other buyers. Those bids depend on supply and demand.

In effect, cattle producer's return is a residual of marketing which provides no ability to pass through costs in the short term economic cycle.

Currently, the industry is struggling to recover from one of its worst downward economic cycles. Undue economic burdens as would be imposed on farmers and ranchers must then be absorbed as a cost of production, thus lowering profitability.

Under the current market conditions, losses being sustained and additional costs imposed by this proposed legislation would only compound these losses, thereby minimizing the recovery of an already depressed livestock situation.

I would like to call to your attention to page 2 of the statement which emphasizes what industry figures the actual dollar and cents economic plight of the industry is.

As you can see, a loss of $53 per head across the board is a severe situation, and one that has prevailed since the wage and price controls of 1973. It is against this economic background that the ANCA requests that the proposed extension of unemployment compensation coverage for agricultural employees be deleted.

We do not believe that such an inclusion is warranted, or the additional cost of agricultural employees be of interest to the beef cattle industry and the American consumer.

Inflation will continue to be a factor in the national economy affecting productivity and hampering the efficiency of production. The National Commission on Productivity has stated during the last 15 years or more productivity improvement in agriculture has been geater than in any sector of the economy.

This statement alone attests to the reason why the American consumers spend only an average of 17 percent of their disposable income on food and is able to maintain a standard of living enjoyed in this country today.

Further, ANCA can see no purpose served by extending unemployment coverage to agricultural workers for the following additional reasons. Our reasons are simple:

First: We can see no purpose served by extending coverage to agricultural workers. We feel strongly that further Federal extensions of additional costs to employers will only serve to lessen productivity and eventually affect consumers.

I might add that we are in the labor market. We have to compete with various industries, such as we have a new 150-megawatt plant going in effect right next to us. These people are paying $12 an hour.

The only way we can compete with this labor force is to offer benefits, or perhaps let them run cattle, or something of this nature. We cannot compete as dollars and cents goes with this type of competition.

Second: As noted by the Subcommittee on Unemployment Compensation of the House Ways and Means staff report dated September 22, 1975:

> Although state adoption of unemployment insurance laws has been greatly influenced by Federal statutes, by a single exception the state is free to determine employers who are liable for contributions to and workers who accrue rights under the law.

In this day and age, where much concern is being raised about the expansion about the Federal bureaucracy and the need to lessen Federal regulations, we would hope this committee would weigh this comment carefully in light of prevailing public opinion.

Further, it should be noted that the State is free to determine employees who are liable for contribution. We feel strongly that, due to the seasonal nature of agriculture and the variance of agricultural production employment, only the State can best determine the needs of its citizens.

Third: There are only five States who provide for agricultural

coverage. Most State laws exclude agricultural labor and coverage for many of the above reasons.

Federal inclusion of agricultural coverage would serve to influence the remaining States to provide unemployment coverage. Under the proposed new legislation, provisions of the Internal Revenue Code will apply to agriculture.

The tax levied on covered agricultural employees will be 3.2 percent of wages up to $6,000 a year paid to an employee plus the additional 0.2 percent proposed rate to begin in 1977 through 1983.

Conceivably, using these figures, the cost to agricultural covered employees would mean a new outlay of $224 per person. Add this to the cost of the new OSHA requirement, the EPA permit requirements, increased grazing permit requirements, and increasing costs of fuel, I might mention that we spend enough money on a tractor to try to offset the expense of feeding cattle to raise feed on my ranch. I am not a farmer. The darn tractor cost more than the ranch itself cost a few years back.

Fourth: A lack of agricultural labor force and increased competition, rising costs, increased capital investment, and outmoded gift tax laws have forced many families to incorporate.

In conclusion, the ANCA opposes the extension of unemployment compensation coverage to agricultural workers by Federal statute.

Mr. Chairman, the National Woolgrowers Association wishes to go on record as endorsing our position.

I appreciate the opportunity to appear before the committee today and present the views of the beef cattle industry.

Thank you, sir.

Senator BROCK. Thank you very much.

I think that it is important to note that a lot of us in Congress, I hope the majority, are sympathetic to the plight, to farmers in general.

We have undertaken some modifications of the law. We hope to do better than that next year.

We have passed through the Senate and are currently engaged in a fairly intensive negotiation with the House to raise the estate tax exemption, so we are trying very hard.

I am sympathetic to your plea, especially, and I will try to help.

I appreciate your testimony.

Mr. VON FORELL. I have another little thing here that I thought might be interesting to include in the record. One of your colleagues, Senator Hansen, on his platform running for Governor in 1965 on unemployment compensation—it was running rampant in Wyoming and a lot of abuses taking place.

As a result of his efforts and other people, there was a lead article in the Reader's Digest on what did happen and what could be rectified at a State level, and I think our pitch today would be more in the area, if we are going to have unemployment compensation, let's keep it at the State level where it is more responsive to that particular State.

Senator BROCK. With your permission, if you will submit that, we will make it a part of the record.

[The article referred to follows:]

[Condensed from National Civic Review, December 1964]

Wyoming Tightens Up on "Happy-Time" Money

(By Earl and Anne Selby)

A CASE STUDY OF UNEMPLOYMENT-COMPENSATION ABUSE—AND ITS CURE

We turned our tape recorder off. We had been interviewing a Wyoming labor-union official on the effects of that state's new, tightened-up unemployment-compensation law, and he had criticized it as harsh and restrictive, an insult to people thrown out of work.

"Now that we're off the record," he said, smiling wryly, "I'll admit that the old law was too soft—it went so far that some people got to thinking of compensation as a way of life. They figured they could work a while, then just rest and draw benefits. It happens everywhere. Don't quote me by name, but frankly we needed something like this new law."

He was recognizing a painful fact: In many of our states, the unemployment-compensation laws, originally designed to tide workers over periods of enforced inactivity while they hunted for new jobs, have been riddled with loopholes which encourage all who want something for nothing.

Wyoming, although it is one of our least populous states, had long been afflicted with all the abuses and distortions of the compensation systems prevalent in larger, more industrial states. And when, in 1957, the state legislature liberalized the already liberal unemployment benefits, the door was opened wide to the twin human weaknesses of laziness and cupidity. The next six years saw a public binge at the trough of unemployment compensation—a happy time for everybody who wanted a prolonged vacation at public expense.

The following cases and practices were typical:

A girl was brought to trial and found guilty of embezzling her employer's funds. Since more than four weeks had elapsed between the date of her dismissal from the job and the day she filed her claim, the state promptly granted her unemployment compensation. When the outraged employer registered an official objection, the state's only response was a letter stating that the girl's unemployment compensation would not be charged against the employer's account.

A field hand was asked to help out with barn chores during the winter months when outdoor work was slack. He refused, quit—and after a month was granted unemployment benefits.

A man gave up his job in another state because he decided that the climate did not agree with him. He filed for compensation in Wyoming, where he had previously worked. He stated lamely that he had consulted a doctor—several years earlier. In spite of an official ruling stating that self-diagnosis of an ailment may not be accepted as good cause for quitting work, the applicant was not denied benefits. He merely had to wait four weeks—the maximum penalty under the law at that time—for his first check instead of starting to draw compensation at once.

Benefits to casual workers who had no intention of becoming year-round employes were handed out lavishly. It was necessary only to earn $250 in one three-month period and $125 in another to qualify. This rule was an obvious temptation: pick up a temporary job, hold it for a few weeks, then push up to the trough and share in the largess. Many a smaller farmer planted in the spring, took a job for wages in early summer, then reaped a double harvest during the late summer and early fall—one from the land, the other from the state.

Residents of neighboring South Dakota noted Wyoming's bonanza and came cross the border in considerable numbers for summer work. Returning home in the autumn, they drew from Wyoming more liberal unemployment benefits than if they had worked in their own state.

In many cases, the same person received unemployment benefits and Social Security simultaneously.

A highway contractor offered some of his men, who had been laid off during severe weather, $2 an hour for winter repair work in his shops. They declined. They were drawing $53 a week in nontaxable compensation. If they worked 40 hours a week in the repair shops, they would have to pay income tax and would end up with only about $16 more take-home pay than they were already getting for doing nothing. It wasn't worth it.

Wyoming's scale of benefits was top-bracket—right up with the industrial states, which have a higher cost of living. In the first half of 1960, Wyoming tied for first place in highest average weekly benefits. Only three states had higher maximum weekly benefits. A claimant could collect up to 55 percent of the state's average wage for 26 weeks—a total of $1222—and also pick up an extra $6 a week as a dependency allowance for two children. He could also earn any amount up to 50 percent of his benefits without any reduction in his state checks.

Unemployment compensation, of course, is financed by a tax on employers, and in Wyoming, as in other states, employers with a record of solid employment through the years pay less than firms where employment fluctuates. Some with perfect records pay nothing. Wyoming's law, however, established a whole series of complicated gimmicks whereby some employers could escape compensation taxes more easily than others. As a result, within two years after the 1957 law went into effect, 30 percent of the state's employers were paying no compensation taxes at all.

The inevitable penalty for such profligacy became evident. Soon the state was paying out 39 percent more in benefits than it was collecting from employers. The reserve fund began shrinking drastically. From 16 million dollars in 1953, it was to melt to three million before action was taken in 1963. To check the downhill flow, in 1959 the state's Employment Security Commission proposed that the employer be taxed on the first $4200 of an employe's earnings instead of the first $3000.

At this point trouble began for the bureaucrats. It was started by a young man named Jack Knott, newly appointed manager of the Associated General Contractors of Wyoming and a management appointee on the Advisory Council of the Employment Commission. Knott started digging diligently into the state's compensation practices. He was joined in his investigations by Russell W. Beamer, executive secretary of the Wyoming Mining Association.

The Commission had hoped to push through the tax hike in the legislative session of 1959. One morning Knott and Beamer had breakfast with two members of the legislature. That same afternoon the House took up the compensation tax bill—which presumably was all set to go through with a whoop and a holler. But when the two legislators who had conferred with Knott and Beamer had finished talking about all the abuses and loopholes that had been unearthed, the House turned down the Commission's bill by a vote of 26 to 23.

The struggle was by no means over. The state still had its old spendthrift unemployment-compensation law. The reserve fund was still sinking. And a lot of folks who shouldn't have been were still relaxing at public expense on happy-time money. But Knott and Beamer had succeeded in raising the warning flag.

About a year later, the efforts of the two men were reinforced by the arrival of Charles DeFoe, energetic new manager of the Wyoming Retail Merchants Association. DeFoe came from Oregon, where he had made a study of unemployment compensation. In his new position he saw immediately that Wyoming's jobless-pay system was headed for disaster.

In 1961, the Employment Security Commission renewed its demand for increased taxes on employers, and a new legislative battle erupted. Knott, Beamer and DeFoe prepared their own bill and got it sponsored by interested legislators. The Commission's bill died, and their measure landed on the governor's desk. But the governor vetoed it.

By this time, however, the state was aroused. The reserve fund was approaching the danger point; soon there would be nothing left to pay even the deserving jobless workers. It was obvious that before long all employers, even those with perfect employment records, would be paying the maximum tax. Suddenly, compensation reform was everyone's business. In the 1962 state election campaign, Clifford P. Hansen, Republican candidate for governor, made it one of his principal issues, and was elected.

DeFoe, Knott and Beamer finally won their long battle in 1963. Their bill, tough but fair, was signed into law. The chief changes are:

1. Under the old law, a worker who quit or was fired for cause could collect benefits. Now he gets none.

2. The casual worker who under the old law regarded compensation as a post-job bonus is now excluded. No one is eligible for benefits unless he has worked 26 weeks in a year, putting in at least 24 hours a week and earning a minimum of 75 cents an hour.

3. Full unemployment compensation and Social Security can no longer be collected simultaneously by the jobless worker.

4. Maximum weekly benefits have been cut about five percent.

5. The out-of-stater who comes to Wyoming to work and later collects Wyoming compensation checks in his home state is now subject to a 25-percent reduction in benefits.

6. Any amount over $10 a week earned through temporary employment is now subtracted from unemployment benefits.

7. Until the unemployment-benefit fund is built up to a safe level, all employers have to pay an extra one half of one percent on their taxable payroll.

This was drastic medicine for a state where many people had come to regard easy access to public funds as a vested right. Opponents predicted that business would suffer because a lot of people would have less spending money. This hasn't happened. The state's economy—as reliably measured by volume of the sales tax—has not been hurt. And the compensation reserve fund doubled in the first year of the new law. When the legislature meets in January 1965, some refinements may be made in the law, but the chances are that in basic outline it will remain unchanged.

"When a man is out of work through no fault of his own, after having been an honest-to-goodness member of the labor force, he is entitled to benefits," says Jack Knott. "Here in Wyoming most of us are all for that established principle. But when the system gets out of hand, something must be done if it is to survive and serve its purpose."

Senator BROCK. One other point.

Mr. Fields, you mentioned the National Commission to investigate current fraud.

There is a good deal of it. I would be delighted to enlarge their authority, if it is necessary, to investigate fraud.

Mr. FIELDS. I have looked at the language of the bill here. I do not see any specific reference to this problem. It should be strengthened that they should be instructed to go into this area.

Senator BROCK. I would agree with this. Normally, when we give them a charter as we did to investigate the area of unemployment compensation, that would include the negative as well as the positive aspect of the problem.

Thank you very much.

[The prepared statement of Mr. Von Forell follows:]

STATEMENT OF AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION

(By Bruce Von Forell)

My name is Bruce Von Forell, chairman of the American National Cattlemen's Association Agricultural Labor Committee. The American National Cattlemen's Association is the national trade association for the beef cattle industry, representing more than 250,000 cattlemen. I appreciate this opportunity to speak before this committee and present testimony relative to the Unemployment Compensation Act Amendments of 1976 (HR 10210).

It is vital that the Committee understand the unique economic factors which distinguish the beef cattle industry from the more typical margin added industries in light of the economic impact this measure will have on the beef cattle industry. Retailers or wholesalers can add profit margins to the costs of material and labor and other costs of doing business. Cattlemen, like other agricultural producers, cannot set a price for their product. They cannot post a price tag on a pen of steers. They accept or reject bids made by packers and other buyers, and those bids depend on supply and demand. In effect, the cattle producer's return is a residual of marketing which provides no ability to pass through costs in the short term economic cycle.

ECONOMIC IMPACT ON CATTLEMEN

Currently, the industry is struggling to recover from one of its worst downward economic cycles. Undue economic burdens as would be imposed on farmers and ranchers must then be absorbed as a cost of production, thus lowering profitability. Under the current market conditions, losses are being sustained and additional costs imposed by this proposed legislation would only compound

these losses, thereby minimizing the recovery of an already depressed livestock situation.

CATTLE PRODUCTION COSTS AND PRICES

While there is a variation in food processing and marketing margins, successful processing and marketing firms generally can earn margins which cover their costs and provide at least some profit each year.

Within the livestock industry, however, there is more variation in prices and costs and in profit (or loss). Therefore, it is almost impossible to show the portions of the beef dollar typically going to the different segments of the cattle industry.

The beef cattle industry has three major phases: (1) farmers or ranchers who own basic herds and produce feeder or breeding cattle; (2) stocker operators whose pastures put additional weight on feeder cattle prior to the cattle entering a feedlot; and (3) cattle feeders who finish cattle in feedlots for marketing. Most retail cuts of beef come from grain-fed cattle.

The USDA average price for Choice beef in 1975 was $1.46 per pound. From January to July of 1976, it was $1.42. This reflected back to these averages in returns to the different segments of the cattle industry:

	Price per hundredweight	Total price per head	Total cost per head	Profit or (loss) per head
400-lb calf	$42.66	$170.64	$200.00	($29.36)
600-lb feeder animal [1]	40.17	241.02	[2] 226.64	14.38
1,000-lb feeder animal [1]	40.27	402.70	[3] 441.02	(38.32)
For industry as a whole				(53.30)

[1] Cattle Fax statistics.
[2] Costs include feeder calf plus cost of adding 200 lb of gain.
[3] Costs include yearling animal plus cost of adding 400 lb of gain.

Under the circumstances shown above, only stocker operators made a profit on each animal based on average prices for the seven month period. However, the basic producer and feeder lost a substantial amount per head. Situations for the various segments of the industry vary from year to year, or even from month to month. In some situations, no segments may be showing a profit, or perhaps only one will have a return. There are no extended periods when a cattleman will show a profit every year. His hope is that profits in good years will be more than enough to offset losses in adverse years.

PRODUCTIVITY VS. EFFICIENCY

In other words, increased agricultural productivity is simply a result of more output per person because of the technology, capital investment and incentive system which encourages increased efficiency.

Today, one U.S. farm worker provides food for 56 other persons. Ten years ago, he produced food for only 29. There were 2½ times as many farmers in 1950 as there are now; yet, farm production last year was twice that of 20 years ago. One out of nine adults worked on farms in 1950; today, it is less than one out of 35.

Largely because of agriculture's efficiency, 96% of the nation's population is now free to provide other goods and services. Without a revolution in agriculture, there could not have been the advances we have seen in medicine, education, housing, clothing, recreation, home appliances, and transportation.

The National Commission on Productivity says that during the past 15 years or more, productivity improvements in agriculture have been greater than in any other sector of our economy.

USDA figures and other reports indicate that output per man-hour on farms is now 3.4 times greater than it was 20 years ago. In manufacturing industries, it is only 1.8 times greater—and this has been done without any unemployment compensation.

Output per man-hour in agriculture has increased by almost six percent a year since 1950. If other parts of our economy had achieved similar results, inflation would be far less of a problem. The following Productivity Commission chart illustrates the improvement that has been made in production efficiency.

Output per manhour in U.S. economy (average annual increases)

	Percent
Total economy:	
1950–72	3.0
1965–72	2.3
Farm sector:	
1950–72	5.7
1965–72	5.0
Manufacturing:	
1950–72	2.9
1965–72	2.7

BEEF CATTLE INDUSTRY CONCERNS

Why then are cattlemen concerned about unemployment compensation legislation? Our reasons are simple!

First, we can see no purpose served by extending coverage to agricultural workers. We feel strongly that further federal extensions of an additional cost to employers will only serve to lessen productivity, diminish efficiency, and eventually affect consumers. Consumers now spend only an average of 17% of their disposable income for food.

Second, as was noted by the Subcommittee on Unemployment Compensation of the House Ways and Means staff report dated September 22, 1975, "although state adoption of unemployment insurance laws has been greatly influenced by federal statute, with a single exception, the state is free to determine the employers who are liable for contributions and the workers who accrue rights under the laws."

In this day and age where much concern is being raised about the expansion of the federal bureaucracy and the need to lessen federal regulation, we would hope this Committee would weigh this comment carefully in light of prevailing public opinion. Further, it should be noted . . . "the state is free to determine the employers who are liable for contribution." We feel strongly that due to the seasonal nature of agriculture and the variance of agricultural production and employment in each state, only the state can best determine the needs of its citizens.

Third, currently, there are only five states that provide for agricultural coverage. Most state laws exclude agricultural labor from coverage for many of the above reasons. Federal inclusion of agricultural coverage will serve to influence the remaining states to provide unemployment coverage. Under the proposed new legislation, provisions of the Internal Revenue Code would apply to agriculture. The tax levied on covered agricultural employees would be 3.2% of wages up to $6,000 a year paid to an employee plus the additional 0.2% (proposed rate to begin in 1977 and carrying through 1983).

Conceivably, using these figures, new costs to agriculturally covered employers would mean a new outlay of $224.00 per person.

$6,000 × 2.7 percent (State)	$182.00
$6,000 × 0.7 percent (Federal)	42.00
Combined State and Federal total	224.00

Add this to the cost for the new OSHA requirements, EPA permit requirements, increased federal grazing permit requirements, increased costs for fuel, fertilizer and machinery and the cost in the agregate becomes unbearable. What remains the choice for animal agriculture?

Fourth, a lack of an adequate agricultural labor force, increased competition, rising costs, increased capital investment, and outmoded estate and gift tax laws have forced many family farms to incorporate.

H.R. 10210 would affect family farm corporations (Subchapter S) in many states. Bear in mind that the corporation is the employer and the corporate family members are the employees. In effect, the family pays the tax and suffers the possibility of being ineligible to collect the benefits.

CONCLUSION

The American National Cattlemen's Association opposes the extension of unemployment compensation coverage to agricultural workers by federal statute.

Mr. Chairman, the National Wool Growers Association wishes to go on record as endorsing the position of the American National Cattlemen's Association.

I appreciate the opportunity to appear before this Committee today and present the views of the beef cattle industry. Thank you.

Senator BROCK. Our next witness is Leanard Lesser, treasurer, Council for Community Action.

Is Mr. Lesser here?

He is not here.

I want to thank those who have come and submitted their statements. I appreciate your cooperation very much.

That will conclude the hearing for this morning.

[Whereupon, at 11:35 a.m. the hearing in the above-entitled matter was adjourned.]

Appendix A.—Communications Received by the Committee Expressing an Interest in These Hearings

STATEMENT OF HON. RON DE LUGO

Mr. Chairman and distinguished members of the Senate Finance Committee, it is a distinct honor to testify in support of H.R. 10210, the Unemployment Compensation Amendments Act of 1976. In particular, I would like to confine my remarks to Section 116 of the bill which extends the Federal Unemployment Compensation Program to the Virgin Islands.

This section embodies the language originally included in my bill, H.R. 4611; it was adopted as an amendment to the comprehensive unemployment bill by the House Ways and Means Subcommittee on Unemployment Compensation on a unanimous voice vote October 27, 1975. It was unanimously approved in the bill which was reported by the full Ways and Means Committee on May 25, 1976 and by the full House on July 20, 1976. The provision also has full Administration support.

Mr. Chairman, under existing Federal law, the Virgin Islands is precluded from participating in the Federal-State employment security system of unemployment insurance and employment services. However, the Territory has operated its own unemployment insurance program for the last several years, notwithstanding the absence of the tax and the tax credit incentives of the Federal Unemployment Tax Act. The Virgin Islands Employment Security Agency has done a commendable job during its existence, but during times of great economic stress, special Federal legislation has been required to maintain its fiscal solvency.

Section 116 would bring the Virgin Islands into the Federal-State system as a fully participating member for the first time and would provide greatly needed assistance to unemployed workers in the Territory and to the local Government itself. This program would enable the Virgin Islands to participate in the extended benefit program under the Federal-State Extended Unemployment Compensation Act of 1970; to receive technical assistance and reimbursement for administrative costs from the U.S. Department of Labor; to be covered by the wage-combining provisions of the Federal-State system; and to be eligible for repayable loans from the Unemployment Trust Fund should local funds be insufficient to pay required benefits.

This latter authority is especially important to the Virgin Islands, because it would eliminate the need to seek special legislation every time the local program ran short of funds during periods of high unemployment. I might point out that this Committee only a few weeks ago unanimously reported emergency legislation authorizing the Virgin Islands Government to borrow up to $10 million to replenish its local unemployment fund. This Committee also took similar action last summer, authorizing a $5 million emergency loan.

I would add, too, that there would be considerable advantages to the United States, should the Federal Unemployment Program be extended to the Virgin Islands. These advantages include the increased scope and coverage of the Federal-State system, the increased effectiveness of its interstate and multi-state operations, the elimination of a tax advantage for Virgin Islands employers, and increased Federal Unemployment Tax revenues for the Federal Unemployment Trust Fund. In addition, the costs of administering the Virgin Islands Employment Service which are now paid for out of U.S. Treasury general revenues would be financed from grants from the Federal Unemployment Trust Fund.

Congress has indicated in the past that the existence of an unemployment insurance law and an operating unemployment insurance program would be a major consideration with respect to new admissions to the Federal-State Unemployment Insurance System. The Virgin Islands meets these requirements, and by its past track record, I believe it has demonstrated that it deserves to be included in the Federal-State system.

Mr. Chairman, this program is of vital importance to the future well-being and economic security of the people of the Virgin Islands. I urge your thoughtful consideration of Section 116 and support its retention in the present bill.

Thank you very much.

STATEMENT OF NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION

The National Machine Tool Builders' Association is a national trade association with approximately 360 members accounting for about 90 percent of the United States' machine tool production.

Most of the member companies are small businesses. Over 70 percent of these companies have less than 250 employees. The entire industry has approximately 90,000 employees. The total annual machine tool shipments of the industry were $2,451,700,000 in 1975, and net new orders were $1,186,350,000.

All metal products from automobiles to armaments are made on machine tools, including machine tools themselves. The productivity of all U.S. industry depends in large part on this small but essential industry.

NMTBA is strongly opposed to the enactment of a Federal Unemployment Compensation Benefit Standard.

State unemployment compensation benefits have, in most cases, been increased substantially in recent years to keep up with inflation. The goal of leading unemployment compensation experts is to have the wages of most workers replaced up to the 50% level, if they find themselves out of work through no fault of their own. Of the 28 states where NMTBA members have facilities, only Texas has a maximum weekly benefit amount pegged at less than 50% of the average weekly wage in the State. Six NMTBA states (Iowa, New Hampshire, North Carolina, Pennsylvania, South Carolina, and Wisconsin) already are paying all claimants a maximum weekly benefit amount of at least two-thirds of the average weekly wage in the state.

Six more NMTBA states (Connecticut, Illinois, Massachusetts, Michigan, Ohio and Rhode Island) pay unemployment compensation (UC) claimants with large families at least two-thirds of the State's average weekly wage, while paying less money to claimants with no dependents (and thus less need for temporary income to pay for non-postponable necessities). Indiana also has a "variable maximum" system, but the amount paid to claimants with large families is less than two-thirds of the State's average weekly wage.

Workers with large families in these states will be hardest hit by adoption of a 50%/67% Federal Benefit Standard, because it is unlikely that employers (who *pay exclusively* for the cost of UC through special UC taxes) will agree to paying for dependency allowances *on top of substantially increased benefits* for single workers and those with a working spouse.

In addition, employers in 23 of the 29 NMTBA states will be hard hit by new state UC taxes, if the 50%/67% Federal Benefit Standard is adopted. *The biggest (and most unjust) jolt* will come to NMTBA members in the four "variable maximum" states (Illinois, Indiana, Michigan, and Ohio) and three "dependency allowance" states (Connecticut, Massachusetts and Rhode Island). These states have worked hard over the years to provide special help to UC claimants who need it most, while still holding down over-all UC costs. (In normal times, most unemployed workers have no dependents or a working spouse). For example, in Pennsylvania, UC taxes substantially increased when the Legislature all but abandoned the State's traditional "dependency allowance" system in favor of a maximum weekly benefit amount pegged to two-thirds of the average weekly wage in the State.

The Administration's 50%/67% Federal Benefit Standard is less onerous than the 67%/100% standard proposed by the AFL–CIO. But it will have the effect of reducing benefits to claimants with larger families in some of our most populous states . . . it will have the effect of sharply increasing UC taxes paid exclusively by employers . . . and it will give the biggest tax jolt to employers in those states which have tried the hardest to help those in the greatest need.

STATE OF NEW JERSEY,
OFFICE OF THE GOVERNOR,
Trenton, September 8, 1976.

Hon. RUSSELL LONG,
Senate Finance Committee, Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR LONG: I am writing you about a problem of grave concern confronting New Jersey and 21 other states—the solvency and integrity of our unemployment insurance trust funds.

As you know, New Jersey has been one of the leading industrial states in the country. The principal source of jobs and income for the workers of New Jersey

is our highly developed industrial complex. However, since 1969, New Jersey has experienced a downturn in both industrial growth and employment opportunities, resulting in a loss of 200,000 manufacturing jobs in our state. During the past few years, economic conditions in New Jersey have deteriorated further as the national economy began its downward course and the nation's steepest and longest post World War II recession continued to take its toll. For the most part, New Jersey remains at the mercy of national economic developments. As the nation's economy began to upturn, this has been reflected in rising New Jersey indicators and improvement in New Jersey market conditions.

The nationwide economic problems have struck New Jersey with great impact. During the past seven years, we have experienced above average unemployment and currently have a statewide unemployment rate of 10.5 percent, representing some 300,000 workers.

The net result of these conditions is that for the first time in the forty year history of the unemployment insurance programs New Jersey has depleted its trust fund reserves and has borrowed, since January 1, 1975, $497 million from the Federal Government to cover the extraordinary costs of financing the unemployment insurance program in the state.

It is important to note that New Jersey has taken positive action to meet the problems of financing the unemployment insurance program. A bill which I signed into law effective January 1, 1975, had as one of its primary objectives restructuring the formula for determining the taxable wage base to provide a flexible provision to account for inflationary trends. Despite the steps that we in New Jersey have taken to address the short term crisis and long term objectives of the program, our state action has been insufficient to solve the enormous problems facing the unemployment insurance program. Clearly, we are faced with a problem that is national in scope and one for which federal direction and initiative are required. Therefore, it is timely that your committee is undertaking a reexamination of the unemployment insurance system at a period in which it is facing the most serious test of its ability to provide effective insurance against the risks of unemployment.

By calling attention to the shortcomings of the unemployment insurance program, I do not mean to minimize its strengths. I want to emphasize the importance of the unemployment insurance program to the 300,000 unemployed workers in New Jersey who are receiving weekly benefits in a dignified and reliable manner through the unemployment insurance program. While not enabling unemployed workers to maintain their normal standard of living, these benefits to permit workers the time needed to locate or regain employment which takes full advantage of their skills and experience gained in previous employment and training. From a broader perspective, the importance of the unemployment program in contributing to a stable labor supply by helping to keep available a skilled, experienced work force for employers who are faced with temporary interruptions of production cannot be overstated.

Despite these strengths, this recession has suddenly made it clear that an employer funded insurance program cannot protect society against the risks of a protracted recession. While the unemployment insurance program is a vital part of a state's economy, its utility is limited to insuring against normal levels of unemployment. If we are to protect our workers, new measures, broader in scope and more universally financed, must be sought to supplement unemployment insurance costs during sustained periods of national economic recession.

I, therefore, urge your personal consideration of the following three part proposal which offers states financial relief during periods of extraordinary unemployment.

(1) The repayment of the Federal Unemployment Insurance Trust Fund due to depletion of state unemployment insurance trust fund reserves should be deferred for ten years at a fixed penalty rate.

The Federal Unemployment Tax Act (FUTA) places unlimited liability on the states for financing of unemployment insurance benefits to their unemployed workers. It is now obvious that the experience of nearly four decades of the federal-state system of unemployment insurance is no longer a reasonably certain guide to the potential drain on a state UI fund during catastrophic recession or a series of close following recessions.

No social program can be truly an insurance system unless the maximum risk is measurable. No state fund can be built up high enough to guarantee solvency in severe recessions. Even if the attempt is made to do this, the accumulation of immense reserves with a relatively low probability of utilization would be fiscally undesirable and a threat to the efficacy of the federal-state system.

However, widespread use of the federal loan fund with the required repayment schedule will adversely affect the economic recovery of affected states. It is appropriate that the repayment schedule provisions, enacted by the federal government in the 1930's, be modified to place a ceiling on the liability of the states for unemployment insurance benefits during catastrophic recessions.

Inasmuch as 29 states will be borrowing from the federal UI Trust Fund during fiscal 1976. I urge your support of a ten year loan payment deferral and extended payback agreement with a fixed 0.5% penalty rate to replace the graduated penalty tax rate.

(2) Extended Benefits Forgiveness:

I strongly recommend that effective January 1, 1975, the trust fund of each state be credited with an amount equal to the amount paid by the state as its share of extended benefits since that date.

The extended duration provision of the law was originally conceived as a technique for supplementing the regular 26 week maximum during times of unusually high unemployment. Recent experience has demonstrated, however, that the low extended benefits trigger point and the high average unemployment rate now provide, for practical purposes, 39 weeks of benefits as the rule, rather than the exception. Therefore, it is appropriate that the extended benefits program established through federal initiatives and mandated by federal law be financed exclusively by the Federal Government. State financing systems could then gear, with more actuarial accuracy, to fully financing state mandated benefits.

(3) Retrospective and Prospective Funding of Federal Supplemental Benefits from Federal General Revenues:

I strongly urge that effective January 1, 1975, all loans to the Federal Trust Fund for Federal Supplemental Benefits (FSB) be forgiven. All future FSB program costs would also be funded by general revenues.

Since the FSB debt from general revenues has already been calculated into the fiscal year 1977, this provision would add no additional sum to the deficit.

I hope you will agree with me that these proposals have substantial merit and should receive every consideration by the Senate Finance Committee for incorporation into the Federal Unemployment Insurance legislation. I am appreciative of your efforts and those of your committee, and I am certain that this work will result in timely and important improvements in the federal-state unemployment insurance program.

Sincerely,

BRENDAN T. BYRNE,
Governor.

STATEMENT OF THE NEW YORK CHAMBER OF COMMERCE AND INDUSTRY, SUBMITTED BY PETER DORN, DIRECTOR, SOCIAL INSURANCE

The New York Chamber of Commerce and Industry represents 2,000+ employers, large and small, in all branches of industrial and commercial activity, including many corporations headquartered in New York but engaged in multi-state operations. Through its Social Security Committee, which includes knowledgeable executives from leading nationwide business organizations, and its Social Insurance Department, the Chamber studies and actively presents management thinking on social insurance issues at both the national and state levels. We appreciate this opportunity to present our views in connection with HR 10210.

The Chamber respectfully urges the Senate not to include in HR 10210 any provision imposing a federal benefit standard on the states and not to increase the taxable wage base above the $6,000 amount contained in the bill passed by the House.

The House on July 20th by a vote of 281 to 113 defeated an amendment to add a Federal Benefit Standard to HR 10210. (The New York delegation vote against standards was an overwhelming 25 to 11.) This decisive rejection of the benefit standard concept indicates that if the Senate should act to add a benefit standard to the bill this late in the session the chances for passage of HR 10210 would be seriously jeopardized. The New York Chamber of Commerce would again join with other business groups in an all out effort to prevent the final enactment of any bill containing a benefit standard.

THE CASE AGAINST FEDERAL BENEFIT STANDARDS

(1) Congress should *not*—repeat *not*—put additional burdens on the state systems right now when many are so desperately in debt—twenty state systems are in bankruptcy (plus Puerto Rico and Washington, D.C.) and more including New York, will face a red-ink situation soon. *This is not the time to place further cost burdens upon a seriously-jeopardized social insurance program.*

(2) Proponents argue for uniformity. They would trade even 53 experimental laboratories (the 50 states, Washington, D.C., Puerto Rico and the Virgin Islands) for one massive bureaucratic labyrinth. They just don't grasp the obvious—unemployment insurance could be made to be uniformly bad—as well as uniformly good.

(3) A federal benefit standard would necessarily mean that other federal standards would have to follow. For example, if only the weekly benefit amount is standardized, a state could offset additional costs by reducing duration—so eventually duration would have to be standardized. Or, if both amount and duration are standardized, then states could raise or otherwise stiffen their earnings (or weeks of work test) to qualify for benefits—so eventually the the qualifying requirements of all states would have to be standardized. Then the acts which disqualify an individual from benefits would have to be standardized, ad infinitum. In short, for a benefit standard to have assured meaning, it will require standardizing *all* benefit provisions. This has the practical effect of federalizing the program.

(4) It is inequitable for the Congress to set benefit levels and then rely upon the states to enact the taxing provisions to support Congressional generosity. Benefit functions and the taxing functions required to pay those benefits should not be separated.

(5) A number of states, including New York, have seen unreasonably liberal qualifications and disqualification requirements passed by their legislatures—probably in lieu of increased benefit amounts. Legislative pragmatics dictate the retention of state control over benefit amounts in order that the political force of quid pro quo can operate to balance the necessary adjustments. A federally mandated standard on only one side of the political balance upsets and negates the other.

(6) A federal standard is not necessary to achieve an adequate benefit level. The record of the states in raising benefit levels has been good. Between 1969 and 1975, for example the average weekly benefit being paid increased 52 per cent—compared with an increase during the same period in the average weekly wage in covered employment of only 39 per cent, and in Consumer Prices of 47 per cent. Contrary to popular belief, average U.C. benefits paid have actually outstripped the inflationary spiral—a record precious few other programs can match. Although a few states have lagged in their maximum benefit amount, many of them have been "catching up", and the record for the past two years has brought these states within striking distance of the norms usually accepted as "adequate. In 1973–74, 35 of the 52 jurisdictions having U.C. laws adopted legislation increasing their benefit levels and 18 states adopted legislation increasing their benefit levels in 1975.

FEDERAL UNEMPLOYMENT FINANCING

The Senate Finance Committee has received ample testimony from national business groups as to why the taxable wage base should not be increased about the $6,000 amount contained in the bill as passed by the House. We concur in these views and will not repeat them here. We must emphasize, however, that New York State employers currently face substantial increases in their tax burden resulting from the recent city and state fiscal crisis and any additional costs imposed by Federal mandate under this legislation will seriously hamper or prevent the ability to recover from the recently depressed economic conditions.

STATEMENT BY HON. ABRAHAM D. BEAME, MAYOR OF THE CITY OF NEW YORK

On behalf of the City of New York, and its citizens and municipal employees, I want to express my deep concern over the financial burden that H.R. 10210 would impose upon us if enacted in its present form.

No one doubts the pressing need to reform both the administration and financing of Unemployment Insurance programs. However, this legislation would impose major financial burdens upon many local governments which have yet to recover fully from the recession.

Further, the shortcomings of the present unemployment benefit programs reflect the lack of a comprehensive national income security policy, of which Unemployment Insurance should be a part.

Finally, H.R. 10210 creates problems with regard to local governments' participation in existing federal employment and grant programs, as described below.

At the height of the recent recession, the Congress responded to the plight of hundreds of thousands of workers by providing a federally-funded Supplemental Unemployment Assistance program to cover previously excluded workers.

A major factor in establishing that program was the wave of municipal employee layoffs forced by national economic conditions in many communities. The crisis in local government finances is no less urgent today, and I must join my fellow mayors and county executives in urging the Congress not to shift the burden of financing these benefits to localities at this time. The City of New York supports the extension of the Supplemental Unemployment Assistance program to maintain coverage for local government employees.

In the City of New York and many other localities, additional terminations of local government employees will loom as a threat as long as our local economies lag behind the national business recovery. Should the City order further layoffs of employees to meet the requirements of our state- and federally-mandated financial plan, H.R. 10210 would force us to terminate additional numbers of City workers to meet our new UI financing obligations.

At the state benefit maximum of $95/week, for every one thousand employees laid off, we would incur an unemployment benefit obligation of $3,705,000. At an average salary plus benefits of $15,000, an additional 247 employees would have to be terminated to finance the Unemployment Insurance benefits for the first thousand—and an additional 61 employees to finance the UI benefits of the 247. Thus, one additional worker will face the loss of his or her job for every three laid off to meet budget requirements.

The meaning of this cruel arithmetic is that H.R. 10210 would add to the unemployment problem in the very areas where joblessness already has become critical. In that regard, the bill undermines the aims of the recently enacted Public Works Employment Act and other programs targeted to assist economically depressed areas.

I understand the concern of the Congress over the solvency of the Unemployment Insurance trust funds, and the need to enact some measure this year. However, I hope the Congress will return to this issue in the next session and address those important UI-related issues which are not resolved in H.R. 10210.

At the local level, mayors and county executives know that the real problem is the high level of unemployment that persists in many parts of the nation months after the recession is said to have run its course. Most of my colleagues would agree that the Congress must soon outline a comprehensive approach to the reform of all our income security programs. This promises the best hope of solving the specific problems that now plague each of these programs.

Second, the drain on the funds which is of such concern to the Congress stems in large measure from administrative inefficiencies and from fraudulent and abusive practices. Extension of benefit periods make each case of fraud that much more costly to the system. However, H.R. 10210 does not tackle this problem.

Third, the Congress should consider the adverse impacts the legislation will have on the private sector and their relation to national policy objectives. The tax increase and the increase in the taxable wage base included in the bill hit hardest at small employers. This is especially true for the small firms in urban areas which often employ unskilled labor plentiful in central cities.

The Congress has worked to sustain the economies of these areas, yet H.R. 10210 may counter that established policy by reducing the incentive to create new jobs in urban areas for low-skilled workers. The specific economic consequences of this legislation should be considered closely. One possible adjustment may be the exemption of smaller businesses—perhaps those employing 25 or fewer workers—from the Unemployment Insurance tax increase.

If the Committee does choose to obligate states and cities to meet UI costs, I urge you to address some of the special problems which this bill raises with respect to local governments' participation in federally funded programs. Local

governments should incur no UI obligations for employees hired under temporary federal employment programs. These positions depend entirely on the continuation of federal support. If localities know they face an Unemployment Insurance obligation to these employees when the programs expire, they will be less willing to participate.

H.R. 10210 recognizes this by excluding CETA workers. The same reasoning should apply to the Title X Job Opportunities Program and to any public sector jobs that may be created through the Public Works Employment Act.

Temporary categorical grants (such as 1-3 year pilot, research, and demonstration programs in education, health, et. al.) present a different problem. When these grants expire, all employees may be terminated—and may be eligible for Unemployment Insurance benefits—unless the community retains them on the payroll with local funds. If a locality chooses to enter the UI system on a reimbursement basis, rather than on a tax basis), a large part of each categorical grant award would have to be set aside to reimburse unemployment costs. However, it may be illegal to retain these funds after the grant has expired under current federal regulations.

Thus, two predicaments arise:

1. Cities would be forced to divert a substantial part of these grant funds to cover future Unemployment Insurance contingencies. This diversion will vary from state to state depending on eligibility standards and benefit levels.

2. Under federal laws and regulation, localities may not be able to provide for a UI reserve since the grant may have to be closed out and all remaining funds returned to the federal government. In that case, categorical grant programs would create substantial new costs for local governments, and they may become unwilling to apply for thsee funds in many cases.

For categorical federal grant programs, the Congress could eliminate this problem through the establishment of a federal insurance pool. Categorical grant recipients could have the option of paying a premium to join the pool—the premium being a small percentage of salaries similar to the UI tax. That premium could be included as an overhead cost in making categorical grant applications and would be only a small amount. Further, there would be no problem about carrying over funds beyond the grant expiration date, as the UI benefits would be paid out of the federal fund—perhaps into state Unemployment Insurance funds to reimburse them for costs incurred.

This legislation reflects the new spirit of rigorous fiscal responsibility now affecting all levels of government, and I commend the Committee members for their forthright approach to this burdensome issue.

However, the problems affecting Unemployment Insurance should not be solved—indeed cannot be solved—my imposing new burdens on local governments at a time when many communities still suffer severe economic hardship.

AMERICAN PAPER INSTITUTE, INC.,
New York, N.Y., September 10, 1976.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finaance, U.S. Senate, 217 Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The American Paper Institute is the national trade association of the pulp, paper and paperboard industry. The 200 member firms of the Institute produce more than 90% of all the pulp, paper and paperboard manufactured domestically. The paper industry ranks among the ten largest industries in the United States and operates in virtually every state of the union.

We appreciate the opportunity to present to this Committee our industry's views regarding the recommended changes in the unemployment compensation program pursuant to H.R. 10210 as passed by the House of Representatives on July 20, 1976.

In our view this bill maintains the fundamental concepts of the federal-state unemployment system by assuring that responsibility for funding and administration of the program would continue to be a state responsibility.

While we support the basic objectives of H.R. 10210 we would like to outline our concerns with certain provisions, and recommend specific modifications. We will also comment on a proposed amendment to H.R. 10210.

FINANCING

Our industry recognizes the impact of the 1974–75 recession on the federal and states' unemployment funds, and the imperative need to raise the current taxable wage base level to restore solvency to the system.

The financing provisions found in Title II of H.R. 10210 recommend an increase in the tax base to $6,000 (effective 1/1/78) and a temporary increase in the net federal tax rate to 0.7% (effective 1/1/77 to 12/31/82) and return to a 0.5% rate effective 1/1/83. Although these provisions will generate an immediate large increase in revenues for the federal fund, we believe this proposal would unduly distort the state experience rating system which will have long range implications.

As an alternative, we suggest implementation of a $5,400 wage base (effective 1/1/78) plus a net tax rate of 0.6% (effective 1/1/77), 0.7% (effective 1/1/78), 0.8% (effective 1/1/79 to 12/31/82) and 0.55% (effective 1/1/83). This proposed schedule of tax rates plus a base increase to $5.400 will product sufficient federal revenues to eliminate the current 7.7 billion dollar deficit and provide for a $900 million positive balance by 12/31/82 and a $1.6 billion positive balance by 12/31/83.

FEDERAL BENEFIT STANDARD

Although federal benefit standards were defeated in the House by a vote of 281–113 and, therefore, not included in the provisions of H.R. 10210, we would like to reiterate our opposition to this proposal.

A federal benefit standard, which was proposed as an amendment to H.R. 10210, would require each state to set a maximum benefit level at not less than 66⅔% of its acerage weekly wage. We believe that such a standard is unwarranted and would adversely affect state unemployment programs, by adding more than a billion dollars annually to the costs of the system at a time when nearly half the states are deeply in debt.

Moreover, benefit standards, by their very nature, would generate additional standards. For example, if only the weekly benefit were standardized, a state could offset costs by reducing duration; therefore, durations would eventually have to be standardized. If both benefit amount and duration are standardized, states could raise or otherwise tighten their weeks-of-work test to qualify for benefits, so, eventually, the qualifying requirements of all states would have to be standardized.

Proponents of benefit standards claim that state benefit programs do not respond adequately to the claimant's needs as inflation increases. We believe, however, that states have demonstrated the ability to respond, as the following illustrates:

PERCENTAGE OF AVERAGE WEEKLY WAGE REPLACED BY MAXIMUM WEEKLY BENEFITS PAYABLE AMONG THE STATES

Percent of average weekly wage	Number of States (including territories)	
	July 1969	June 1976
65 percent or more	4	22
60 to 64 percent	1	6
55 to 59 percent	0	9
50 to 54 percent	17	11
45 to 49 percent	12	2
40 to 44 percent	13	1
Under $40	5	1

Source: Research Division, UBA, Inc.

TRIGGER PROVISIONS IN THE EXTENDED BENEFITS PROGRAM

H.R. 10210 modifies the triggers in the Extended Benefits Program to provide for the payment of extended benefits (weeks 27–39) in a state when either of the following conditions are met:

1. There is a seasonally adjusted national insured unemployment rate of 4.5% based on the most recent 13-week period; or

2. The seasonally adjusted state insured unemployment rate is 4.0%, based on the most recent 13-week period.

The intent of the trigger mechanism contained in the 1970 amendments was to establish an extended benefit program which would provide early response to adverse economic conditions and end when the distress period has passed. The triggers have been costly and unrealistic particularly during periods when high unemployment has continued over a protracted period. For example, the 120 percent factor would have prevented payment of extended benefits on several occasions in states where the unemployment rate was high and payment of extended benefits appeared appropriate. A state with a 10 percent unemployment rate for two successive years would not trigger extended benefits at the beginning of the third year unless the rate increased to 12 percent, or 20 percent higher than the preceding two years. Since enactment in 1970, Congress has legislated on seven different occasions to waive the 120 percent factor in order to permit payment of extended benefits.

We recognize imperfections in the current triggering provisions, but to simply pay extra benefits in any state experiencing a 4% "seasonally adjusted" rate may lead to permanent and unnecessarily high expenditures. In an economy where the labor force growth averages two million a year, a trigger point of 4% is too low since a significant portion of the unemployment statistics reflects the large inflow of new work seekers. Furthermore the 4% rate generates significant inequities between states experiencing normally low vs. high unemployment levels. For those with very low unemployment, it will virtually preclude participation in extended benefits; in high unemployment states its oversensitivity will mean a perpetual program of extended benefits.

We believe that the existing and proposed trigger mechanisms should be carefully reviewed, and recommend that the National Commission include such a study in the proposed evaluation of the present unemployment compensation programs. This study should examine the adequacy and economic impact of various alternative approches, including the possibility of a trigger provision based on the proportion of workers reported out of work for extended periods.

SUMMARY

This industry recognizes the financial crisis which exists at the federal and state levels and strongly urges immediate legislative action.

We recommend continued control of the unemployment compensation system at the responsive state level and retention of the state experience rating concept in setting employer taxes. We oppose federal benefit standards.

We recommend, in addition, a study of the trigger mechanism by the proposed National Commission on Unemployment Compensation.

Sincerely,

NORMA PACE,
Senior Vice President.

STATEMENT OF JAMES D. "MIKE" MCKEVITT, WASHINGTON COUNSEL, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Chairman, NFIB, with an audited membership of 462,000 small and independent business firms, vigorously opposes H.R. 10210, the Unemployment Compensation Amendments of 1976. Our system of unemployment compensation needs thorough reform, not another "quick fix" with an even expanded number of workers covered.

NFIB members are distraught by the continuing abuses of the current unemployment compensation system which are both well-known and widely reported. CBS and Mike Wallace deserve special commendation for airing sample abuses to a wide spectrum of the public on the television program "60 Minutes". But "60 Minutes" added nothing to what small business people have known for years—abuse of unemployment compensation is rampant.

NFIB's files are filled with poignant examples.

An NFIB member in Seattle recently advised us of a young, single warehouseman who quit his job to atend the Olympics in Montreal. The young man draws Unemployment Compensation. Another employee of the same firm had a fight with her husband and went home to her parents "until her husband came to his senses". She, too, draws Unemployment Compensation. Case after case of similar abuses can be cited, but H.R. 10210 doesn't address this problem.

Simply put, America's small business community is sick and tired of providing paid vacations to these people who are violating the law in spirit, if not in prac-

tice. We have heard a great deal about welfare cheats, but little has been done. Will the same tbe true of Unemployment cheats?

NFIB members are also concerned over the staggering numbers of people drawing Unemployment benefits when small business has well over 1½ million job openings. NFIB's Quarterly Economic Report for Small Business, July 1976[1], reveals 17 percent of the small firms surveyed responded positively to the question, "Do you have any job openings that you are not able to fill right now?" Since the posed question directed itself only to the number of firms with job openings, not the number of openings per firm, extrapolations from the survey sample to the entire small business population will provide a very conservative estimate. Nevertheless, NFIB's estimate of at least 1.6 million vacant jobs in the small business sector raises significant questions.

Why should this phenomenon exist? Why should so many be drawing Unemployment Compensation, yet so many jobs be available? Possibly, part can be attributed to the geographic distribution of job openings in contrast to the geographic distribution of unemployed. NFIB survey data reveals, however, that even in New England, the region where the fewest small firms reported job openings, 9 percent of the firms had vacancies. Possibly, part can be attributed to the substantially greater need for skilled labor than unskilled labor. NFIB survey data reveals, however, 5 percent of the firms needed unskilled labor.

But there is a stronger possibility that is not revealed in NFIB survey data. It is revealed by the experiences of our members. Tihs possibility is the disincentive Unemployment Compensation currently provides against seeking productive employment.

A couple in a small Wisconsin community recently offered their experience:

"Since Spring we have advertised for employees but have found it extremely difficult to fill the positions we have open. Our starting wage is $3.50 to $3.75 per hour depending on experience. (Experience is not required for a position.)

"On many various occasions, when prospective employees call or come to our office, they laugh when they hear of our starting wage and say, 'I can earn more money by staying home and collecting unemployment compensation.' So, we keep trying to find people to work for us."

When does Unemployment Compensation cease being a stabilizing influence and begin to contribute to the problem? No one can determine precisely when that point has been reached. But, with the significant number of jobs available, it certainly appears the watershed has long been passed and Unemployment Compensation is no longer buoying the economic system, but sinking it.

NFIB members are further concerned because H.R. 10210 will compel millions of small firms to absorb tax increases despite excellent experience ratings. Why should that be? Why should firms that have not contributed to the insolvency of the fund in many states now be asked to help bail it out?

A small agri-business employer in the Mid-West, an NFIB member, has not experienced a single layoff in 44 years of operation. Yet, H.R. 10210 would raise his taxes. The man's business happens to be located in the same community as a subisidiary of a corporate giant, the subsidiary being subject to periodic, heavy layoffs. This small employer resents this indirect subsidy to his large corporate neighbor. Can you blame him?

NFIB appreciates the fact H.R. 10210 provides for a creation of a National Study Commission to consider various aspects of Unemployment Compensation. This is a laudable, though tardy action. But for the Commission to be successful, it must direct itself to the conceptual issues as well as the mechanical. It must begin with the question, "What is unemployment?" and proceed to eliminate the inequities, the abuses, and the disincentives to gainful employment. Without thorough consideration of these aspects, the Commission will be nothing more than a bureaucratic sham—a basis for another "quick fix" rather than wholesale reform.

Small business employes over 50 percent of all workers in the private sector. NFIB, therefore, feels THE COMMISSION MUST INCLUDE PERSONS REPRESENTING THE SMALL BUSINESS SECTOR.

NFIB does not oppose Unemployment Compensation per se; indeed, we feel the purpose of the program is commendable and essential to the social and economic goals of the United States. However, H.R. 10210 encourages institutionalization of the program's current distortions and we cannot support it.

NBIF appreciates the opportunity to express our views.

[1] *NFIB Quarterly Economic Report for Small Business*, Bailey, Richard M. and Dunkelberg, William C.; Faculty Associates, Inc., San Mateo, California.

STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

The National Retail Merchants Association ("NRMA"), a non-profit corporation, represents approximately 30,000 department, chain and specialty stores in the United States, many of which are operated by small retailers. The aggregate annual sales volume of NRMA members exceeds $80 billion.

The retailing industry is probably our nation's largest employer outside of the governmental and health care agencies and is uniquely subject to changes in consumer spending attitudes. Retailers historically have operated with comparatively small profit margins because of the very competitive nature of our business. Unlike many other industries, additional costs cannot readily be passed on to the consumer. Minor changes in costs, thus, become magnified and usually have resulted in reductions in the labor force of many of our stores. Given these financial considerations, substantial increases in the cost of unemployment compensation insurance would have a significant impact on all retailers.

The following comments are made with the realization that social benefits are appropriate as a matter of government responsibility to those Americans who temporarily are unemployed due to economic circumstances not of their own making. The NRMA is fully cognizant of the role which such income-replacement benefits have played in the Nation's recent economic downturn by affording millions of deserving citizens the economic means by which they might sustain a minimum living standard. These benefits helped smooth the economic cycle and our consumer-oriented industry immediately felt their favorable effects.

The NRMA, therefore, offers the following comments for your consideration.

(1) As acknowledged by the proposed Unemployment Compensation Amendments of 1976 (H.R. 10210), the States, rather than the Federal Government, should continue to administer and control unemployment insurance because:

(*a*) "Local" management can be more responsible and sensitive than "distant" management, by reason of being closer to the individual problems facing the unemployed. A Federal or centralized administration most likely would create more confusion in an already complicated area and result in higher costs. In summary, the NRMA believes that the State governments are in a much better position to make such decisions, based upon their knowledge of local needs and local fiscal considerations.

(*b*) Federal benefit standards could force benefits throughout the Nation to rise to the highest existing State level. The determination of the amount of unemployment benefits rightfully should be the prerogative of each State. The setting of any national benefit standard on the basis of a proportion of weekly earnings would work hardship in many States.

(*c*) The States generally have been doing an efficient job in increasing benefit standards; unemployment benefits have increased at a faster rate than average earnings and have kept pace with cost-of-living increases. For example, from 1969 to 1974 the average weekly benefit increased 39% according to Unemployment Benefits Advisors, Inc. During this period average weekly wages of the covered employees increased 30% and the CPI increased 35%.

2. The NRMA recognizes the need for financing to meet the deficit in the Federal Unemployment Trust Fund mainly caused by the unforeseen recent national economic downturn and the temporary extension of unemployment benefits to 65 weeks. In order to alleviate this situation, the NRMA advocates the following measures:

(*a*) An increase in the Federal wage base to $5,400 and not to the $6,000 level as provided in H.R. 10210. The NRMA strongly recommends that the States not be required to meet the new Federal level but instead be permitted to allow their own financing needs to determine their wage base. It is a fact that several States already voluntarily have exceeded the Federal wage base.

(*b*) An increase in the effective net Federal tax rate to 0.6% effective January 1, 1977 and to 0.7% effective January 1, 1978 (from the present 0.5% rate) until obligations to general revenues are repaid. Thereafter, the net Federal tax rate should revert to 0.5%.

(*c*) The Federal Unemployment Trust Fund should not be depleted further by providing benefits beyond the 39-week level. If benefits are to be extended beyond 39 weeks, the benefits should be paid from general revenues because extended layoffs are a reflection of generally depressed economic conditions rather than of a particular employee-employer relationship.

3. The NRMA suggests that the trigger provisions for the extended unemployment compensation program proposed in H.R. 10210 are too low. In view of the

current influx of numerous workers into the insured category for the first time, unless the "triggers" for extended unemployment benefits are increased, there is a real possibility that the Fund in the future again may become at risk. If the Committee feels that it is inappropriate to increase the national and state insured unemployment "triggers" at the present time, the NRMA recommends that this matter be considered by the proposed National Commission on Unemployment Compensation.

Our industry recognizes the responsibility which the Nation owes to those Americans who find themselves temporarily unemployed as a result of economic declines. However, any program of economic support must be fashioned with a view to the ultimate economic goal of our society, *i.e.*, to encourage employment and self-support. It is in this context that the NRMA proffers the views outlined above.

The NRMA appreciates this opportunity to present its views on unemployment compensation legislation, a matter of significance to our members. Representatives of the NRMA would be pleased to assist the Committee and its staff in any manner that the Committee deems appropriate.

[Mailgram]

HUDSON RANCHERS,
Topeka, Kans., September 9, 1976.

MICHAEL STERN,
Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C.

The economically depressed agricultural industry can ill afford the additional burden of unemployment compensation as passed by the House and now under consideration by the Senate Finance Committee. We strongly urge that you oppose passage of this provision.

A. B. HUDSON.

MILLDALE RANCH CO.,
North Platte, Nebr., September 4, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: On behalf of the many ranchers in our area, I wish to express objection ot that section of HR 10210 that extends unemployment compensation coverage to agricultural workers.

Historically, there has been and will continue to be a shortage of adequate agricultural labor throughout the United States. Unlike workers in urban areas, agricultural workers, in the main part, are furnished housing and other fringe benefits as most of them live on the farms and ranches where they work.

It is our contention that unemployment compensation is not needed in the field of agriculture, as it does not relate to the actual conditions and needs of this shrinking segment of the American Labor Force. Extended coverage to agricultural workers will only encourage situations of unemployment and add to the production costs of food, which in turn, means higher food costs to all consumers.

As there is no forseeable need for unemployment compensation in the field of agriculture, I urge that the Committee on Finance delete such coverage in the proposed legislation.

Respectfully yours,

E. H. SHOEMAKER, Jr.,

P.S. Part-time and seasonal work compounds the problem.

NEW MEXICO WOOL GROWERS, INC.,
Roswell, N. Mex., September 7, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Room 227, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: The New Mexico Wool Growers Association would like to go on the hearing record as opposing the inclusion of agriculture in H.R. 10210, Unemployment Compensation Amendments of 1976. I wish to emphasize this for the following basic reasoning:

Agriculture operates on either a very low profit margin or at a loss. This would be an added cost burden to farmers and ranchers.

2. Cost to agriculture could ultimately affect consumer and higher prices for agricultural products.

3. The individual states should determnie responsibility for coverage of agricultural employees rather than the Federal government due to seasonal employment in agriculture and also because agricultural employment practices vary from state to state.

Thank you for your time in hearing our opposition to this bill. We are very much opposed to the inclusion of agriculture in H.R. 10210.

With warmest regards,

TONY TREAT, *President.*

STATEMENT BY ST. CLAIR REEVES, MAYOR OF COLLEGE PARK, MD.

Mr. Chairman, I appreciate the opportunity to present my comments on H.R. 10210, and specifically on the provisions of the bill which would require States to extend unemployment compensation coverage to employees of local governments.

In this, our Bicentennial Year, it is appropriate that we remind ourselves that down through the years it has been the local government that citizens have looked to for their basic government services. Unfortunately, there is an increasing trend of more and more federally mandated costs being imposed on the treasuries of the local government. Furthermore, this is occurring at a time when these governments are facing severe financial problems, and their taxpayers are demanding that there be no more tax increases. There is a real danger that the increasing trend in federally imposed costs will have an adverse effect on the independence and integrity of municipal government priority, policy and budget decisions.

H.R. 10210, the Unemployment Compensation Act Amendments of 1976, would extend unemployment compensation benefits to State and local governments—at State and local government expense. These mandated costs would come at a time when local governments can least afford them. It is even conceivable that the imposition of these additional costs, on presently overburdened local budgets, could lead to the unemployment of many public employees. It would be most unfortunate if this were to occur in a sector that overall has a very good employment record.

By and large, established compensation systems of local governments are working well, and in many cases are providing additional benefits to public employees. Most important, these systems are operating within the present financial capabilities of the local governments. This is particularly true for the smaller municipalities, such as College Park, who have relatively few employees. Thus, the financial impact of H.R. 10210 on local governments must be considered in relation to the benefits which might be derived.

Speaking for the taxpayers and local government of College Park, and along with many other local governments, I urge the committee to amend H.R. 10210 to provide for the continuing exclusion of State and local government employees from the unemployment compensation program.

BOARD OF SUPERVISORS,
COUNTY OF LOS ANGELES,
Washington D.C., September 7, 1976.

Senator RUSSELL B. LONG,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR: Your Committee is scheduled on September 8 to consider H.R. 10210, the "Unemployment Compensation Amendments" bill.

As you know, the Supreme Court ruled on June 24, 1976 that the Federal wage-hour regulations governing private employers do not apply to State and local governments. In handing down its decision, the Court said that enforcement of these regulations would interfere with the integral governmental functions of the affected States and local governments. The County of Los Angeles contends that Section 115(b) of H.R. 10210 is a like infringement of the constitutional rights of State and local governments; and we urge you to delete the provisions of this section of the bill.

If this legislation proceeds regardless of the Supreme Court's ruling on what we consider a like infringement, we request that you consider the impact of the legislation as it would affect the use of part-time and temporary employees. In the bill as passed by the House the increased expense of providing unemployment compensation in this category would be so great as to preclude future use of part-time employees in some instances. We propose the following alternative language for Seciton 115(b) which would enable States and local governments to continue some seasonal or emergency employment practices:

"(D) an employee serving on a temporary, part-time, recurrent or seasonal basis or an employee serving a probationary period pending final appointment to a permanent full-time position except an employee of the State, or any instrumentality of the State or of the State and one or more other States for a hospital located in the State. For purposes of sub-paragraph (d) of this paragraph, a temporary employee shall be any employee whose appointment is for a limited duration of not more than one year; a part-time employee is any employee who is not employed for the maximum number of hours per week normally required of a full-time employee in said governmental entity; and the term "seasonal" and "recurrent" shall be deemed to be synonymous and shall refre to any employee who is appointed to a position for a limited duration of not more than one year and who may be reemployed on a recurring basis during monthly, quarterly, annual, or biannual periods."

In our opinion the alternative language we propose would appropriately limit the bill's effect to full-time permanent employees in public agencies for which local governments are responsible. We believe the Committee could best provide new language to properly cover the situation where some part-time employees are already covered by Federal statutes, i.e., part-time employees in State hospitals and in institutions of higher learning.

We attach a listing of the kinds of temporary, part-time and recurrent employees who are part of the county's work force as required. Unemployment insurance or payments are estimated to come to a minimum of $21.4 million for these employees if the present employment policy continues under the mandate of H.R. 10210. We see no way for the county to shoulder this cost burden without a drastic tax increase at the local level which taxpayers would surely resist.

The County's Department of Personnel and this office stand ready to provide additional information on the effect of H.R. 10210.

Sincerely,

JOSEPH M. POLLARD,
Legislative Representative.

COUNTY OF LOS ANGELES, CALIF., DEPARTMENT OF PERSONNEL

I. TEMPORARY AND RECURRENT EMPLOYEE STAFFING REQUIREMENTS IN FOUR MAJOR AREAS OF COUNTY OPERATIONS

1. Health Services

We operate one of the largest health care systems in the nation. We are affiliated with three major teaching institutions. Our hospitals are a training ground for: nurses, nursing attendant, medical lab and other medical technical personnel, food service workers, janitors and unskilled workers employed in hospitals or other health care facilities. These categories include temporary workers at times of excessive patient loads.

2. Elections

We hire as many as 700 people to carry out elections. They are of course temporary workers.

3. Property appraisals and tax collection

Under state law the appraisal of property and tax collection are performed in cycles, requiring employment of large numbers of clerical staff. They are temporary or recurrent.

4. Recreation

We hire people to work in parks, at beaches and marines, or at any kind of recreation facility during the summer months. They are seasonal employees.

II. TEMPORARY EMPLOYEES IN LESSER CATEGORIES

Workers hired in time of emergency or disaster, or civil disturbance.

Tour guides at museums, arboretums and other tourist attractions during exhibitions, seasonally, and at times of peak visitor loads.

Students working part time during summer vacations or while attending school.

People employed for duration of construction or repair projects.

Crossing guards during school sessions.

Weed abatement and fire control workers employed during periods of high fire risk.

III. COST OF TEMPORARY EMPLOYEES

While we cannot be certain of the kind of State financing that would be available if H.R. 10210 became law, and we have no data base for estimating the quantity or duration of benefits which would be paid, we can reasonably project a cost of at least $21.4 million if the County is required to pay the bill under existing state regulations.

COUNTY OF SAN DIEGO,
Washington, D.C., September 7, 1976.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee, 2227 Dirksen Senate Office Building, Washington, D.C.

DEAR CHAIRMAN LONG: On September 8, 1976, the Senate Finance Committee will begin consideration of H.R. 10210, which would extend the unemployment compensation program to employees of local governments. On March 24, 1976, the County of San Diego Board of Supervisors unanimously adopted a resolution in opposition to this bill. I have enclosed a copy of the resolution for your reference.

H.R. 10210 would have a deplorable impact upon city and county governments in California. San Diego County would have to pay in excess of $1 million in the first year. By further imposing Federal requirements on the fiscal and personnel policies of local governments, H.R. 10210 would severely hinder cities and counties currently attempting to meet fiscal crises.

I urge you, as Chairman of the Senate Finance Committee, to either vote against this bill or support any amendments that would delete the provisions dealing with employees of local governments.

If you need any further information regarding H.R. 10210, please let me know.

ROGER F. HONBERGER,
Washington Representative.

Enclosure.

RESOLUTION NO. 23, RE OPPOSITION TO H.R. 10210

On motion of Supervisor Walsh, seconded by Supervisor Brown, the following resolution is adopted:

Whereas, the County of San Diego is not currently required to participate in the State Unemployment Insurance Program; and

Whereas, local government employees now receive benefits for 52 weeks; and

Whereas, layoffs of County employees have been infrequent, amounting to 24 since 1972; and

Whereas, HR 10210 mandates Unemployment Compensation coverage for state and local employees including employees of the County of San Diego; and

Whereas, HR 10210 would require that the County either participate in the State Unemployment Insurance Plan and pay taxes amounting to $1.05 million, or pay employee benefits equal to the State Unemployment benefits; and

Whereas, the bill would have several other adverse effects on the County; now therefore, be it

Resolved, That the Board of Supervisors of the County of San Diego oppose HR 10210 and join other organizations in urging the defeat of this legislation.

Passed and adopted by the Board of Supervisors of the County of San Diego, State of California this 24th day of March, 1976 by the following vote:

Ayes: Supervisors Walsh, Brown, Bates and Taylor.

Noes: Supervisors, none.

Absent: Supervisor Conde.

State of California, County of San Diego, ss.

I, Porter D. Cremans, Clerk of the Board of Supervisors of the County of San Diego, State of California, hereby certify that I have compared the foregoing copy with the original resolution passed and adopted by said Board, at a regular

meeting thereof, at the time and by the vote therein stated, which original resolution is now on file in my office; that the same contains a full, true and correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of said Board of Supervisors, this 24th day of March, 1976.

PORTER D. CREMANS,
Clerk of the Board of Supervisors,
By IRENE GUSS,
Deputy.

(SEAL)

MONTANA WOOL GROWERS ASSOCIATION,
Helena, Mont., September 7, 1976.

Re: H.R. 10210 Unemployment Compensation Amendments of 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance,
Room 227, Dirksen Building, Washington, D.C.

Mr. STERN: The Montana Woolgrowers Association opposes the coverage of agricultural workers in unemployment compensation. Our National asociation has also presented opposition and we concur with their reasons. Not only the sheepmen of Montana, but the cowman faces hard economic times and we don't need further financial burdens. We in agriculture don't have an opportunity to raise prices for our products because of increased costs of operation. We urge deletion of agricultural coverage in HR 10210.

Sincerely,

ROBERT N. GILBERT,
Secretary-Treasurer.

SWOYER & SWOYER,
Oskaloosa, Kans., September 7, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: Do you have any idea what this unemployment compensation bill will do to a small farmer?

Whenever a farmer puts up baled hay he hires five or six boys to haul the hay and put it in a barn.

This would come under "hire four or more workers in 20 weeks of the year."

At the present time, he has to pay these boys at least $2.50 an hour, and since they goof off so much, most farmers are going to the big round bales that don't have to be moved.

This farmer cannot use these five or six boys after the hay is in the barn, therefore, he would have to let them go, and that would make them eligible for unemployment.

It is my understanding that it would cost $208.00 for each employee, and if the farmer used six boys to put his hay in the barn it would cost him $1,248.00 for unemployment insurance, in addition to the $2.50 an hour.

Is Congress trying to drive all farmers out of business?

Yours truly,

MARTHA ANN SWOYER.

STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL

The United States Industrial Council, representing 4,500 business and industrial firms employing some 3,000,000 people, is deeply concerned about unemployment compensation legislation which continuously adds to the amount and duration of UC benefits and the cost of providing such benefits.

Because of such increases, the unemployment compensation program is changing from a form of insurance, providing a cushion against economic hardship for people losing their jobs through no fault of their own, to a welfare concept. Along with other welfare programs, food stamps, and various benefits provided to those not working, it is becoming an inducement not to work.

At the same time that government statistics are showing relatively high rates of unemployment, the want ads in almost every newspaper are filled with ads for jobs that are going begging. Work is available for those who want to work. The

problem is that so many of those who are out of work will only take jobs that exactly suit them or really aren't interested in taking any job at all. In many instances, where an employer has been forced to lay off employees, those employees, instead of taking jobs that are available to them, prefer to collect unemployment compensation and simply wait for the time when their old employer will take them back.

Almost every employer has had the experience of seeing an employee let go because of incompetence, filing for and obtaining unemployment compensation for the longest possible period without making any effort to obtain a job which he or she might be able to handle satisfactorily. Because of the amount and duration of unemployment benefits today, drawing unemployment compensation has in many cases become more pleasant than working.

When unemployment benefits are large enough to almost equal the take-home pay of an employee, the incentive to find work is killed. Being a non-producer is too comfortable, and initiative and self-reliance are destroyed.

Congress rightly has been concerned about unemployment and those people who genuinely want to find jobs but have been unable to do so. The United States Industrial Council and its members share that concern. Our criticism of federal unemployment compensation legislation does not reflect any lack of humanitarian feeling toward the involuntary jobless. We are, however, disturbed by the number of voluntarily unemployed who are encouraged to remain in that condition by bigger UC payments over longer and longer periods of time.

The Council believes that unemployment compensation regulations should be strengthened to make sure that no one collects UC benefits who has not made every possible effort to find a job. We further urge that no one be permitted to turn down work because it is not the most ideal or desirable job, and then obtain unemployment benefits. The number of unemployed persons in this country can be substantially reduced and a sizeable portion of the unemployment problem can be solved in this way.

Furthermore, the USIC recommends that Congress devote more time and effort to treating the causes of unemployment than its symptoms. The enactment of legislation which stifles the free enterprise system and adds to the cost of doing business has limited business expansion and the creation of new job opportunities.

Increasing the unemployment compensation tax rate and the taxable wage base makes it increasingly difficult for marginal or near-marginal companies in a highly competitive industry to survive. The increased cost of doing business also discourages the starting of new business enterprises. Trying to help the unemployed by increasing UC taxes can actually make the problem more difficult because of the resulting decline in the number of actual or potential jobs.

In more highly concentrated, less competitive industries, most or all of higher UC costs will be passed along to the consumer. This is one of the realities Congress frequently ignores. Income maintenance programs whose costs are placed on business may be politically popular, but the fact is that business enterprises usually are not able to increase their costs without corresponding increases in prices. The ability of companies to absorb such costs is limited. Thus, it is the consumer who actually pays for the benefits legislated by Congress. We are confident that as more of the public understands this there will be more public pressure for holding the line.

H.R. 10210, by extending the unemployment compensation program to an estimated 8.3 million state and local government employees and 600,000 domestic and agricultural employees, would add more tenacles to the federal octopus. It would be a further federal intrusion into state and local affairs. In the case of domestic and agricultural employees, it would impose record keeping requirements on many employers least equipped to handle them.

We believe that the state taxable wage base should not be increased, as proposed in H.R. 10210. The states are capable of determining their own taxable wage base in accordance with the conditions existing in each particular state. Many of them on their own already have raised their taxable wage base above the federal base and others will move in that direction if it is not done by Congressional edict.

While we believe that further increasing the costs of unemployment compensation by increasing both the tax rate and the taxable wage base are unwise and are opposed to it, we were glad that the House in enacting H.R. 10210 rejected the proposals of labor unions for even more substantial increases. We commend the House for declining to include in the bill provisions for federal standards for unemployment benefits, also sought by labor unions.

The United States Industrial Council is unalterably opposed to federal UC standards as an unwarranted usurpation of another state function by the federal government. The states can handle the unemployment compensation program in a way that fits a state's particular needs and limitations. There is great diversity among the states as to the amount of benefits needed to prevent serious economic adversity for the unemployed, and also in the state's ability to provide such benefits. The record clearly shows that the states are steadily improving their UC programs.

Statistics developed by UBA, Inc., the well known organization doing research in unemployment benefits, show that the average unemployment benefit has increased over the last 10 years faster than average weekly wages and the Consumer Price Index. Employers and employer organizations have encouraged and worked with the states in raising the level of benefits.

There is no reason to believe Congress can do a better job than state legislatures in setting the standards for unemployment compensation. State legislatures deal with this problem on an annual continuing basis; they are closer to the problem and better able to set up a sound, workable program that meets the situation in their own states than people sitting in Washington, D.C.

Furthermore, the states are much better able to police the unemployment compensation program and control abuses, keeping the program on a sound basis for those who truly need it. Establishing federal benefit standards would take away control from the states and invite abuses.

The United States Industrial Council urges that the existing federal-state relationship in unemployment compensation not be disturbed.

STATEMENT OF JAMES F. MARSHALL, EXECUTIVE DIRECTOR, ASSEMBLY OF GOVERNMENTAL EMPLOYEES

Mr. Chairman and members of the Committee:

I am James F. Marshall, Executive Director for the Assembly of Governmental Employees, a federation of 46 affiliate organizations in 33 states, representing more than 700,000 state, county, municipal, special district and school district classified employees. We are sincerely appreciative of the opportunity to appear before this committee concerning its deliberations on H.R. 10210.

The Assembly of Governmental Employees is in favor of the basic provisions and objectives of H.R. 10210. However, we feel the impact of a particular provision, Section 115(c), dealing with employees in non-teaching, research, or administrative positions, has not been adequately considered. Therefore, I would like to direct my brief comments to this issue and offer two alternate solutions.

In 1974, Congress passed the Emergency Jobs and Unemployment Assistance Act (PL 93-567). Title II of that law provides a temporary system of Special Unemployment Assistance (SUA) which pays benefits out of federal funds to individuals, formerly employed by State or local governments, who are not eligible under a state or federal unemployment insurance program. In 1975, PL 94-45 extended this program through December of 1976. According to Department of Labor statistics, 21 states do not have compensation laws which cover local employees. In 21 other states, coverage at the local level is elective. The remaining eight states have mandatory coverage at both the state and local level. In those states which have local elective coverage, the localities often opt not to provide benefits for economic reasons. Conservatively then, in nearly half of the states if not more, local employees are eligible for benefits under the SUA Program. Furthermore, according to regulations issued by Department of Labor on March 23, 1976 (Federal Register at page 12162), local school employees, who are not "primarily" serving in an instructional, research, or principal administrative capacity are eligible for benefits paid out of general treasury revenues during the summer months.

Are these benefits justified? The answer is unequivocably yes. One of the primary concerns which prompted SUA in 1974 and its continuation in 1975 was the seasonally adjusted unemployment level exceeding 6.5%. As of July, 1976 according to the Labor Department, that level was at 7.8%. If the motivation was valid in 1974, and AGE believes it was, it remains valid today. Jobs which may have been previously available to nine and 10-month school employees are not available today. Thus, these members of the work force are unemployed in every sense of the word and deserve insurance benefits.

The question now becomes, who should bear the cost? If, as under Section 115 (c), the burden is shifted to the federal government and to the states only if they so elect, one of two options will occur. First, the states will elect to deny benefits between terms or, secondly, states will shift the burden onto local budgets which in turn will mean cuts in either other employee benefits or services. Either option is clearly unsatisfactory.

There remain two other viable alternatives which do not cause great economic hardship to either local school budgets or local employees. They are: 1) Maintenance of the status quo of those local school employees currently under SUA by extending the SUA program for two years, or 2) Replacement of the SUA program with a similar permanent federally-funded program providing benefits for all local classified school employees with no provisions for denial of benefits between terms. While AGE urges the latter alternative, we realize that the first option of maintaining the status quo would allow adequate time to study the problem. While H.R. 10210 currently calls for the establishment of a national commission to study the unemployment compensation system, we feel that the study will be financed at the expense of hundreds of thousands of local school employees.

In conclusion, the current system under SUA was a program adopted to meet a national economic problem and was funded at the national level. AGE strongly urges that this precedent be followed in the form of one of the two alternatives outlined above. On behalf of AGE, I sincerely thank the Chairman and Committee members for this opportunity to testify. AGE of course stands ready to assist your Committee in any way possible, should you desire our help or resources. Thank you.

STATEMENT OF EDWARD THOMAS, CHAIRMAN, LEGISLATIVE COMMITTEE, BOWLING PROPRIETOR'S ASSOCIATION OF AMERICA

Mr. Chairman and Members of the Committee:

I write to you as Chairman of the Legislative Committee of the Bowling Proprietors' Association of America, an office which I hold by virtue of the fact that I am a bowling proprietor in Frederick, Maryland. I am also a member of the Maryland State Senate.

Before engaging in a discussion with respect to the advantages and disadvantages which H.R. 10210 will offer our Association and its members, a brief analysis and profile of a typical bowling center is in order.

This typical center actually exists so it is not a fantasy of average or median. It is typical in that it is neither the largest nor the smallest. This legislation will have even a greater impact upon the smaller or less profitable bowling centers.

It should be pointed out that H.R. 10210 cannot and must not be considered by itself as the sole influence in the increasing cost pressures that drive the marginal, yet service producing operators, out of business and make even the typical operator dubious of his financial future. As an example, utilities alone at our typical bowling centers jumped a full 33⅓% in fiscal 1974–75 and other costs and expenses also show substantial increases.

The typical bowling center operates from morning through late evening. In the morning and early afternoon it serves the housewives. In the later afternoon and early evening it serves young people and in the evenings it serves working men and women.

Just as you want service and availability when you go to your golf, tennis and health clubs—so working men and women and their families want service and availability when they seek, what in many cases, is the only affordable recreation open to them.

Any legislation which would effect and substantially increase the costs of the already overburdened small businessman should recognize that there is tremendous competition for the recreational dollar. In order to provide service and availability demanded of a bowling center, it has become necessary to increase prices which over the past two years averaged only 5.5%, an amount substantially less than the average cost increase. Therefore, profits are falling in the face of increased competition from other recreational providers while costs increase. To raise prices beyond a minimal level in the face of these economic facts is counterproductive and can only lead to economic disaster.

With respect to the economic facts of life in this industry a recent staff survey has revealed that a typical bowling center requires a total investment of $870,000.

It employs 25 people. In fiscal 1975 it had sales in excess of $300,000 and a payroll totaling $100,000. Its pretax profit was $7,000—after paying its management a modest $20,000. This means that it returned 2.3% on sales and .8% on investment.

These figures clearly indicate that this is not only a small business but a small business in trouble. A marginal industry at best.

Our association is not unmindful or insensitive to the financing crisis of the many states whose unemployment compensation funds are now bankrupt. Indeed, something has to be done to replenish the state funds caused by the recent recession and subsequent unemployment.

With this in mind, our Association urges the Committee to reconsider only a modest increase in the wage base. The emphasis is on the word modest. Any abrupt and large increase in payroll taxes would be disastrous to the bowling proprietors who are operating on a marginal basis. It would play havoc with the interests of the millions of Americans who bowl in America's bowling centers as their way of relaxation and enjoyment of leisure time.

There still exists some concern among our members about this legislation. First, if a federal benefit standard is added to the bill; and second, if the Senate extends the emergency long-term benefit program which was established last year to provide jobless benefits to persons up to 15 months. An addition of either of these to the bill could substantially raise costs. Such an increase in payroll taxes would be inimical to the best interests of the bowling industry and would be certain to result in the financial failure of many bowling centers throughout the country.

The inherent problems of the federal benefit standard and any further extension of the emergency long-term benefit program should be quite obvious. For the most part such an amendment would be in complete derogation to the purpose for which Unemployment Compensation legislation was enacted. Unemployment Compensation, as I understand it, was designed as a program of income maintenance for temporarily jobless workers whose unemployment is not of their own making. Its main function is to replace part of the income lost by the worker when he is laid off. It is not intended to be a support program for the permanently unemployed. Nor is it intended to subsidize workers' voluntary unemployment.

The imposition of either of these amendments would not only increase the earnings replacement, it would also decrease the work incentive with the receipt of income from the Unemployment Compensation benefits. Such legislation would encourage the unemployed to remain jobless creating further business failures, further unemployment, and a further diminution of state funds.

It is for these reasons that our Association opposes any such amendments to the bill. The Bowling Proprietors' Association of America worked closely with other organizations in urging the amendments to H.R. 10210 which brought about a common sense approach to a most difficult problem. Unemployment Compensation is a topic which affects nearly every businessman and its importance should not be overlooked. For too long the small businessman has had to succumb to the burden placed upon him by big government and organized labor. It is time that some legislation in this area is needed, however, the expense should not be undertaken solely by small business.

For the reasons cited, Mr. Chairman and members of this Committee, the Bowling Proprietors' Association of America urges the Senate to concur in H.R. 10210 as passed by the House.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
OFFICE OF STATE-FEDERAL RELATIONS,
Washington, D.C., September 8, 1976.

To: Senate Finance Committee.
From: Speaker George Roberts, New Hampshire chairman, National Conference of State Legislatures' Committee on Government Operations.
Re: Unemployment insurance amendment, H.R. 10210.

As you begin consideration of H.R. 10210, the Unemployment Insurance Amendments of 1976, no position should be considered more carefully than the position of your partners in unemployment insurance policy—the Legislatures of the 50 States. Other state and local groups, representing elected and appointed officials, may express different points of view, but the State Legislatures must make the fundamental policy decisions on the state programs.

The National Conference of State Legislatures' policy represents the collective position of all 7,600 state Legislators, and was arrived at through a careful

process of deliberations and debates. I have enclosed a copy of the official position of the National Conference of State Legislatures on unemployment insurance. Two issues which have become the focus for debate are coverage and benefit standards. Our policy supports coverage of state and local government employees, as well as domestics and agricultural employees. We are opposed to the establishment of national benefit standards.

I hope this statement of policy is useful to you as you complete action on this important legislation.

Enclosure.

UNEMPLOYMENT INSURANCE

The NCSL affirms that the unemployment insurance system has served the nation and each State well as an insurance for the unemployed for 40 years. It has provided a stable and job ready workforce and has complemented the total manpower program. The U.I. system also acts as an important counter-cyclical economic measure during recessionary periods.

The U.S. Congress and administration is considering permanent legislation to replace the present collection of emergency Federal-State programs. The NCSL strongly supports this effort and pledges its cooperation in developing a workable program which best serves the needs of the nation's unemployed.

The NCSL recommends that the Federal-State U.I. system provide for coverage of all unemployed persons based on their previous work experience. This coverage should be included in both State and Federal programs on the basis now defined by the Supplemental Unemployment Assistance Act.

The NCSL strongly supports the concept that all benefit levels should be set by the States so that local conditions may be taken into account. A national benefit standard would be inappropriate if applied to the various conditions in 50 States. The IRS urges State Legislatures to review their benefit levels in light of the recent U.S. Supreme Court decision which established the right of an unemployed person to apply for either welfare or unemployment insurance, whichever is greater. If U.I. benefits are not raised to an adequate level, the welfare system may become over-burdened.

The NCSL believes that States and Federal U.I. trust fund accounts should be made more fiscally sound by raising incrementally the wage base for employer taxes. States should collect and manage, subject to State prescribed accounting and investment procedures, all employer U.I. taxes. These funds should be retained by each State to pay benefits, and finance state U.I. administrative costs. A predesignated portion of these U.I. taxes should be transferred to the national government to maintain a catastrophic reserve fund and for financing national U.I. benefits (i.e., veterans) and Federal administrative costs.

The NCSL supports a regular benefit period up to 39 weeks. Benefits duration should be tied to a persons work experience. The first 26 weeks of benefits should be financed by the States. Benefit weeks 27–39 should be financed on a shared basis by the Federal and State governments. Benefit weeks above 39 weeks, if required by a national recession, should be federally financed.

The NCSL urges the Federal government to permit an extended repayment period to those States which have been forced to borrow from the Federal loan accounts to meet the U.I. obligations.

STATEMENT OF EDWIN E. MARSH, EXECUTIVE SECRETARY, NATIONAL WOOL GROWERS ASSOCIATION

This statement represents the views of the National Wool Growers Association. Our principal membership consists of 22 state and area sheep producer organizations operating in Arizona, California, Colorado, Idaho, Indiana, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming and the Navajo Nation. In this area, covering 25 states, approximately 90 per cent of the nation's lambs and wool are produced.

We do strongly oppose the coverage of agricultural workers in unemployment compensation legislation for the following reasons:

(1) Most segments of agriculture, including the sheep inudstry, operate on either a very narrow profit margin or at a loss. This would be an added cost burden to farmers and ranchers.

(2) The cost to agricultural employers could ultimately affect consumer prices for agricultural products.

(3) We feel that the states should determine the responsibility for coverage of agricultural employees rather than the Federal government due to seasonal employment in agriculture and also because agricultural employment practices vary from state to state.

For the reasons set forth we would urge the deletion of agricultural coverage from the bill. We appreciate this opportunity to set forth our views.

TEXAS SHEEP & GOAT RAISERS ASSOCIATION,
San Angelo, Tex., September 3, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: Please accept this as a statement of the Texas Sheep and Goat Raisers' Association in opposition to H.R. 10210, Unemployment Compensation Amendments of 1976.

We are particularly opposed to the section concerning itself with unemployment compensation relative to agriculture workers. It would be extremely difficult to administer a program such as this in the ranching industry. At various times of the year contract labor is used for miscellaneous job, such as building fence, shearing sheep and goats, working on windmills, etc. It would be the responsibility of the rancher to some way or another pay unemployment compensation on these people, which would be almost a total impossibility.

The main reason would be that the crew chief is paid direct, and he takes care of the people who work for him. Most of these people are not registered crew leaders because the act does not cover them.

Further, it seems quite short-sighted in this day and time when the Federal government is encouraging the improvement of agriculture and trying to grow more products to export to keep adding burdensome record-keeping and expense on the producers. This would be just another expense that would have to be absorbed by the producer because, as you know, the agricultural producer does not have the ability to pass on his expenses as does the manufacturer. All the consumer groups and even the Federal government encourage cheaper prices for food rather than the more realistic prices which the farmers and ranchers need to make an adequate return on their investment. It sometimes seems that they expect the farmers and ranchers to work for nothing while they are always trying to get more money for themselves.

In closing, we feel if unemployment compensation relative to agriculture is needed, it should be handled entirely on the State level because of the vast differences in agricultural production in every state. Sheep production in southwest Texas is much different than that in the mountain states of Idaho and Utah. Raising cotton in south Texas is certainly much different than rising cotton in central Texas or California. Certainly the man who raises milo in southwest Texas has much different needs than the carrot farmers in California, so we feel these are individual problems and as such should be taken care of by the individual states.

The reason American agriculture has been so successful in the past is because it has more or less been free to operate as a free enterprise. Your opposition to this legislation would allow free enterprise to continue to work.

Sincerely,

BILL PELUGER, *President.*

KANSAS LIVESTOCK ASSOCIATION,
Topeka, Kans., September 2, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: The Kansas Livestock Association is strongly opposed to the provisions of HR 10210 which would include agriculture under the mandatory payment of unemployment compensation.

Even though the increase in the taxable base under HR 10210 was lowered from $8,000 to $6,000 by amendment on the floor of the House, the cost to agri-

cultural employers is considerable. Custom cattle feedlots would be hardest hit by the legislation although it would also include many other farming operations in Kansas.

The cost to employers would be approximately $208 per employee. For the feedlot segment of Kansas agriculture alone, the price tag of this bill will be about $337,000.00.

The responsibility for determining coverage of agricultural employees should rest with states and not the Federal government due to the seasonal factor and variability of agriculture practices within each state. This is a state issue.

It seems inconsistent for Congress to be making so much noise about the need to get more people back to work and then pass legislation that will have a negative impact on the desire of employers to hire more people.

We urge the Senate Finance Committee to either reject HR 10210 entirely or, at the very least, remove the section requiring the mandatory inclusion of agricultural employees.

Sincerely,

ROLLAND D. PARR, *President.*

STATEMENT OF TEXAS AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION

The Texas and Southwestern Cattle Raisers Association, an organization of 15,000 livestock producers with headquarters at Fort Worth, Texas, appreciates the opportunity to have its opinion recognized at this hearing where the Committee on Finance is considering HR 10210, Unemployment Compensation Amendments of 1976. If passed, this legislation would pose an undue economic burden upon the cattle industry of Texas and the Southwest. In view of the already depressed livestock situation in this country, we believe HR 10210 will add to the financial problems of livestock producers.

Our Association opposes this legislation and the proposed extended coverage to agricultural workers as very few livestock operations would be affected by the coverage. Promulgation of such regulations would only bring an additional expense and red tape not beneficial to anyone.

We also feel that the livestock industry should continue to be exempt from extended coverage as this is only the start with new regulations and additional bureaucracy continuing to develop in this field which will cost the producer and ultimately the consumer great sums of money with negligible benefits.

We further believe that the concept of unemployment assistance is a matter for the states to administer rather than the Federal Government. Employment conditions in agriculture vary so widely that an overall Federal system is bound to penalize severely some areas and to overcompensate others. The states are in a better position to analyze their various needs and to act according to these needs.

The production of livestock is a seasonal as well as cyclical industry. Certain seasons of the year call for heavier work loads, requiring temporary workers to be hired; likewise, lax seasons dictate that the work force be held to a bare minimum, particularly in such financially depressed times as these. Beyond the seasonal cycle is the economic cycle which dictates expansion or reduction of herd size, of land leased for increased production, or of additional management practices aimed at taking advantage of a high market or at minimizing losses when the market is poor. All these cycles naturally affect the size of the work force. The ranching industry cannot endure being shackled by unnecessary legislation which is in opposition to the natural ebb and flow of free enterprise.

Therefore, we ask that the committee retain the exemption for agricultural workers, as extended coverage is not applicable, nor will it benefit the industry or consumers.

STATEMENT OF WARREN G. BLUE, SENIOR VICE PRESIDENT, R. E. HARRINGTON, INC.

My name is Warren G. Blue. I am Senior Vice President of R. E. Harrington, Inc., a cost control firm specializing in the administration of programs to minimize the cost of unemployment and workers' compensation to employers. Our company has represented employers throughout all fifty states and the District of Columbia since 1950. We are headquartered in Columbus, Ohio, and have offices in major cities throughout the United States.

We appreciate the opportunity to express our opinions concerning the administration of the unemployment compensation program, both by the federal and

state governments, and would like to address our remarks principally to the present merit rating system of financing unemployment compensation, the manner of determining benefits and their triggering mechanisms, and the federal tax and wage base proposals in H.R. 10210.

A. FINANCING UNDER MERIT RATING

The unemployment compensation system, although federally mandated, is a state-oriented program which has been continually updated by every state legislature since its inception in the late 1930's, but particularly in the last 20 years. The states have provided financing of the benefits, which are regulated by the respective state laws, through a variety of merit rating formulae which are, and always should remain, the bulwark of a sound unemployment compensation system.

Under the general federal requirements, the experience rating provisions of states vary greatly and the number of variations increase with each legislative year. To do its job, the merit rating system must fix responsibility for the unemployment of each worker who draws unemployment benefits. The states have adopted one or the other of the following four general methods: (1) reserve ratio, (2) benefit ratio, (3) benefit wage ratio, and (4) payroll decline.

1. Reserve Ratio Formula

The reserve ratio was the earliest of the experience rating formulas and continues to be the most prevalent. It is now used in 32 states. The system, essentially is simple cost accounting. It is designed to level the taxes paid by each employer at a point which will meet the cost of benefits paid to his former workers, and at the same time, insure a certain reserve for emergencies.

Each employer has what is, in effect, a checking account in the state unemployment fund. Tax payments are credited to the employer's account, benefit charges are debited. The size of the "deposit" needed each year to replenish the account is determined by dividing one or more years payroll into the balance to get the "reserve ratio." A high ratio of reserve funds to an employer's payroll means a low rate, a low ratio means a high rate.

The payroll used to measure the reserve is ordinarily the average of the last 3 years. However, Massachusetts, Michigan, New York, South Carolina, Tennessee, and Wisconsin establish reserve on the last year's payrolls. Idaho and Nebraska use 4 years. Arkansas gives the employer the advantage of the lesser of the average 3- or 5-year payroll. Rhode Island uses the last year's payroll or the average of the last 3 years, whichever is less. New Jersey protects the fund by using the higher of the average 3- or 5-year payroll.

In all cases, the employer must accumulate a reserve over a specified time period before his rate is subject to change. The rates are then assigned according to a schedule of rates for specified ranges of reserve ratio; again, the higher the ratio the lower the rate. This formula is designed to insure that no employer will be granted a rate reduction unless he contributes, over the years, more to the fund than his workers draw in benefits.

The 32 states using the reserve ratio are as follows: Arizona, Arkansas, California, Colorado, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana Maine, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, West Virginia, and Wisconsin.

It is particularly important to know that:

Rates depend both on how many workers become unemployed and how long they draw benefits.

Rates are based on long-term experience. Each years rate depends on the employers previous history of taxes and benefits. Even when a business changes hands, the reserve account may go with it.

A payroll increase tends to raise the rate and a payroll decrease tends to lower it.

Twenty-five (25) states allow employers to make extra tax payments, "voluntary contributions," and to secure a lower rate see states below).

Voluntary contributions are allowed in the reserve ratio states of: Arizona, Arkansas, Colorado, District of Columbia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, West Virginia, and Wisconsin.

A reserve account does not necessarily stop when business is discontinued. When an employer stops doing business in a reserve ratio state, he does not immediately lose his reserve account (unless he applies for termination of coverage). The account stays on the books either indefinitely or for a specific length of time. If the employer resumes operation in the state before the account is closed out, his past record of taxes and benefit charges determines his merit rate when he has again qualified for one.

2. Benefit Ratio

This formula also uses benefits to measure experience, but eliminates tax contributions from the formula. Therefore, benefits are related only to payroll. The ratio of benefits is the index for rate variation.

The theory behind this formula is if each employer pays a rate which approximates his benefit ratio, the fund will be adequately financed.

This differs from the Reserve Ratio approach inasmuch as tax contributions are not considered. This formula is geared to short-term experience. Only the benefits paid in the most recent three years are used to determine the ratio. The higher the ratio, the higher the rate.

The states using this formula are: Connecticut, Florida, Maryland, Minnesota, Mississippi, Oregon, Pennsylvania, Texas, Vermont, and Wyoming.,

Of these states, voluntary contributions are permitted in Minnesota and Pennsylvania.

3. Benefit Wage Ratio

The benefit wage formula makes no attempt to measure benefits paid. The formula measures separations of workers which result in benefit payments, but the duration of benefits is not a factor. When a claimant receives a certain amount of benefits, he triggers his base period wages up to the specific states limit. As an example, in Illinois, after 3 weeks' benefits are paid, up to $3,000 is chargeable to the employer. Here, the state is measuring benfit wages to total taxable payroll.

The theory behind this formula is that a claimant who draws benefits receives a certain amount of benefits for each dollar of benefit wages and the same amount of taxes per dollar of benefit wages is needed to replenish the fund.

The higher the ratio, the higher the rate. States using this formula are Alabama, Delaware, Illinois, Oklahoma and Virginia.

4. Payroll Decline

Neither benefits nor any benefit derivatives are used to measure experience in this formula. An employers experience is measured by the decline in his payroll from quarter to quarter or from year to year. The declines are expressed in percentages of payrolls in the preceding period or periods.

The theory here is that if payroll declines, people are unemployed and drawing benefits. States using this formula are Alaska, Montana, Utah, and Washington.

It should be recognized that these definitions are general and that the reserve ratio formula in one state can be considerably different from the reserve ratio formula used in another state. Furthermore, some states use a combination of features from two or more formulas in developing their own unique method of merit rating. Pennsylvania, for example, although categorized as a Benefit Ratio State, actually is a combination Benefit Ratio and Reserve Ratio State.

These financing formulae produce a tax rate which is then applied up to the employers taxable wage base, presently not less than the first $4,200 earned by each covered employee. The result is, of course, the tax to be paid by the employer. Many states have exceeded the $4,200 minimum base and others are considering doing so.

The overall effect of these financing formulae is a merit rating system which creates a financial reason for employers to minimize layoffs and other types of employee separations.

Each state should continue to be given the discretion to establish its own tax rate formula and tax base in order to provide adequate funds to pay benefits which are suitable in the respective states to meet the purpose of the unemployment compensation law. What may be suitable in New York could be extravagant in Mississippi. Any adjustments necessary in these formulae to meet unusual economic conditions can be made by the states by use of solvency factors or minimum state level rate changes which react quickly to large pay outs. Those states now faced with the need to borrow from the Federal Trust Fund would soon revise

the rate formulae to react quicker, and provide more adequate financing, if they knew the federal fund (which is financed by employers on a non-merit rated basis) was not there to bail them out.

Unemployment compensation is intended to help replace loss of wages during temporary periods of unemployment for those who have lost their jobs through no fault of their own. It was intended, and should not be considered, as the long-range financial reimbursement for former employees unable to obtain employment for extended periods of time. There are federal and state programs financed by other means which should be utilized to create needed assistance for individuals experiencing long-term unemployment.

Unfortunately, the present trend in Congress has been to view the unemployment compensation system as the means to finance the long-term unemployed. As a result, Congress has imposed a non-merit rated tax to be paid for solely by employers to provide the necessary funds to pay the benefits for these claimants. This has been accomplished by extending state unemployment compensation benefit programs beyond their reasonably intended duration and using the existing federal tax on every employer to pay for this extension. The tax being used, which is imposed at a fixed rate regardless of the individual employer's unemployment experience, was not originally intended for any purpose other than to pay the cost of administration of the system.

This trend is compounded by proposals to require all employers to pay the non-merit rated tax on an even higher taxable wage base which creates a disproportionate tax on different classes of employers paying at diverse wage scales in all parts of the country.

The net effect of these proposals is to minimize the experience rating formulae and thus reduce incentive for employers to keep unemployment at the very minimum.

The goal in financing unemployment compensation should continue to be based on the proposition that the cost of benefits should be paid in such a way that those employers whose workers suffer the most involuntary unemployment pay at a higher rate than those employers whose workers suffer little involuntary unemployment. The basic principle is that employers who stabilize employment are rewarded in the form of reduced unemployment taxes. This is best accomplished by individual state action devising the best combination of a wage base and tax rate formula.

B. ELIGIBILITY

All state laws require certain minimum requirements before a claimant is considered to be eligible to collect unemployment compensation. Although such requirements are diverse, they all have an earnings and work history requirement. The standards established by the state are reasonable and appropriate depending upon the economic condition and type of employment found in the individual states. These "base period" requirements and the subsequent determination as to qualification for requirements should be continued on a state-by-state basis to meet the peculiar characteristics of the state itself and the decision of its legislature and its courts.

C. BENEFITS

The Senate should follow the example set by the House and reject all efforts to impose a Federal minimum benefit mandate upon the present state system. The establishment of a minimum standard for states to follow in the area of weekly benefits is not necessary since most states have already established a reasonable criteria for benefit amounts which meet the economic standards of the specific state. Most states have enacted laws which provide for weekly benefits to be a percent of the current wage earned in that state. Thirty-five states have, or will soon have, escalator clauses in their laws which provide adequate unemployment compensation benefits in relation to the economic condition of that state. These states, however, still create an incentive for the unemployed claimant to attempt to find suitable work to support himself and his family. Since mid-1969, forty-three states have raised their maximum benefits by 50 percent and eight more than 100 percent. Currently at least 45 states pay (or will soon pay) maximum benefits equaling 50 percent or more of the 1975 states' average weekly wage.

It seems that the function of government should be not to provide financial handouts so much as to make every effort to keep full employment and to find better methods of creating more jobs so that unemployment compensation benefits need not be paid at all. It certainly should not be the role of government to make it more attractive to collect unemployment benefits than to actually work.

Tax free benefits which produce an annual income in excess of $7,072 per year, as in Michigan, would require an additional 20%, or $8,400, income if fully taxable. This does not provide the proper incentive for job hunting.

I have already mentioned the negative effect upon merit rating of the numerous triggering mechanisms now available. These emergency triggers were enacted as a reaction to an economic slump more than to a permanent solution. The proposal in H.R. 10210 permitting a 4% trigger in a state to activate extended benefits is too low. Based on past experience it will require payment of extended benefits in at least 17 states more than 50% of the time. For those states the low trigger establishes an extended benefit standard in use most of the time which will be very expensive and generally not utilizing the merit rating system.

During normal economic times, the average duration of benefits for most claimants is between 10 to 14 weeks. Very few claimants exhaust the normal 26-week duration which would seem to indicate that the present state provisions which limit benefits to approximately 26 weeks were well conceived and claimants exceeding this period should probably not be paid under the unemployment system. The state legislatures can administer a triggering program which might be necessary during periods of severe economic depression. If, in fact, Congress does decide to mandate permanent trigger provisions, the only type of provisions which could be properly administered would be on a state-by-state basis and be dependent upon extreme abnormal economic conditions in that particular state.

The constant extension of benefits without some incentive for claimants to obtain a job should not continue. Approval by the Senate requiring recipients to participate in a job training program if they are to be eligible for extended benefits and also requiring claimants to make themselves available for all job openings, not just those similar to the prior job which they held, are moves in the right direction. If employers are to be asked to finance programs for as long as 65 weeks, then I believe they have a right to request that the claimant be willing to sacrifice, to some extent, by accepting jobs that are available or be trained for new jobs. It is quite possible the industry in which a claimant formerly worked no longer even exists.

D. FEDERAL TAX AND WAGE BASE

The increase in the non-merit rated federal tax from .5 to .7 perpetuates the trend to non-merit rating which I have previously discussed. This is particularly true when you take into account the trigger mechanisms which are financed principally by the non-merit rated federal tax.

If it is determined that the trigger approach is the most feasible manner to adjust unemployment compensation benefits during economic downturn, then it would seem appropriate that these extended benefits should be 100% merit rated under the existing state laws. Presently, 24 states do merit-rate their one-half share of the original 13-week extended benefits. This philosophy should be encouraged for all extended benefits. It must be remembered that the entire unemployment compensation program, including the regular and extended benefits, are paid for entirely by employers. The employer deserves to have his tax on a merit rated basis.

The need for additional funds by some 21 states whose unemployment trust funds are depleted is a matter of record. The effect and need of a more than 40% increase in the wage base, from $4,200 to $6,000, for all states is not. Most states do not require increased wage bases, they need revised tax rate schedules. An increase in the wage base prolongs the time when these states face up to this reality.

In our opinion, before even a modest wage base increase would be palatable to employers, it is necessary that the states make a sincere effort to regain employer confidence in the program. This can best be started by each state first revamping its internal administration of eligibility determinations with a special emphasis on enforcing the requirement for a claimant to actively be searching for work. Also, there must be a change in attitude to reduce the determinations being made to allow claimants who voluntarily abandon jobs to collect benefits.

Although it may be a case of overstating the obvious, it must be clearly understood that measures designed to increase employer costs are unquestionably inflationary in effect. The employer whose costs increase despite good employment experience will have no option but to pass this cost on to the consumer

by increased cost of goods and services. Not only are excessive increases in unemployment taxes inflationary, but when the tax becomes too burdensome, it has the effect of discouraging the creation of new jobs and, thus, compounds the problem by actually creating more unemployment.

STATEMENT OF TEXAS CATTLE FEEDERS ASSOCIATION

The Texas Cattle Feeders Association represents cattle feeders in Texas—the No. 1 cattle feeding state—and most of the cattle feeders in New Mexico and Oklahoma.

The Texas Cattle Feeders Association opposes the extension of unemployment compensation coverage to agricultural workers as provided in H.R. 10210. The reason for this opposition is simply—"What purpose will be served by extending coverage to agricultural workers?".

Agriculture has been the most productive segment of the U.S. economy. Some reasons for this statement are:

1. U.S. citizens spend only an average of 17% of their disposable income on food—less than any other country.

2. Largely because of agriculture's efficiency, less than one out of 35 adults work on farms.

3. The National Commission on Productivity says that output per man-hour in agriculture has increased by 5% per year since 1965. This compares to 2.3% per year for the total economy and 2.7% for the manufacturing industry.

4. USDA figures show that beef production went from 9.5 billion pounds in 1950 to 23.6 billion pounds in 1975. That is an increase of 250%. At the same time, total hours for meat animal production in the U.S. were reduced almost two-thirds.

5. Increased agricultural productivity is simply a result of more output per person because of the technology, capital investment and incentive system which encourages increased efficiency.

Custom feedyards are prime examples of the increased efficiency in agriculture. A custom feedyard feeds cattle for customers, for a fee. It furnishes room and board for the cattle, much like a hotel. The 163 feedyard members of the Texas Cattle Feeders Association have a one-time capacity of 3,046,000 head or an average of 18,687 head each. Of these 163 feedyards, 108 have a capacity of over 10,000 head, 35 over 30,000 head and 11 over 50,000 head. Because these feedyards are large and efficient, they can produce beef at less cost.

In conclusion, we believe that extending unemployment compensation coverage to agricultural workers is the first step toward reducing agricultural efficiency. It definitely is in the best interests of the American consumer to provide incentives to agriculture to produce an abundant supply of food at a cost consumers can afford.

Thank you.

CITRUS INDUSTRIAL COUNCIL,
Lakeland, Fla., August 31, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: This statement is submitted for the record regarding proposed amendments to extend unemployment compensation coverage to certain previously uncovered workers: to increase the amount of the wages subject to the federal unemployment tax, to increase the rate of such tax: and for other purposes. The proposed Act is cited as the "Unemployment Compensation Amendments of 1976" identified as H.R. 10210.

This statement is submitted on behalf of the Citrus Industrial Council, which is a non-profit trade association, representing Florida Citrus Mutual and its 16,000 Florida citrus growers, Florida Canners Association and its 50 members which comprise all of the processors of citrus juices in Florida, and the Florida Citrus Packers which represents most of the citrus packing houses in Florida.

This statement is also submitted on behalf of the National Council of Agricultural Employers which represents employers in all phases of agriculture

who hire an estimated seventy-five per cent (75%) of the agricultural workers in this country.

Our statement is confined solely to the issue relating to unemployment compensation benefits for agricultural workers.

We agree with H.R. 10210 which provides unemployment compensation coverage for agricultural workers. Such coverage for agricultural workers, however, poses a critical risk to both agricultural and non-agricultural employers' unemployment compensation tax rates. To avoid this risk, H.R. 10210 must be amended to provide federal reimbursement to any state in which benefits paid to agricultural workers is greater than the amount of unemployment compensation taxes paid by their agricultural employers (commonly called "overdraft"). Each state has an employer maximum tax rate. Should the problem of excessive overdraft occur in states with high agricultural employment, the overdraft will be picked up by an increased tax to the experienced rated non-seasonal employers (paying less than the state maximum tax rate) consequently causing pressures to increase the maximum state tax rate to the agricultural employer caused by the agricultural worker coverage to the extent that agricultural employers could be forced to pay a punitive tax rate. In the absence of a provision for a federal reimbursement for overdrafts likely to occur in some states, the resulting risks will leave us no choice but to urge that coverage for agricultural workers be rejected.

We thoroughly reviewed the estimates of the cost of agricultural coverage which suggest that the amount of benefits paid will be well within the revenues generated in most states, only slightly exceed revenues in others, and that substantial overdrafts will, therefore, not occur in any state as a result of agricultural coverage.

We are keenly aware of other evidence which persuades us that there is a definite risk that in some states the benefits paid to agricultural workers will exceed substantially the revenues generated by taxes, paid by their employers, payable under the maximum state tax rates presently applicable. The risk about which we are concerned is that the amount of those benefits may be two to as much as four times greater than the revenues generated in some states and that a substantial overdraft will, therefore, occur in such a state(s).

In spite of an intense study sponsored by the U.S. Department of Labor in 1970, no one can accurately predict the amount of benefits that will be paid as a result of claims that will be filed by agricultural workers and we seriously question the assumptions of the projections of the survey made in 1970. There are substantial numbers of farm workers involved and it is impossible to predict the impact of unemployment coverage on the decision of the individual farm worker as to whether he or she will choose to follow the migrant stream in order to secure additional agricultural work or will, instead, remain at his or her current location and apply for unemployment benefits at the end of the local crop season. The decision of the individual farm worker will depend on a vast number of economic, social, and personal factors which are highly variable and difficult to predict since the amount of benefits that will be paid will depend on the combined net effect of all those very personal individual decisions. The 1970 survey assumed that unemployment compensation coverage would not deter agricultural workers from migrating to other areas after a crop was completed.

It is also obvious that overdrafts will occur whenever a disproportionate number of farm workers choose to remain in a particular state and draw unemployment benefits at the end of the local crop season rather than move on to other agricultural jobs in other areas as they have done in the past. It may be said that there are not enough jobs in the area in which they choose to remain to absorb them, and those who choose to stay will likely remain unemployed until the beginning of the next crop season. The unemployment benefits such workers receive will exceed substantially the unemployment taxes paid during the base period by their employers in that state. The resulting problem is that rated employers (non-agricultural) in those states in which a disproportionate number of farm workers elect to remain and draw unemployment benefits will be saddled with the burden of paying higher state unemployment taxes to offset the overdraft caused by claims paid to unemployed farm workers from other states. The problem cannot be prevented from arising since we must not interfere with the decision of the individual farm worker as to whether he or she will remain and

draw unemployment benefits at the end of the local crop season or will, instead, seek agricultural work elsewhere.

We must provide an effective solution when this occurs. The solution is to provide for federal reimbursement to a state in which an overdraft occurs as a result of providing agricultural coverage. Viewed in relation to the total amount of revenues generated by the federal portion of unemployment taxes, the amount of federal funds required to effect this solution will certainly be relatively small since such overdrafts are unlikely in most states.

Conversely, viewed from the perspective of one of the handful of states which is likely to be burdened by a substantial agricultural overdraft, the adverse impact of absorbing the overdraft by increased taxes on rated employers (non-agricultural) in that state can be quite serious.

Attached hereto is a chart extracted from the annually published statistical tables of the State of Florida, Department of Commerce, that shows a twelve-year record of the Florida citrus processing and packing industry, showing the amount of contributions or taxes paid by each of the two segments of the industry and the amount of benefits paid out to the employees of the firms in these segments of the Florida citrus industry. It also shows the amounts of overdrafts and an implied tax rate should there not be any tax rate limitation as now provided by the Florida Unemployment Compensation Law (4.5%—Florida maximum rate).

In the fresh fruit packing and processing segments of the Florida citrus industry, employee makeup is very similar to the farm worker. The Florida citrus industry, like other agricultural entities, is seasonal in nature and year-round employment cannot be provided. As the chart shows, there is a built-in "overdraft" when unemployment compensation coverage is extended to a seasonal agricultural entity.

Also attached is an amendment that will provide the solution to the coverage of farm workers in those states where overdrafts are likely to occur. The attached proposal on reimbursement will not come into play where agricultural overdrafts do not occur. The argument that agricultural overdrafts are unlikely under a hypothetical group of assumptions made by the study sponsored by the U.S. Department of Labor are not valid points. There is a significant risk that agricultural overdrafts will occur whenever the net effect of the personal decisions of the individuals involved do not track those hypothetical assumptions precisely. Therefore, it is not necessary to decide whether agricultural overdrafts are likely to occur in some states. It is only necessary to decide whether there is a risk that they will occur.

The attached proposed amendment to H.R. 10210 provides for such reimbursement to those states if they so elect if and when an agricultural overdraft occurs. If no overdraft occurs, there will be no federal reimbursement. Consequently, no statutory or administrative difficulties are being created to provide in advance for the contingency that may occur. To the contrary, if no provision is made for that contingency, the adverse effect upon those states in which a substantial agricultural overdraft thereafter occurs can be quite serious for those states.

We, therefore, urge the Committee to amend the provisions relating to agricultural coverage to provide for federal reimbursement to a state in which an agricultural overdraft occurs measured by the amount by which benefits paid to agricultural workers in that state exceeds revenues received from unemployment taxes paid with respect to those workers.

We urge the Chairman and the Committee to consider carefully the merits of this statement and act affirmatively on behalf of the agricultural employers who will be affected by the proposed coverage of unemployment compensation for their agricultural employees.

Sincerely,

CLARK M. GHISELIN,
Executive Vice President.

Attachments.

	Contributions	Benefits	Amount of overdraft	Average annual implied tax rate (percent)
1962:				
Citrus canning	$867,966	$1,973,844	$1,105,878	6.18
Citrus packing	607,880	1,326,946	719,066	6.08
1963:				
Citrus canning	771,774	2,061,635	1,289,891	7.53
Citrus packing	444,210	1,505,597	2,351,278	9.26
1964:				
Citrus canning	852,619	2,020,022	1,167,403	7.46
Citrus packing	544,097	1,254,941	710,844	6.83
1965:				
Citrus canning	1,114,807	1,527,203	412,396	4.98
Citrus packing	735,392	1,244,305	508,913	5.86
1966:				
Citrus canning	1,305,537	1,550,269	274,732	4.67
Citrus packing	849,683	1,347,188	497,505	6.09
1967:				
Citrus canning	1,467,265	2,007,134	539,869	4.91
Citrus packing	963,510	1,463,272	499,762	5.88
1968:				
Citrus canning	1,115,769	2,040,608	924,839	5.63
Citrus packing	859,048	1,782,131	923,083	7.89
1969:				
Citrus canning	1,282,107	1,561,752	279,645	3.93
Citrus packing	859,189	1,309,108	449,919	5.97
1970:				
Citrus canning	1,392,696	2,410,756	1,018,060	5.92
Citrus packing	885,584	1,492,554	606,970	6.66
1971:				
Citrus canning	1,569,442	2,868,510	1,299,068	6.45
Citrus packing	924,580	1,857,653	933,073	7.97
1972:				
Citrus canning	1,657,234	2,131,923	474,689	4.84
Citrus packing	1,063,247	1,639,603	636,356	5.98

Source: Extracted from the annual published statistical tables of the State of Florida, Department of Commerce.

FEDERAL PAYMENT OF OVERDRAFT

Sec. ——— Title IX of the Social Security Act (miscellaneous provisions relating to employment security) is amended by adding at the end thereof the following new section:

"SEC. 909. OVERDRAFT PAYMENT PROGRAM—AMOUNT PAYABLE

(a)(1) There shall be paid from the Federal unemployment account to each participating State an amount equal to the excess of—

(A) the unemployment compensation paid under the State unemployment compensation law during the calendar year and attributable to agricultural employment, over

(B) an amount equal to the maximum rate of employer contributions with respect to any employment subject to contributions under State law multiplied by the aggregate of wages paid during such year for agricultural employment and subject to contributions under State law.

(2) No payment shall be made to any State under this subsection unless—

(A) the State unemployment compensation law is certified by the Secretary of Labor in accordance with section 3304 of the Internal Revenue Code of 1954; and

(B) services in agricultural employment are treated, for purposes of wage credits given to employees and benefits paid employees, like other services performed in such State which are subject to the State unemployment compensation law.

(3) A State may elect to participate for any calendar year in the overdraft program established by this section by filing a notice of such participation with the Secretary of Labor at such time and in such manner as the Secretary may by regulation prescribe.

PAYMENT ON CALENDAR YEAR BASIS

(b) The Secretary of Labor shall pay each calendar year to each State such sum as he estimates the State will be entitled to receive under this section for such year reduced or increased, as the case may be, by any sum by which he finds that his estimates for any prior calendar year were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary of Labor and the State agency.

CERTIFICATION

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

STATEMENT ON H.R. 10210 RELATIVE TO UNEMPLOYMET COMPENSATION BY FLORIDA FRUIT & VEGETABLE ASSOCIATION

The Florida Fruit & Vegetable Association, 4401 E. Colonial Drive, Orlando, Florida, is an agricultural trade association representing growers who produce more than a majority of the fruits and vegetables grown in the State of Florida. This Association has long taken the position that we would not oppose coverage of agricultural workers under appropriate State and Federal unemployment insurance laws, provided it can be shown that this would be an economically feasible program . . . In this respect, we fully back the Statement presented to the Committee by the Citrus Industrial Council and the National Council of Agricultural Employers in relation to Federal reimbursement to any State in which benefits paid to agricultural workers are greater than the amount of unemployment taxes paid by their agricultural employers (commonly called "overdraft").

This Statement is written to express our views on Title I, Part I, Section 111, paragraph (b)(1)(B), which excludes from coverage, until January 1, 1979, non-resident aliens legally admitted to the United States to perform temporary agricultural work.

We wholeheartedly agree with this exclusion but believe it should be a permanent exclusion, not temporary only to January 1, 1979.

There are legal non-immigrant agricultural workers as defined under USC Title 8, paragraph 1101. (a)(15)(H)(ii) (Immigration & Nationality Act), who are admitted to the U.S. temporarily to perform services or labor where unemployed persons capable of performing such services or labor, cannot be found in this country. The certification for such use is made by the U.S. Department of Labor and the approval for their importation for a specifically defined period is made by the U.S. Department of Justice's Immigration & Naturalization Service before the workers are imported. Both their employment for the stipulated contract period in the U.S. and their departure from this country at the end of the certified period is guaranteed by the employer.

The workers imported under this program are returned to their countries of origin by the U.S. empolyers at the termination of employment and, therefore, do not become a burden on the unemployment compensation program.

Employers of farm workers legaly brought in under these programs should not be taxed under the unemployment compensation program for these non-immigrant temporary workers.

There is a precedent for such an exclusion. Under the Social Security Act, there are various exclusions as indicated in USC Title 42, paragraph 410(a). Included under subparagraph (1) is an exclusion for "Service performed by foreign agricultural workers . . . lawfully admitted to the United States from . . . Jamaica and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor."

The same reasons the Congress in its wisdom saw fit to exclude the non-immigrant, temporary agricultural workers from the Social Security Act are still valid and would apply to their exclusion under unemployment compensation laws such as HR 10210.

Workers brought in temporarily to do agricultural work under USC Title 8, paragraph 1101. (a)(15)(H)(ii) of the Immigration & Nationality Act, could not obtain benefits under either the Social Security Act or the Unemployment Compensation Act.

We respectfully request your favorable consideration of the deletion of the words ". . . before January 1, 1979 . . ." in paragraph (b)(1)(A)(i), paragraph (b)(1)(B) of Section 111 of Part I of Title I of H.R. 10210.

CITRUS INDUSTRIAL COUNCIL,
Lakeland, Fla., September 7, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: This statement is submitted for the record regarding proposed amendments to extend unemployment compensation coverage to certain previously uncovered workers: etc., cited as the "Unemployment Compensation Amendments of 1976," identified as H.R. 10210.

This statement is submitted on behalf of the Citrus Industrial Council, which is a non-profit trade association, representing Florida Citrus Mutual and its 16,000 Florida citrus growers, Florida Canners Association and its 50 members which comprise all of the processors of citrus juices in Florida, and the Florida Citrus Packers which represents most of the citrus packing houses in Florida.

This is to advise that the Citrus Industrial Council endorses the statement to the Committee on Finance of the United States Senate from the Florida Fruit and Vegetable Association, 4401 E. Colonial Drive, Orlando, Florida, regarding their position on exclusions from coverage of non-resident aliens legally admitted to the United States to perform temporary agricultural work.

Sincerely,

CITRUS INDUSTRIAL COUNCIL,
CLARK M. GHISELIN,
Executive Vice President.

Enclosures.

FLORIDA FRUIT & VEGETABLE ASSOCIATION,
Orlando, Fla., August 27, 1976.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee, Room 217, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: We are attaching a Statement by this Association, expressing our views on HR 10210 with specific reference to Title I, Part I, Section 111(b)(1)(B).

We would appreciate your favorable consideration of the views expressed in this Statement.

Sincerely yours,

GEORGE F. SORN,
Manager, FFVA Labor Division.

Attachment.

STATEMENT ON H.R. 10210 RELATIVE TO UNEMPLOYMENT COMPENSATION BY FLORIDA FRUIT & VEGETABLE ASSOCIATION

The Florida Fruit & Vegetable Association, 4401 E. Colonial Drive, Orlando, Florida, is an agricultural trade association representing growers who produce more than a majority of the fruits and vegetables grown in the State of Florida. This Association has long taken the position that we would not oppose coverage of agricultural workers under appropriate State and Federal unemployment insurance laws, provided it can be shown that this would be an economically feasible program. . . . In this respect, we fully back the Statement presented to the Committee by the Citrus Industrial Council and the National Council of Agri-

cultural Employers in relation to Federal reimbursement to any State in which benefits paid to agricultural workers are greater than the amount of unemployment taxes paid by their agricultural employers (commonly called "overdraft").

This Statement is written to express our views on Title I, Part I, Section 111, paragraph (b)(1)(B), which excludes from coverage, until January 1, 1979, non-resident aliens legally admitted to the United States to perform temporary agricultural work.

We wholeheartedly agree with this exclusion but believe it should be a permanent exclusion, not temporary only to January 1, 1979.

There are legal non-immigrant agricultural workers as defined under USC Title 8, paragraph 1101.(a)(15)(H)(ii) (Immigration & Nationality Act), who are admitted to the U.S. temporarily to perform services or labor where unemployed persons capable of performing such services or labor, cannot be found in this country. The certification for such use is made by the U.S. Department of Labor and the approval for their importation for a specifically defined period is made by the U.S. Department of Justice's Immigration & Naturalization Service before the workers are imported. Both their employment for the stipulated contract period in the U.S. and their departure from this country at the end of the certified period is guaranteed by the employer.

The workers imported under this program are returned to their countries of origin by the U.S. employers at the termination of employment and, therefore, do not become a burden on the unemployment compensation program.

Employers of farm workers legally brought in under these programs should not be taxed under the unemployment compensation program for these non-immigrant temporary workers.

There is a precedent for such an exclusion. Under the Social Security Act, there are various exclusions as indicated in USC Title 42, paragraph 410(a). Included under subparagraph (1) is an exclusion for "Service performed by foreign agricultural workers . . . lawfully admitted to the United States from . . . Jamaica and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor."

The same reasons the Congress in its wisdom saw fit to exclude the non-immigrant, temporary agricultural workers from the Social Security Act are still valid and would apply to their exclusion under unemployment compensation laws such as H.R. 10210.

Workers brought in temporarily to do agricultural work under USC Title 8, paragraph 1101.(a)(15)(H)(ii) of the Immigration & Nationality Act, could not obtain beenfits under either the Social Security Act or the Unemployment Compensation Act.

We respectfully request your favorable consideration of the deletion of the words ". . . before January 1, 1979 . . ." in paragraph (b)(1)(A)(1), paragraph (b)(1)(A)(ii) and paragraph (b)(1)(B) of Section 111 of Part I of Title I of H.R. 10210.

CALIFORNIA TAXPAYERS' ASSOCIATION,
September 8, 1976.

As Executive Vice President of the California Taxpayers' Association, of which there are about 1,300 members, I am writing to express our views regarding H.R. 10210. We will appreciate your including our statement in your record of hearings on the measure.

H.R. 10210 as passed by the House of Representatives makes a number of insurance.

1. It brings unemployment insurance protection to about nine and one-half million workers who currently are excluded.

2. It bolsters federal tax revenues by raising the taxable wage base and increasing the federal tax rate.

3. It liberalizes the extended benefit program by lowering the trigger point which starts the payment of recession benefits, thus bringing the extra payments into operation more frequently than the current trigger does.

4. It sets up a National Study Commission charged with making a thorough review of the federal state unemployment insurance system and recommendations for change.

Our members generally support H.R. 10210, holding that it is a measure which fits California law. Our state law already has anticipated much of the expansion

of coverage. In 1975, the California Legislature brought farm workers into the unemployment insurance program and, several years ago, provided some unemployment protection to most state employees. Also in 1975, the California Legislature acted to refinance the program here by raising employers' payroll taxes by more than $600 million a year. That legislation provides for a $6,000 taxable wage base, comparable to the one called for in H.R. 10210.

The extended benefit trigger provision, however, does present a problem. The proposed state trigger of an insured unemployment rate of four percent seasonally adjusted that is called for in H.R. 10210 would ensure that the extended benefit program would operate in California for all or most of every future year. This would cost the state unemployment fund an average annual amount of $56.5 million and that cost would have to be matched by federal funds. We would respectfully urge that the Senate Committee on Finance examine the trigger provision for the recession program operation to assure that the extra benefits only are payable in times of high-level unemployment. It may be that the current law should not be changed. Instead, the development of a trigger mechanism which is responsive to unemployment conditions could be assigned to the National Study Commission.

The basic concern of California employers with H.R. 10210 is that the Senate will make additional substantive changes in the House version of the bill. Specifically, there are two issues we oppose:

1. Inclusion of a federal benefit standard which would require the states to adjust their weekly benefit payments to a federally prescribed standard.
2. Increase in the taxable wage base above the $6,000 which is called for in H.R. 10210.

The federal benefit standard would cost the California unemployment fund an additional $240 million a year. The new benefit cost which would result could not be met from the present tax on business which now approximates $1.5 billion annually. That benefit standard provision if added to H.R. 10210 would either (1) force the California program into bankruptcy, or (2) require a further tax hike. More importantly, perhaps, the California Legislature has been responsive to the problem of keeping weekly benefits in line with wage changes. The top weekly benefit moved up to $75 in 1972, then to $90 in 1974 and now is $104 starting in 1976. The minimum weekly benefit of $30 is the largest in the country. Thus, there is no need for a federal formula governing state benefit amounts. We genuinely hope that the Senate Committee on Finance will oppose such an amendment to H.R. 10210.

We urge the Senate Committee on Finance to approve the $6,000 taxable wage base that is proposed in H.R. 10210. Now, employers pay a federal unemployment tax on payrolls which amounts to $21 annually for each employee earning $4,200 a year. Under the $6,000 base and the rate increase which H.R. 10210 also proposes, the per employee tax will double, amounting to $42 a year for each employee whose annual earnings are at least $6,000. Because the average annual insured wage in California exceeds $11,000 in 1976, the tax boost will apply to most payrolls. A doubling of the employer tax appears to be as much as business can tolerate without having the taxes constitute a deterrent to employment expansion.

In summary, we respectfully urge that the Senate Committee on Finance adopt the provisions of H.R. 10210 with one exception. That exception is to leave the trigger mechanism as it stands in current law and to refer the item of the method of adjustment as an investigative topic to the National Study Commission on Unemployment Compensation.

Respectfully submitted,

KIRK WEST,
Executive Vice President on behalf of
the California Taxpayers' Association.

STATEMENT SUBMITTED BY ASSOCIATED INDUSTRIES OF NEW YORK STATE, INC., IN REGARD TO H.R. 10210

Associated Industries of New York State is the major employer association in the Empire State and represents over 2800 members.

In its deliberations on H.R. 10210, the proposed unemployed compensation amendments of 1976, we ask the Senate Finance Committee to consider the following:

The proposed increase in the FUTA tax rate to 0.7% and in the taxable wage base to $5,000 is principally due to the large deficit in the federal extended benefit account and to increases in administrative costs. These deficits in turn are due to the constant extensions by Congress of more and more weeks of benefits with no consideration given to their cost, the method of financing, or the validity of their purpose.

After piling extension upon extension, waiver upon waiver, and creating a vast debt that has now reached over $6 billion, Congress is now considering the financing of these present and future deficits.

It is ironic that included in the proposed legislation is the establishment of a commission to study the federal-state unemployment compensation program, its goals and objectives. And yet, in the same legislation, it is also proposed to make far-reaching monetary and program changes before this study is undertaken.

The federal-state unemployment compensation program was set up to provide benefits for short-term, temporary involuntary unemployment—unemployment which could be attributable to an individual's involuntary loss of recent employment. The establishment of the relief of such short-term unemployment as a responsibility of employers to finance through a payroll tax could be justified as an ingredient in the true cost of a product or service and thus a proper charge to the cost of doing business. Employer responsibility for long-term unemployment, cannot be so established or justified.

In normal economic times the present maximum benefit duration in most states of 26 weeks is more than ample for the unemployed to canvass the labor market. The many years of experience in the problems of long-term unemployment has shown that those unemployed after six months are no longer unemployed primarily because of their separation from their most recent employer—they are unemployed either because the economy as a whole is in serious difficulty or because they are unwilling to undergo or accept the changes necessary to become employed.

The problems of such long-term unemployment, whether economic or personal, are far beyond the scope of an employer-financed insurance program which is an alleviative not a curative program. Employers thus have resisted and will continue to resist the imposition of payroll taxes to subsidize long-term unemployment. With no justification as a proper charge to the cost of a product, it becomes simply a payroll tax for welfare purposes.

Most employers supported the establishment of the permanent federal-state extended benefit program as enacted by the Unemployment Compensation Amendments of 1970 and providing for an additional 13 weeks of benefits in times of economic recession. While employers still believe such additional weeks were outside their cost responsibility, the program was supported because it was hoped that the enactment of a permanent program would end the rash of ill-conceived, ill-financed "emergency" legislation extending benefit duration heedlessly and mainly for political purposes. Employers were sadly mistaken—the permanent program has been added to and its triggers changed or waived on an "emergency" basis time and time again in the five years the program has been in effect.

As stated heretofore, we point out that each of these extensions or waivers has been enacted without providing for the financing of the additional costs. That day of reckoning was postponed until now.

We also point out that the federal-state unemployment compensation program worked well and was adequately financed when it was doing the job for which it was intended. Financing problems have only arisen since the program was stretched to cover areas outside its original concepts.

Employers therefore strenuously oppose the imposition of the immense increase proposed in FUTA tax revenues intended principally to cover costs of the FSB program which should never have been a charge to the unemployment compensation program. The present deficits and future costs attributable to this additional extended benefit program should be transferred to general revenues where they truly belong.

While we recognize that administrative costs of the unemployment compensation and employment service programs have increased greatly over the years and perhaps may need some additional funding, we point out that federal unemployment compensation tax funds are being used to finance administrative costs of programs under the Employment Service which are entirely outside the unemployment compensation system. These employer-financed unemployment tax funds should only be utilized for costs in connection with the work test aspects of the Employment Service, with administrative costs of the manpower, youth, etc. programs financed from general revenue.

In addition, the costs of administering the UCFE and UCX programs are also a charge to the FUTA tax although at the present time only private employers are subject to this tax. In proposing to extend coverage under the federal-state unemployment compensation program to employees of state and local governments, H.R. 10210 provides that the administrative cost of this new coverage should be a charge to the governments involved, not handled under the FUTA tax. It thus certainly follows that administrative costs in connection with the payment of benefits to former federal employees and ex-servicemen should now become payable by the federal government out of general revenues, not charged to the FUTA tax to which the government does not contribute. This also applies to those costs attributable to benefit payments to former employees of nonprofit organizations. Since these employers are not covered under the federal law—although coverage is mandated for approval of state programs—they are also not subject to the FUTA tax and thus are given a free ride administratively at the expense of private employers.

Removing FSB from UC financing, permitting FUTA administrative financing only for UC purposes, and charging administrative costs to the federal government and nonprofits should certainly reduce the necessity for a large increase in FUTA taxes. We recommend that the Senate Finance Committee give serious consideration to these needed reforms which would go a long way to defray additional costs on the private sector of our employment economy.

One justification which we understand has been offered for enacting an increase in the FUTA taxable wage base is that it would assist the states to maintain better financing systems. This argument simply has no merit. Few states have been slow to act when their experience has shown that additional financing has been truly needed. This is evidenced by the fact that at least 21 states have enacted an unemployment compensation taxable wage base higher than that under the FUTA tax. Other states have preferred to revise their financing through a change in tax rates rather than the wage base, which is their right, but this right would be severely defeated by too harsh an increase in the federal wage base. The states should be left as free as possible to determine—based on their own experience and knowledge—the distribution of the state unemployment compensation tax burden. A high federal wage base hampers this determination—particularly for low-cost states.

The unemployment compensation tax—both state and federal—is a major business tax and one of the most regressive. As a payroll tax it is a tax on the very provision of jobs. In states such as New York with a depressed industrial economy, high state and local taxes, and high labor costs—with the latter leading to high unemployment compensation costs—the additional cost placed on the price of jobs through overly excessive federal unemployment compensation taxes is of critical concern. Employers in this state are faced with the necessity of a massive increase in state unemployment compensation taxes in the coming years to rebuild this state's Fund which has been drained by benefit outlays totaling $1.4 billion in 1975 and at least $1.1 billion in 1976. The imposition of nearly $60 million in additional annual federal taxes would be a severe hardship and would seriously undermine our efforts to revitalize the state's industrial economy

In addition, the effect of the proposed changes in the federal-state extended benefit program incorporated in H.R. 10210 would be particularly severe in New York State. Perhaps the triggers in this program—and especially the secondary trigger—should be changed to make them more responsive to continuing high unemployment. However, removal of any secondary trigger and total reliance on a single low trigger point as proposed would effectively establish this state as a permanent member of this program.

A secondary trigger is necessary for the proper implementation of this program as a tool for use in states suffering periods of abnormally high unemployment. Because areas of this country differ greatly in normal experiences with unemployment, the use of an insured unemployment rate figure as the program trigger creates an obvious problem in that a figure which would be indicative for some states will be too high or too low for others. The proposed 4 percent seasonally adjusted rate is too low for New York and many other states which normally experience unemployment which can reach or exceed that figure. Thus only a secondary trigger can show that the unemployment rate in a particular state reflects a period of unusually high unemployment.

A change in the triggers which will make extended benefits a way of life in over one-third of the states in the nation is a major policy change in the unemployment compensation program. It is more properly a determination which should

be made by the study commission established by H.R. 10210. We therefore recommend that the changes in the extended benefit program be deleted from this legislation.

SUMMARY OF RECOMMENDATIONS

In summary we recommend that the U.S. Senate Finance Committee take the following steps in regard to H.R. 10210:

1. Transfer the FSB program and the deficits in the extended benefit account attributable to this program to general revenue financing.
2. End FUTA financing of administrative costs of the Employment Service which are not directly connected to the unemployment compensation program.
3. Charge the administrative costs of the UCFE, UCX, and nonprofit coverage to the employers involved in those programs.
4. Reduce the financing changes in H.R. 10210 to reflect the needs of the program with the above costs removed—with any increase in the FUTA taxable wage base not to exceed $5,400.
5. Delete any change in the triggers or other provisions of the federal-state extended benefit program, with any possible revision made a subject of study by the proposed unemployment compensation commission.

STATEMENT OF THE PUBLIC EMPLOYEE DEPARTMENT—AFL–CIO

We appreciate the opportunity to testify on H.R. 10210, which we supported in the House of Representatives. I am John E. Cosgrove, Director of Legislation of the Department.

We are concerned with this important legislation because many thousands of the 1.5 million members affiliated with the AFL–CIO Public Employee Department, by our twenty-nine national unions, literally have their bread and butter at stake.

In December, 1974, Congress enacted Public Law 93–567 extending unemployment compensation coverage to all wage and salary workers. The legislation included public workers not covered by earlier enactments. But this particular coverage expires in March, 1977.

Since 1954, employees of the federal government and the Postal Service have been entitled to unemployment compensation benefits under the laws of the states of their last employment. But until 1974 other employees in state and local governments had no right to those benefits.

All told, there are about 7.8 million local government workers who will not qualify for benefits after temporary coverage expires.

This situation highlights a related problem—the unreasonable discriminations which exist under current state laws. Employees in state hospitals are often covered; employees in city hospitals are not. Maintenance workers in state higher education facilities may be covered; maintenance employees in local school districts are not. The same is true of the two "types" of employees assigned to libraries, sanitation operations and highway activities. The disparity rests solely on which public unit is their employer.

Certainly the effect of joblessness is the same for all employees. There is no logical explanation, of which we can conceive, for treating groups of employees diffrently simply because they have a different government employer. Twenty-nine states (including the District of Columbia) now cover all their state, but only eight include local government employees. Twenty-two do not provide any public employee coverage. Yet, the needs of all unemployed individuals for income to care for basic needs, such as food, housing and clothing, are similar. Unemployed public employees, at whatever level of government, must feed, clothe and house families at all times—as do other workers. The pressing need for basic necessities is not suspended because the jobless worker happens to be a public employee.

The initial coverage of unemployment compensation, in the private sector, has been repeatedly broadened, particularly in 1954 and again in 1970. Between those years there was provided (1954) coverage for federal civilian employees and (1958) ex-servicemen. The 1970 amendments, extending coverage to agriculture processors, non-profit organizations, state hospitals and state institutions of higher education, were welcomed. Following implementation of all these changes, in 1972 it was estimated that 12 million workers were still left without protection. Most of these, 7.8 million—as noted before—were local government workers. We

now have extension of coverage to some state employees, as noted, but not usually to their counterparts who work for local government.

The Congress, in its wisdom, has already provided for federal workers. Workers employed by other political jurisdictions deserve the same protection.

We, of course, are grateful that in December of 1974 Congress enacted Public Law 93-567. The pressing problem of course is that the coverage for all public employees not otherwise covered is on an emergency basis and expires March 31, 1977, unless extended by H.R. 14970 on which the Ways and Means Committee has not acted. Because of the urgency of providing permanent coverage to public employees, we ask, as a matter of high priority, the approval by this Committee and, we trust adoption by the Congress, of H.R. 10210. This bill will provide permanent coverage to public employees.

The AFL-CIO Executive Council noted, on this question, in part: "Unemployment compensation protection should be extended on a permanent basis to all wage and salary workers, including . . . all public employees".

How pressing is the problem? The unemployment rate of government (including federal) wage and salary workers in non-agricultural industries is higher than for any yearly average rate since (1950) data has been published. These figures are from the Bureau of Labor Statistics.

Over the last 12 months the slight improvement in the official rate of unemployment for the aggregate economy has not been shared by public sector workers. Between August 1975, and August 1976, the official unemployment for the aggregate has decreased by (0.6%) 582,000 workers. At the same time the official unemployment for government workers increased over the year from 622,000 to 704,000. The number of unemployed government workers between August, 1975 and August, 1976 increased by an additional 82,000. Based upon the second quarter unemployment level for government workers of 722,000 as compared to the first quarter's level of 678,000 it can be seen that the lagged Recession impact upon state and local government workers is continuing and the Recession for these workers is deepening.

The 704,000 government workers unemployed in August, 1976 is—as noted—by far the highest unemployment level ever recorded in August since such statistics began to be compiled back in 1950. In fact, over the 25-year period, 1950-1974, unemployment in August among government workers has averaged only 212,000 or 2.1 percent. Therefore, the unemployment for August, 1975, of 622,000 and August, 1976, of 704,000 are historically high.

Unfortunately, there is a strong surge in the trend toward even worsening unemployment among government employees. Over the last four quarters the unemployment rate for government employees moved from a level of approximately 630,000 to 640,000 during the second, third and fourth quarters of 1975, upward to 678,000 in the first quarter of 1976, climbing to an historically high figure of 722,000 during the second quarter of 1976. At the same time, the official U.S. aggregate unemployment level declined from 8,087,000 in the second quarter of 1975 downward to 7,912,000 by the fourth quarter of 1975, declining further to 7,014,000 by the second quarter of 1976.

The sharp deterioration between the first quarter of 1976 public employee unemployment level of 678,000 and the second quarter figure of 722,000 shows that the true impact of the severe economic Recession in the general economy is still gaining momentum in the public sector. Further, the August 1976 surge to 7.9 percent in the aggregate economy unemployment rate suggests a continuing impetus toward further declines in public sector activity and a further deepening of the Recession.

It is inevitable that the increased layoffs in the public sector reaching, as noted, highs well after crests in the private sector, diminished severely the quality and quantity of government services at the local level.

While we urge a federal benefit standard and a tax base of $8,000 for purposes of the unemployment insurance program, we emphasize the importance of broadened scope of coverage. We urge coverage of farm workers, domestic workers and of employees of non-profit organizations. Most importantly, from our particular point of view, is the permanent coverage, approved by the House of Representatives, of public employees.

We earnestly solicit the permanent extension of this coverage by the Senate in action on this timely and vital legislation. Public employees deserve the same protection provided workers in the private sector as a matter of equal social justice. We trust that this can become law during the present Congress.

THE SHADE TOBACCO GROWERS AGRICULTURAL ASSOCIATION, INC.,
Windsor, Conn., September 10, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance,
Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. STERN: This letter is to support the position taken by the Citrus Industrial Council, Florida Canners Association, Florida Citrus Packers and the National Council of Agricultural Employers as outlined in a statement filed with the Committee on Finance on August 31, 1976.

The Shade Tobacco Growers Agricultural Association, Inc. represents over 90% of the 4,000 plus acres of shade grown cigar wrappers produced annually in the states of Massachusetts and Connecticut. The members of the Association employ several thousand workers year round, an average of 4,000 for the months of April through June and September through November, and over 15,000 during the months of July and August when the harvest is at its peak. The amendment suggested by Mr. Ghiselin to H.R. 10210 would provide an equitable method to protect any of the states if an overdraft as described in Mr. Ghiselin's statement occurs.

Sincerely yours,

ANTHONY F. AMENTA,
Executive Director.

SEPTEMBER 3, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: It has come to our attention here in western Nebraska that it is contemplated to extend unemployment compensation to agricultural workers. In my opinion this is a further disservice to the American taxpayer and would lead to labor difficulties and complications in agriculture per se:

1—We have enough trouble trying to get help, particularly in seasonal labor of the summer. As in other types of employment the practice would undoubtedly be exploited by those who are looking for something for nothing. As we have a great deal of seasonal demand for labor, this includes hay work, harvesting, beet labor, etc., workers would be able to work one, two or three months and then collect unemployment for the prescribed amount of time.

2—This, of course, places the hiring farmer and rancher in competition with the government, for if there was work to be done and the unemployment compensation would pay any where near equal wages, most would not work. We see this repeatedly here in Bridgeport, where we have a gravel dredging operation which works during the summer months and these workers do not look for or take other jobs until their unemployment compensation runs out.

3—Our migrant worker program in which laborers from the South come up seasonally to hoe and thin beets, would claim unemployment compensation when they return to their homes as long as possible.

I feel keenly that this would prove an additional hardship on the taxpayers, the people who hire, and further compounds the philosophy of, in cowman's terms, "tailing up people" so that in the long run they become accustomed to the public dole and will not support themselves by standing on their own feet.

4. As in all of these parasite programs, we feel that the "buck" should stop somewhere; for between inflation, the spiraling cost of farming and ranching, the increased taxes and the government sanction of permitted strike programs throughout the nation which continue to light the spark of inflationary spirals, we who produce in agriculture cannot carry added burdens such as unemployment compensation without exhausting our resources, both physical and economical.

We have just lately laid to rest one more poorly thought out program—OSHA—and now another threatens to take its place. I, therefore, as a cattleman of 300 head and farmer-rancher of 3,800 acres, decry this entire program and ask that it be negated at the Washington level.

Sincerely,

GEORGE P. POST.

WEST VIRGINIA MANUFACTURERS ASSOCIATION,
Charleston, W. Va., September 7, 1976.

Re: Unemployment Compensation Amendments of 1976—H.R. 10210.

Hon. RUSSELL D. LONG,
Chairman, Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: Since we will not be in attendance at your hearing on September 8, 1976, relative to the captioned, we submit the following comments which represent the views of members of the West Virginia Chamber of Commerce and the West Virginia Manufacturers Association.

For most of the past thirty years the State of West Virginia has experienced the highest unemployment rate of any state in the Union. Today, West Virginia has one of the few solvent state unemployment compensation funds. West Virginia is also one of the states that has reached the suggested federal minimum standard for benefit payments. Because of this long record of troublesome unemployment, the maintaining of a solvent fund, coupled with high compensation for the unemployed, we believe that your committee will want to consider these facts as you consider H.R. 10210.

We believe that to impose a $6,000 wage base on the State's system will impose an unnecessary high tax on West Virginia employers.

The most uncalled for provision in H.R. 10210 is the four percent state trigger for activating extended benefits. This trigger is so low that its true effect is to impose by federal law a longer duration of benefits than is necessary or desirable under most conditions.

Very truly yours,

ROBERT G. WORDEN,
President.

Appendix B.—Staff Data and Materials on Unemployment Compensation Amendments of 1976 (H.R. 10210)

94th Congress
2d Session

COMMITTEE PRINT

STAFF DATA AND MATERIALS ON

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

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

SEPTEMBER 3, 1976

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1976

CONTENTS

A. Unemployment Compensation Under Present Law

BENEFITS UNDER EXISTING UNEMPLOYMENT COMPENSATION PROGRAMS

Program	Benefit duration [1]	Funding [2]	When in effect
Regular State programs.....	1st to 26th week of unemployment.	100 percent from State unemployment accounts.	At all times.
Federal-State extended benefits.	27th to 39th week of unemployment.	50 percent from State, 50 percent from Federal unemployment accounts.	High level of insured unemployment—nationally or in specific State.
Emergency unemployment benefits.	(a) 40th to 52d week of unemployment.	(a) 100 percent from Federal unemployment accounts.	(a) Temporary program: expires Mar. 31, 1977; effective only when extended program in effect and State insured unemployment rate is at least 5 percent.
	(b) 53d to 65th week of unemployment.	(b) 100 percent from Federal unemployment accounts.	(b) Same as (a) but effective only if State insured unemployment rate exceeds is at least 6 percent.

[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) *Agricultural 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.

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.

78-153 O - 76 - 14

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.

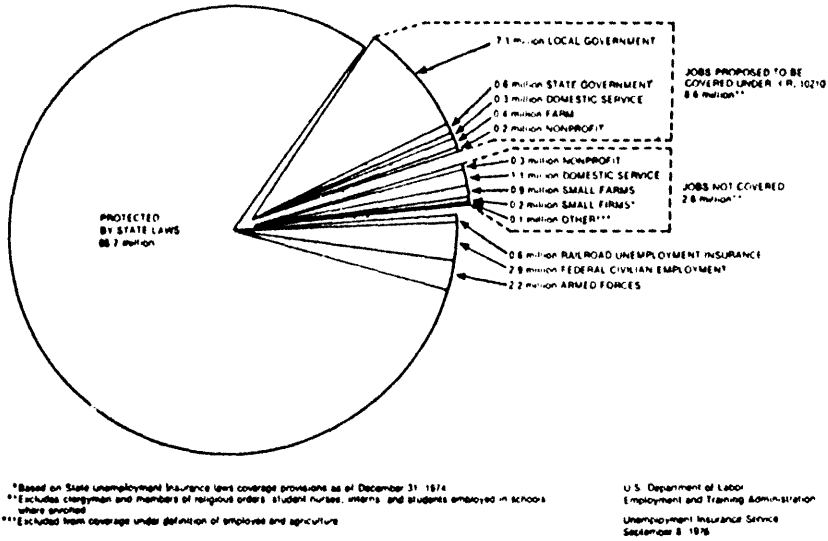
UNEMPLOYMENT COMPENSATION COVERAGE UNDER PRESENT LAW AND H.R. 10210 [1]

	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



*Based on State unemployment insurance laws coverage provisions as of December 31, 1974.
**Excludes clergymen and members of religious orders, student nurses, interns, and students employed in schools where employed.
***Excluded from coverage under definition of employee and agriculture.

U.S. Department of Labor
Employment and Training Administration
Unemployment Insurance Service
September 8, 1976

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.

78-143 O - 76 - 15

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 [2]	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.

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	20.5	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.

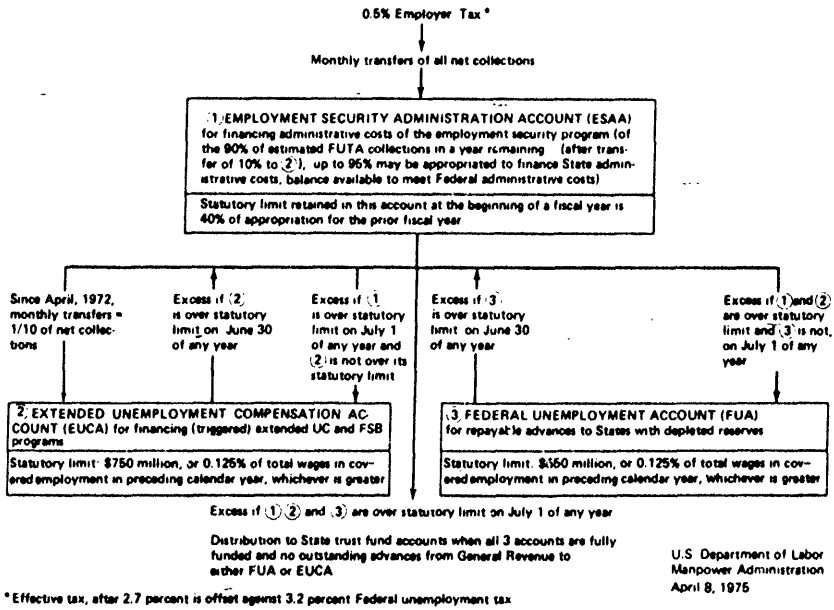
[2] The Federal subsidy arises from a provision authorizing general revenues reimbursement to the States for benefits paid in fiscal years 1978 and 1979 to the extent such benefits are based on wages prior to Jan. 1, 1978 (and for some benefits based on wages during January-June 1978).

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		Reserves as of Dec. 31, 1975
			Regular State benefits	State share of extended benefits	
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	53,648	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	140,940	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	(2)
Maryland	60,750	4,886	180,905	15,579	29,849
Massachusetts	269,997	1,628	476,884	49,573	(2)
Michigan	283,801	4,267	835,930	132,475	(2)
Minnesota	84,920	1,034	175,392	17,785	(2)
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	(2)
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 (thousands)
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.

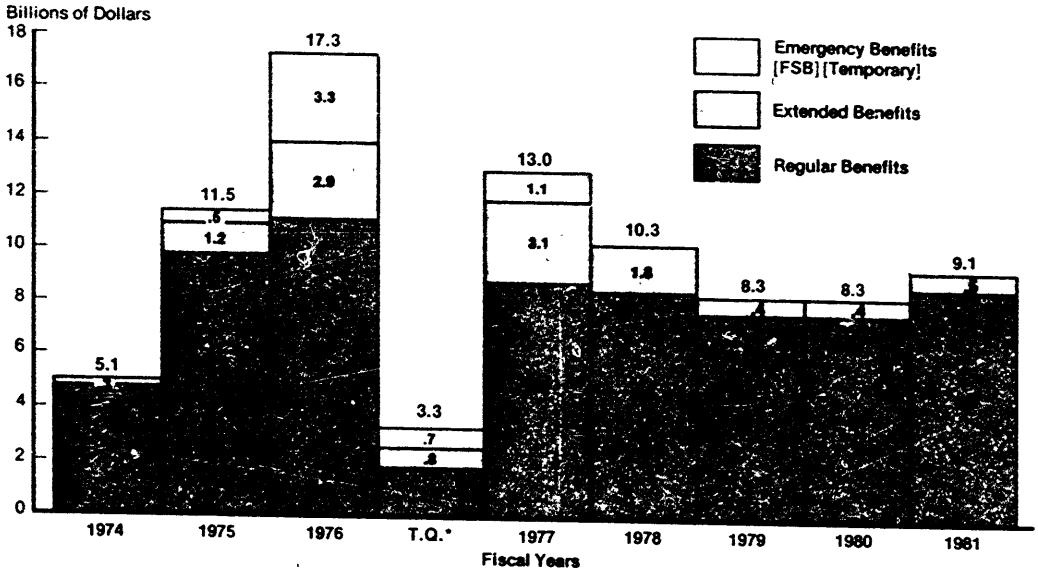
EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974
DATA: CALENDAR YEAR 1975—Continued

	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.

78-153 O - 76 - 17

Benefit Payments
State UI Programs [Excludes SUA]
Regular, Extended and Federal Supplemental Benefits
Current Law



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

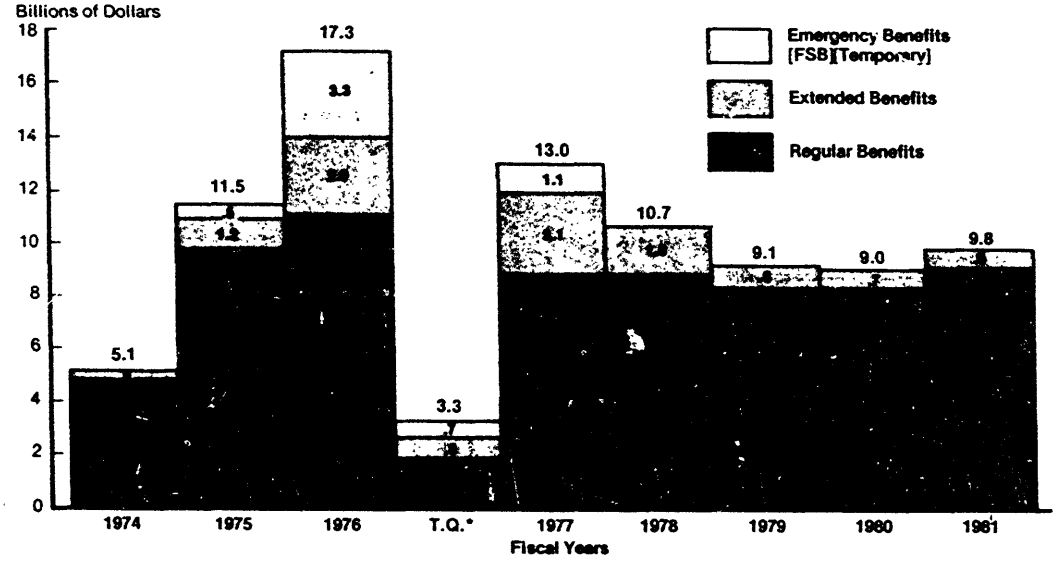
U S Department of Labor
Employment and Training Administration
Unemployment Insurance Service
August 9, 1976

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.

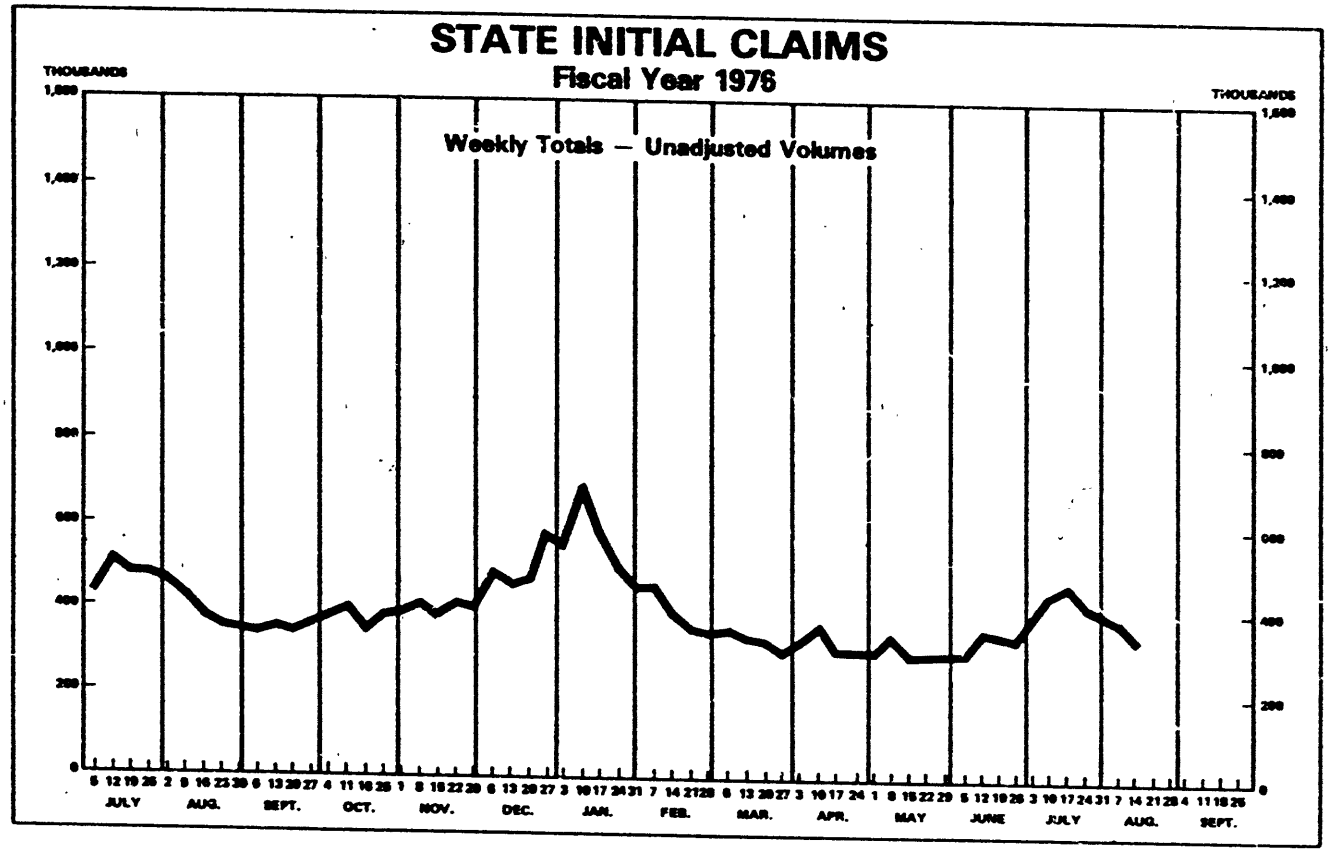
Benefit Payments

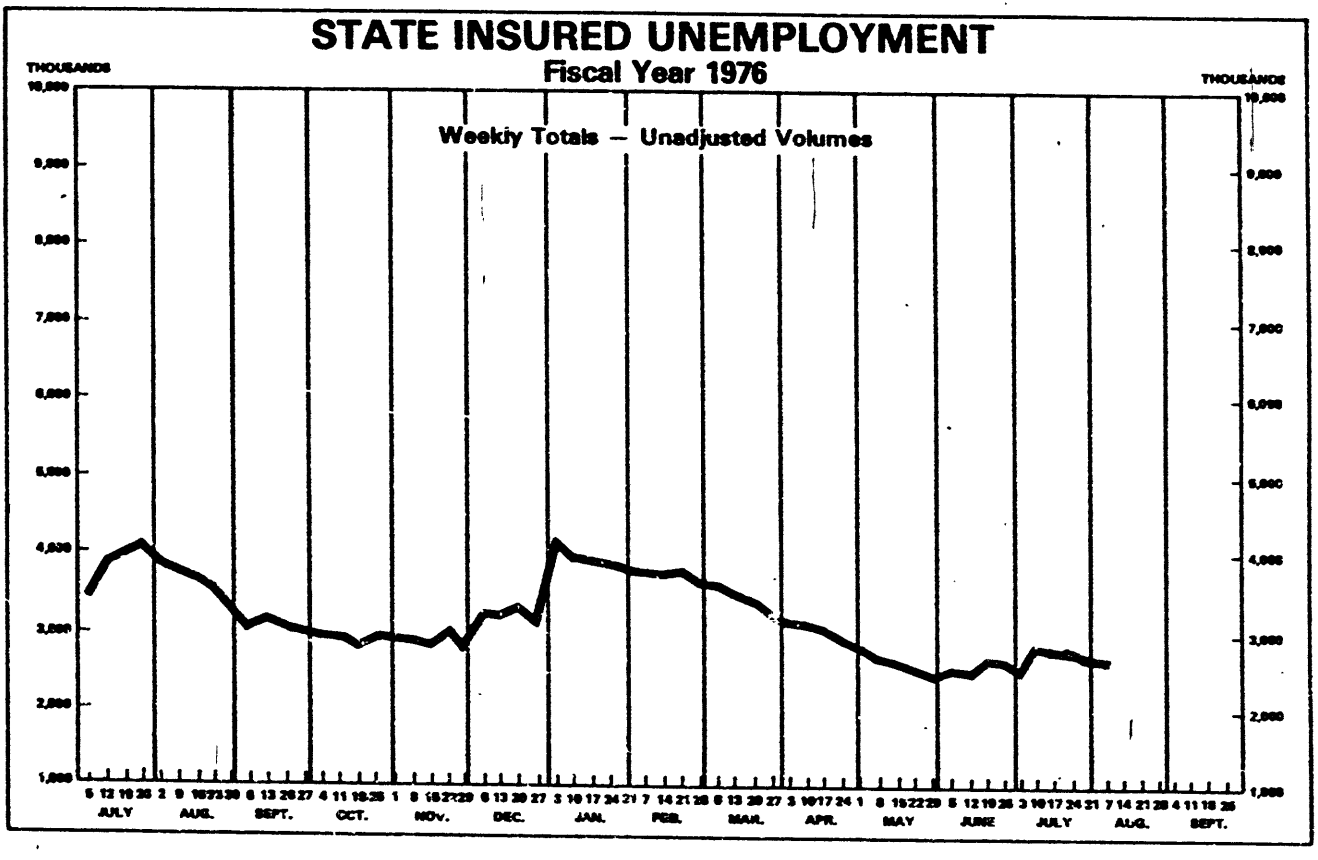
State UI Programs [Excludes SUA]

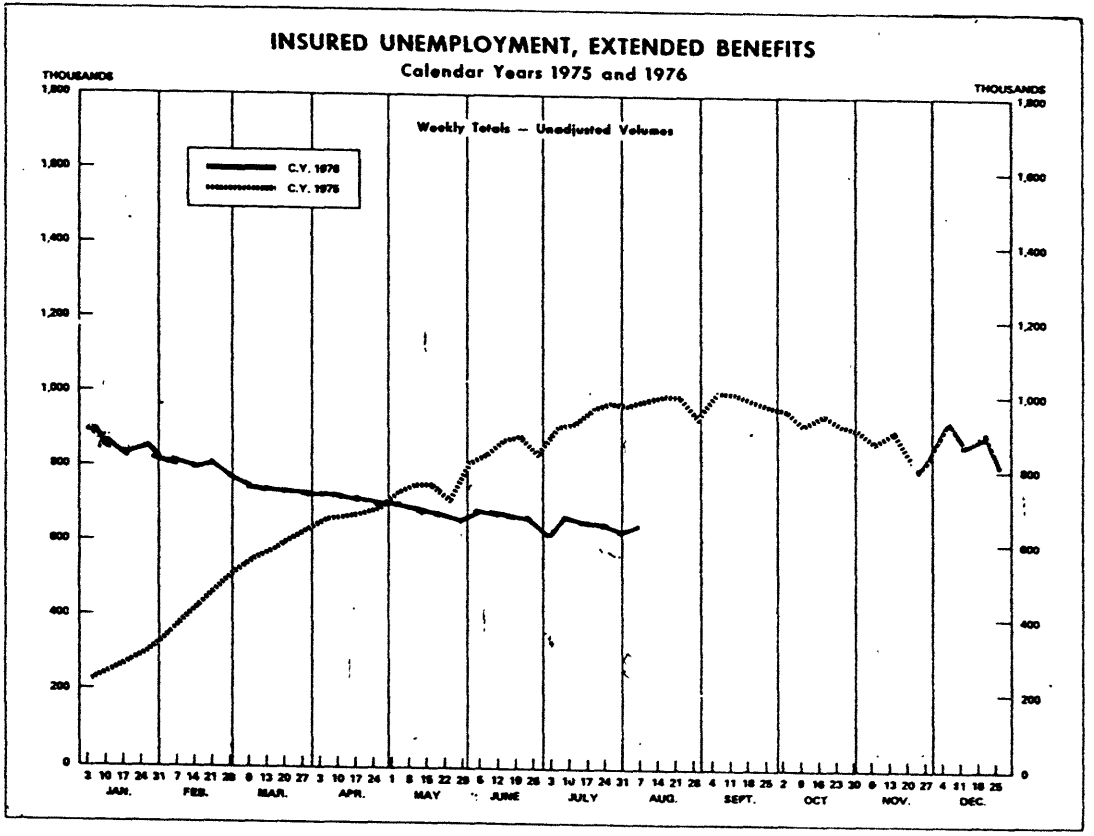
Regular, Extended and Federal Supplemental Benefits
Under HR 10210, U.C. Amendments of 1976, as passed by the House, 7/20/76



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
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
1,800
1,600
1,400
1,200
1,000
800
600
400
200
0
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT
NOV.
DEC.

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									Coverage: Size of firm (1 worker in specified time and/or size of payroll) [14]	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					
				Minimum	Maximum		Proportion of base-period wages [6]	Benefit weeks for total unemployment [7]				
								Minimum [8]	Maximum		Minimum	Maximum
Alabama	1½×hqw; not less than $522.	0	1/24	$15	$90	$6	1/3	11+	26	20 weeks.	0.5 [9]	2.7 [9]
Alaska	$750; $100 outside HQ.	1	2.3–2.1 percent of annual wages, plus $10 per dependent up to $30.	18–23	90–120	Greater of $10 or ⅓ 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	1/24 up to 66⅔ percent of State aww.	15	100	3/5	1/3	10	26	10 days	.3	4.2.
California	$750	1	1/24–1/21	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	¼ wba	1/3	7+–10	26	20 weeks.	0	3.6.

Connecticut	40	0	1/36, up to 60 percent of State aww plus $5 per dependent up to 1/2 wba.	15–20	110–165	1/3 wages	3/4	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	1/22 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.		1/2 claimant's aww.	10	82	$5	1/2 weeks employment.	10	26	20 weeks	.1	4.5.
Georgia	1½×hqw	1 [7]	1/22 plus $1	27	90	$8	1/4	9	26	do	.08 [8]	3.36 [9]
Hawaii	30; 14 weeks employment.	1 [10]	1/25 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 [18]	1/2 claimant aww up to 50 percent of State aww.[19]	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						Duration in 52-week period			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]	Proportion of base-period wages [6]	Benefit weeks for total unemployment [7]			Minimum	Maximum
				Minimum	Maximum			Minimum [8]	Maximum			
Indiana	1½×hqw; not less than $500; $300 in last 2 quarters.	1	½₅ 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	½₀ up to 66⅔ percent of State aww.	10	116	$15+½ wages.	½	10	39	do	0 [9]	4.0.
Kansas	30; wages in 2 quarters.	1	½₅ up to 60 percent of State aww.	25	101	$8	½	10	26	do	0	3.6.
Kentucky	1½×hqw; 8×wba in last 2 quarters; $250 in 1 quarter.	0	½₂₃ up to 50 percent of State aww.	12	87	⅛ wages	½	15	26	do	.1	3.2.
Louisiana	30	1 [10]	½₂₀–½₂₅	10	90 [11]	½ wba	⅜	12	28	do	1.0	3.0.

Maine	$900; $250 in each of 2 quarters.	0	½₂ up to 52 percent of State aww+$5 per dependent to ½ wba.	12–17	79–119	$10	½–½	11+–25.	26	do	2.4	5.0.
Maryland	1½Xhqw; $192.01 in 1 quarter; wages in 2 quarters.	0	½₄+$3 per dependent up to $12.	10–13	89 [4]	$10	Uniform	26	26	Any time	.7	3.6.
Massachusetts	$1,200	1	½₁–½₆ up to 57.5 percent of State aww, +$6 per dependent up to ½ 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 ½ wba.[5]	¾ 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 [16]	(15)	18	113	$25	⅓₀ weeks employment.	13	26	20 weeks.[17]	.9 [6]	5.0.[6]
Mississippi	36; $160 in 1 quarter; wages in 2 quarters.	1	½₆	10	80	$5	½	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) [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 [6]	Duration in 52-week period					
				Minimum	Maximum		Proportion of base-period wages [6]	Benefit weeks for total unemployment [7]			Minimum	Maximum
								Minimum [8]	Maximum			
Missouri	30×wba; $300 in 1 quarter; wages in 2 quarters.	1 [10]	1/26	$15	$85	$10	1/5	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	(5)	(5)	13	26	Over $500 in current or preceding year.	1.1 [9]	3.1.[9]
Nebraska	$600; $200 in each of 2 quarters.	1	1/26–1/52	12	80	Up to 1/4 wba.[5]	1/5	17	25	20 weeks	.1	2.7.
Nevada	1½×hqw;	0	1/52, up to 50 percent of State aww.	16	94	1/4 wages	1/5	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	1/5 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 1/5 wba.	3/5 weeks employment.	15	26	$1,000 in any year.	1.2 [9]	6.2.[9]

New Mexico	1¾ × hgw	1	1/26 not less than 10 percent nor more than 50 percent of State aww.	16	78	1/3 wba	3/26	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 [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).	1/26 up to 66⅔ percent of State aww.	15	105	½ wba	1/3 bpw	13	26	20 weeks	.2	4.7.
North Dakota	40; wages in 2 quarters.	1	1/26 up to 67 percent of State aww.	15	107	½ wba	([14])	18	26	do	.9	4.2.
Ohio	20 weeks employment at $20 or more.	1 [15]	½ claimant's aww + d.a. of $1–$55 based on claimant's aww and number of dependents.[16]	10–16	95–150	1/3 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	1/26 up to 66⅔ percent of State aww.	10	103	¼ wba	1/3	10	26	20 weeks	.25	4.1.
Oklahoma	1½ × hqw; not less than $500 in BP; $4,200	1	1/26 up to 55 percent of State aww	16	93	$7	1/3	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									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	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	1/50–1/25 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 [9]	55 percent of claimant's aww up to 60 percent of State aww, + $5 per dependent up to $20.	26–31	100–120	$5	5 weeks employment.	12	26	do	3.2 [9]	5.0 [9]
South Dakota	$400 in HQ: 10× wba outside HQ.	1	½₂ 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	½₆	14	85	$20	½	12	26	do	.4	4.0.
Texas	1½×hqw; not less than $500 or ⅓ FICA tax base.	1 [10]	½₅	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	½₈ 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]	½₂₅	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) [14]	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 [15]	1	1/25 of hqw up to 50 percent of State aww.	$17	$102	$5+¼ wages.	1/3	8+23+	30	Any time	3.0 [9]	3.0.[9]
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]	5/10 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	1/26 up to 50 percent of State aww.	10	95	$10	3/10	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.

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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 * * *.

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[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. 2489, 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. * * *

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"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 charges 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. *Bekins*, 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, 590 (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

78-153 O - 76 - 19

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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