# EXTENSION OF NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

## HEARING

BEFORE THE

## SUBCOMMITTEE ON UNEMPLOYMENT AND RELATED PROBLEMS

OF THE

## COMMITTEE ON FINANCE

## UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

## H.R. 3920

AN ACT TO AMEND THE UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976 WITH RESPECT TO THE NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION, AND FOR OTHER PURPOSES

SEPTEMBER 5, 1979

Printed for the use of the Committee on Finance

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# EXTENSION OF NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

WEDNESDAY, SEPTEMBER 5, 1979

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON UNEMPLOYMENT AND RELATED PROBLEMS,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:40 a.m. in room 2221, Dirksen Senate Office Building, Hon. David L. Boren (chairman of the subcommittee) presiding.

Present: Senators Boren, Long, and Dole.

[The press release announcing this hearing and the bill H.R. 3920 follow:]

Press Release # H-50

PRESS RELEASE

FOR IMMEDIATE RELEASE
August 6, 1979

UNITED STATES SENATE
COMMITTEE ON FINANCE
SUBCOMMITTEE ON UNEMPLOYMENT
AND RELATED PROBLEMS
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON UNEMPLOYMENT AND RELATED PROBLEMS TO HOLD HEARINGS ON NATIONAL COMMISSION EXTENSION (H.R. 3920) AND ON PROPOSALS FOR REDUCING PROGRAM COSTS

Senator David L. Boren (D.,Ok.), Chairman of the Finance Subcommittee on Unemployment and Related Problems today announced that the Subcommittee will hold a hearing on H.R. 3920, a bill to extend for an additional year the National Commission on Unemployment Compensation, to provide for payment of Commission members, to exempt the Commission from certain procedural requirements, and to extend a provision exempting certain alien contract farm labor from unemployment taxes.

The hearing will be held starting at 10:30 a.m. on September 5, 1979 in Room 2221 Dirksen Senate Office Building.

Senator Boren also announced that the Subcommittee intends in future hearings to examine additional issues related to the Unemployment Compensation program with a view towards developing proposals which will reduce program costs and improve its effectiveness. Because of the heavy workload of the full committee and the importance of the tax legislation now pending before it, dates for these further hearings cannot now be specified. As soon as specific scheduling is possible, a press release announcing the dates for the further hearings will be issued.

Senator Boren noted that the National Commission was established by the Unemployment Compensation Amendments of 1976 but for a variety of reasons, including delays in initial organization, the Commission has been unable to complete its mandate to provide a comprehensive report on a wide spectrum of issues related to unemployment compensation. At the hearing on September 5, the Subcommittee expects to hear testimony from the Honorable Wilbur Cohen, Chairman of the Commission, and from other witnesses on the status of the Commission's work to date and the need for extending its existence.

Senator Boren also noted that the staff of the Finance Committee has compiled a list of proposals which might be considered to improve the fiscal status and reduce the cost of the unemployment compensation program. These proposals have not been considered or approved by the Subcommittee or any members thereof but are described in an appendix to this press release so that witnesses at the hearings to be held subsequent to September 5 may have an opportunity to consider and comment on them or to suggest other methods of controlling the costs of the program.

Requests to testify.--Chairman Boren stated that witnesses desiring to testify at the September 5, 1979 hearing must make their requests to testify to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than the close of business on Tuesday, August 14, 1979. Witnesses who are scheduled to testify will be notified as soon as possible after this date as to when they will appear. If for some reason the witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance. A deadline for submission of requests to testify at the subsequent hearings on cost saving proposals will be announced at the time the dates for those hearings are scheduled. Chairman Boren also stated that the Subcommittee strongly urges all witnesses who have a common position or the same general interest to consolidate their testimony and to designate a single spokesman to present their common

viewpoint to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain.

Legislative Reorganization Act.--Chairman Boren stated that the Legislative Reorganization Act of 1946 requires all witnesses appearing before the Committees of Congress to "file in advance written statements of their proposed testimony and to limit their oral presentation to brief summaries of their argument." Senator Boren stated that, in light of this statute, the number of witnesses who desire to appear before the Subcommittee, and the limited time available for the hearings, all witnesses who are scheduled to testify must comply with the following rules:

(1) A copy of the statement must be delivered to Room 2227 Dirksen Senate Office Building, not later than 5:00 p.m. on Thursday, August 30, 1979.

(2) All witnesses must include with their written statements 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 100 copies must be delivered to Room 2227, Dirksen Senate Office Building, not later than 5:00 P.M. on Tuesday, September 4, 1979.

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

(5) All witnesses will be limited in the amount of time for their oral summary before the Subcommittee. Witnesses will be informed as to the time limitation before their appearance.

Witnesses who fail to comply with these rules will forfeit their privilege to testify.

Written statements.--Persons not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. Written testimony for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with 5 copies to Michael Stern, Staff Director, Senate Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than Friday, September 14, 1979.

## A P P E N D I X

Summary of Various Proposals For Reducing Costs and Improving the Budgetary Status of the Unemployment Program

A-1. Require disqualification for duration of unemployment for voluntary quits, discharge for misconduct, and refusal of suitable work.--When an unemployed worker has voluntarily left his job without good cause, has been discharged for misconduct, or has refused what the State agency considers a suitable job offer for him, he becomes ineligible for benefits. However, in many States the disqualification is lifted after a period of time. Other States continue the disqualification for the duration of unemployment. A recent research study by SRI International concluded that the average length of unemployment tends to be lower in States which impose disqualification for the duration of unemployment. Consideration could be given to requiring all States to utilize this rule.

A-2. Require that States not pay benefits beyond 13 weeks to an individual refusing any reasonable job offer.--The unemployment compensation program exists to provide protection against income loss during periods of involuntary unemployment. Generally, a worker qualifies for up to 26 weeks of benefits if he was laid off from work for reasons other than his own misconduct or his own voluntary decision to quit and if he remains ready, willing, and able to accept new employment. For the benefit of both the worker and the labor market, newly unemployed workers are not required to take any available job but are permitted to seek a job which reasonably matches their previous experience, training, and earnings level. After seeking such work unsuccessfully for a reasonable period of time, however, individuals may be required to seek jobs not meeting their full qualifications as a condition of continued benefit eligibility. Consideration could be given to establishing a Federal requirement that States not continue benefits beyond 13 weeks unless, at that point, the unemployed individual is willing to accept any job which meets minimum standards of acceptability (such as basic health and safety standards, compliance with the Federal minimum wage, and acceptability under existing Federal standards). A similar requirement was included in the legislation extending the now expired Emergency Unemployment Compensation Act of 1974.

A-3. Require that States not pay benefits on the basis of predictable layoffs from seasonal employment.--The main objective of the unemployment program is to provide security for workers against the sudden loss of income which occurs when they are unavoidably laid off. It could be argued that it is inconsistent with this objective to pay benefits to workers whose layoff is a regularly recurring and predictable event because of the seasonal nature of that employment. In extending unemployment coverage to State and local government workers, Congress addressed this problem as it applies to school employees by providing for the denial of benefits during regularly scheduled periods of nonwork. The 1976 Amendments also provided for denying benefits to professional athletes during the offseason. Consideration could be given to requiring States to establish a seasonal employment exclusion of general applicability as a few States have done already. For example, employment for firms with a pattern of seasonal layoffs could be excluded from consideration in determining benefit eligiblity during the offseason unless the unemployed person was fully employed during the same offseason in the prior year.

A-4. Require all States to establish a one-week waiting period.--Most States do not now pay benefits for the first week of unemployment on the basis that requiring a "waiting week" before benefit eligibility starts provides an important incentive to immediately undertake a search for reemployment (or even to find ways to avoid being laid off). Consideration could be given to requiring that the one-week waiting peiod be incorporated into all State programs.

A-5. Provide increased assistance to States in control of error and fraud.--In the past, when benefit costs were almost entirely borne from State imposed taxes, there has not been a highly visible Federal concern over the need to control the extent of error, fraud, and abuse in State unemployment programs. Given the increased impact of these programs on the Federal budget and the increasingly large direct Federal contribution to benefit costs through the extended benefit program and other programs involving Federal funding, consideration might now be given to providing additional aid and incentives for improved State administration in these areas. Elements which could be considered might include Federal aid in establishing computerized quality control systems and the reduction of Federal payments under the various Federally funded parts of the program to the extent that errors are determined to exceed certain minimum levels.

A-6. Eliminate the national trigger for the extended benefit program.--Under existing law, an addition 13 weeks of benefits over and above the usual maximum duration of 26 weeks for regular State unemployment benefits become payable in times of high unemployment. Fifty percent of the costs of these extended benefits are paid from the proceeds of the Federal unemployment tax. The basis for the extended benefits program is that unemployed workers may reasonably be expected to find themselves unable to obtain employment for a longer period of time when jobs are scarce as indicated by high levels of unemployment. Consequently, the law requires States to participate in the extended benefits program when insured unemployment levels in the State have increased by at least 20 percent (measured against the two prior years) and an absolute insured unemployment rate of 4 percent has been reached. The law also, however, requires that all States implement the extended benefit program when the national insured unemployment rate reaches a level of 4.5 percent. This can result in adding three months of benefit duration in a State which has experienced neither a particularly high level of unemployment nor any relative growth in unemployment levels. In such States there would,therefore, seem to be no particular basis for assuming that unemployed workers required additional benefit duration in order to find new work. Consideration could be given to deleting this national trigger so that extended benefits would be payable only in those States where economic conditions indicated a need for the additional duration.

A-7. Permit States to establish optional extended benefit trigger at higher insured unemployment levels.-- Under present law, States which are not required to participate in the extended unemployment compensation program under the mandatory trigger provisions may elect to opt into the program when the State insured unemployment rate reaches a level of 5 percent. States do not, however, have the option of triggering the program only at a higher level (such as six percent.) Consideration might be given to providing States this additional flexibility.

A-8. Provide incentives for Federal agencies to contest improper benefit claims.--An important element of the unemployment compensation program in the States is the experience rating system which provides a strong incentive for employers to avoid unnecessary employee turnover and to monitor claims for unemployment to assure that improper awards are not being made by the State agency. Federal agencies do not have a similar incentive in the case of their employees since benefit costs are funded through a separate account not chargeable to the individual agency. Consideration could be given to requiring each agency, as a part of its annual budget request, to provide information concerning the amount of benefits paid to its former employees in the prior year and its expectations for the coming year. In addition, the Labor Department could be charged with a continuing analysis of the agency experience and could be required, in its annual budget submissions, to include information concerning any agencies with unusually high benefit charges.

A-9. Modify trade adjustment assistance program to provide same benefit amount as regular program.--The trade adjustment assistance program provides additional benefits to workers who become unemployed as a result of import competition which causes a decline in the sales or production of their employers. Under existing law, adjustment assistance is provided in the form of both higher benefits than would be payable under regular unemployment compensation program and a longer duration of benefits (generally 52 weeks as opposed to 26 weeks under regular State programs). While the impact of import competition may justify a longer duration of benefits on the basis that many similar firms in a given area could be simultaneously impacted so that it would take a longer time for workers in the affected industry to find new work, there does not appear to be a similar rationale for providing a higher level of benefits than are provided to workers losing other types of jobs. Consideration could be given to modifying the program by continuing the additional benefit duration but limiting benefit levels to those of the regular State unemployment compensation program.

A-10. Require States to pay interest on funds borrowed from Federal accounts.--Under present law, State benefit costs are paid from the proceeds of State unemployment taxes which are deposited in the State accounts of the Unemployment Trust Fund. If a State account drops to a level where the State will be unable to meet its benefit obligations, a loan to meet the shortfall is made from the Federal unemployment account. (If the Federal unemployment account proves inadequate, it in turn borrows from the general fund of the Treasury.) In each case, the loans that are made bear no interest. Once a loan is made to a State under this provision, the State has between 23 and 35 months to make repayment. At the end of that period, Federal collection action begins by reducing the Federal tax credit otherwise available to employers in the State. Even so, no interest or other penalty applies. (Because of the severe impact of the recent recession, States with outstanding loans were given 3 additional years to make repayment during which no action is being taken to effect collection.) Since these loans are provided on an interest-free basis, there is little incentive for States to make repayment any sooner than they have to. The Federal government, however, is actually paying interest on these balances since they represent an increase in the public debt. A change in the law could be considered to increase State incentive to repay outstanding loans as quickly as possible by charging interest on any loan balance outstanding at a rate equal to the going rate of interest on Federal securities.

A-11. Provide for reduction of benefits when the unemployed individual is receiving a pension based on recent employment.--When the 1976 Amendments to the unemployment laws were under consideration by Congress, concern was expressed over the situation in which an individual who is in fact retired rather than unemployed may receive unemployment benefits at the same time that he is receiving retirement pension. The law was amended to provide for a dollar-for-dollar reduction in unemployment benefits by the amount of any pension concurrently payable to the individual. Because of concern that the provision may have been too broadly drawn, the effective date was set in the future to permit time for study and that effective date was subsequently further extended to March 31, 1980. The interim report of the National Commission on Unemployment Compensation recommended that the provision be repealed. As an alternative to this proposal, consideration could be given to making the provision effective with a modification meeting the most serious objections by limiting the reduction to pensions based in whole or part on employment within the 2 years preceding the date of unemployment.

96TH CONGRESS
1ST SESSION

# H. R. 3920

IN THE SENATE OF THE UNITED STATES

JULY 26 (legislative day, JUNE 21), 1979
Read twice and referred to the Committee on Finance

# AN ACT

To amend the Unemployment Compensation Amendments of 1976 with respect to the National Commission on Unemployment Compensation, 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. PAY OF MEMBERS OF THE NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION.**

(a) GENERAL RULE.—Paragraph (1) of section 411(e) of the Unemployment Compensation Amendments of 1976 (relating to pay and travel expenses) is amended to read as follows:

"(1) PAY.—

"(A) IN GENERAL.—Members of the Commission who are not full-time officers or employees of the United States shall be paid compensation at a rate not to exceed the per diem equivalent of the rate payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) during which they are engaged in the performance of services for the Commission.

"(B) OFFICERS OR EMPLOYEES OF THE UNITED STATES.—Except as provided in paragraph (2), members of the Commission who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the Commission."

(b) TECHNICAL AMENDMENT.—Paragraph (2) of such section 411(e) is amended by striking out "section 5703(b)" and inserting in lieu thereof "section 5703".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1979, and shall apply with respect to services performed on or after March 1, 1978.

**SEC. 2. SUBMISSION OF REPORTS BY THE NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION.**

(a) INTERIM REPORTS.—Subsection (f) of section 411 of the Unemployment Compensation Amendments of 1976 (relating to interim report) is amended to read as follows:

"(f) INTERIM REPORTS.—The Commission shall, from time to time, transmit to the President and the Congress such interim reports as the Commission deems appropriate.".

(b) FINAL REPORT.—Subsection (g) of such section 411 (relating to final report) is amended by striking out "July 1, 1979" and inserting in lieu thereof "July 1, 1980".

**SEC. 3. EXEMPTION OF NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION FROM REQUIREMENTS FOR OFFICE OF MANAGEMENT AND BUDGET CLEARANCE.**

(a) EXEMPTION FROM CLEARANCE REQUIREMENTS.—Section 411 of the Unemployment Compensation Amendments of 1976 is amended by adding at the end thereof the following new subsection:

"(j) EXEMPTION FROM REQUIREMENTS FOR OFFICE OF MANAGEMENT AND BUDGET CLEARANCE.—

"(1) FEDERAL REPORTS ACT.—The requirements of chapter 35 of title 44, United States Code, shall not apply to the Commission.

"(2) REPORTS TO CONGRESS.—Any reports submitted to the Congress by the Commission shall be

submitted directly to the Congress and shall not be subject to any requirements for clearance of reports by the Office of Management and Budget.".

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

SEC. 4. EXCLUSION OF CERTAIN ALIEN FARMWORKERS.

(a) GENERAL RULE.—Subparagraph (B) of section 3306(c)(1) of the Internal Revenue Code of 1954 (relating to agricultural labor) is amended by striking out "January 1, 1980" and inserting in lieu thereof "January 1, 1982".

(b) LABOR PERFORMED BY ALIENS TAKEN INTO ACCOUNT FOR DETERMINING WHETHER OTHER AGRICULTURAL LABOR IS COVERED.—Subparagraph (A) of section 3306(c)(1) of such Code is amended by striking out "not taking into account labor performed before January 1, 1980, by" each place it appears and inserting in lieu thereof "including labor performed by".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid after December 31, 1979, for services performed after such date.

Passed the House of Representatives July 25, 1979.

Attest: EDMUND L. HENSHAW, JR.,

*Clerk.*

Senator BOREN. We will begin the hearing at this point. I want to welcome all of you to this hearing on the continuation of the work of the National Commission on Unemployment Compensation.

I am very pleased to have Chairman Long with us this morning and I would also like to mention that we are pleased to have a Member of Congress, who is a member of this Commission, also with us this morning, Congresswoman Mary Rose Oakar of Ohio. We welcome you to this hearing this morning and we are very pleased that you could join us.

The purpose of today's hearing is to receive testimony on H.R. 3920. The bill, as passed by the House, would extend for an additional year the National Commission on Unemployment Compensation. Without extension, the Commission will terminate at the end of this month.

The House also included, in H.R. 3920, a provision to modify and extend until January 1, 1982, the exemption of certain alien contract farm labor from unemployment taxes.

Before we begin testimony on the bill, I would like to call your attention to some additional material which the staff has included in the blue book, beginning on page 28. The staff has compiled a list of proposals which might be considered to reduce the cost of the unemployment compensation programs. It is my hope that we can have hearings in the very near future to explore these and other cost saving proposals. It is crucial that this program be returned to a fiscally sound basis.

I might mention that, if all of these savings were adopted—we realize there are pros and cons on each—if all of these savings were adopted listed at the beginning of page 28, it is estimated by the staff that $3.2 billion could be saved annually.

My experience with this program while Governor of Oklahoma convinced me that it can be turned around financially. When the trust fund balance began to drop in the mid-1970's, we set out to solve the problem. I discovered that 60 percent of the claims being filed were from people who had voluntarily quit work or had been fired for good cause. These claimants, along with those who refused suitable employment when it was offered, were simply made to wait 7 weeks, and then were able to draw benefits.

The law was changed to disqualify these types of claims. Penalties were made tougher for fraud and misrepresentation and staff was increased to identify and recover erroneous and fraudulent payments. In 2 years, over $500,000 has been voluntarily repaid—largely due to publicity about the antifraud program.

The result of these changes has been to bring the fund from near bankruptcy—a balance of $10 million in April of 1977—to a $150 million balance, the highest in the history of the State of Oklahoma. This year the tax rate was reduced for over 30,000 employers in the State.

At the same time, benefits were increased for persons who were unemployed through no fault of their own. Maximum benefits were increased from 55 percent to 62 percent of the average covered weekly wage.

I believe that the subcommittee should look at this and other examples of actions which might be taken to reduce costs in the unemployment insurance program.

I know that the Commission has given much consideration to these suggestions and other ways in which the program could be improved so that it better meets its purposes.

Before we begin with our first witness, I do want to have placed in the record, letters which I have received, one from the Secretary of Labor, Secretary Marshall, who urges a continuation, extension, of the life of the National Commission on Unemployment Compensation for an additional year; also, a letter from Governor Garrahy on the Governors' Conference, Committee on Human Resource, which he chairs; the National Governors' Association also urging an extension of the Commission and a continuation of its work and a telegram from the director of the California Development Department, Mr. Gene Livingston, who also encourages and supports the continuation of the work of the Commission.

I would like to have these entered into the record at this time.

[The material referred to follows:]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
*Washington, D.C., August 27, 1979.*

Hon. DAVID L. BOREN,
*Chairman, Subcommittee on Unemployment and Related Problems,*
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: It is my understanding that the Subcommittee on Unemployment and Related Problems of the Committee on Finance has scheduled hearings for September 5, 1979, for the purpose of extending the life of the National Commission on Unemployment Compensation for an additional year.

As you know, the original life expectancy of the Commission was intended to be two years. However, because of the delay in designating the Commission membership, more time is needed to provide adequate consideration of all the issues that Public Law 94-566 mandated it to review. We believe, given the importance of the unemployment insurance program, that the Commission should be given adequate time to do a thorough job.

I, therefore, respectfully request your prompt and favorable consideration of legislation to extend the life of the National Commission on Unemployment Compensation. If a bill is not enacted into law to prolong its life by September 28th, the Commission's charter will expire and much effort will have been wasted.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAY MARSHALL.

NATIONAL GOVERNORS' ASSOCIATION,
*August 27, 1979.*

Hon. DAVID L. BOREN,
*Chairman, Subcommittee on Unemployment and Related Problems, Committee on Finance, U.S. Senate, Washington, D.C.*

DEAR SENATOR BOREN: I am writing on behalf of the National Governors' Association to urge your support for prompt passage of H.R. 3920, which would extend the final reporting date for the National Commission on Unemployment Compensation to July 1, 1980.

The National Commission, which was mandated under the Unemployment Compensation Amendments of 1976 (Public Law 94-566), is charged with conducting a thorough and comprehensive review of the 44 year-old Federal-State unemployment insurance system. As you know, serious delays in constituting the membership of the Commission consumed more than a year of the time allotted by Congress for completion of the Commission's work. On this basis alone it would seem appropriate for Congress to extend the life of the Commission for another year.

I am aware, however, of attempts by some groups to discredit the work of the Commission and to use preliminary working papers prepared for the Commission as the basis for arguing for premature termination of its work. In my opinion, these attempts are unjustified.

I am convinced a good deal of confusion exists regarding the difference between process and products of the National Commission. The only product of the Commission to date is the set of recommendations presented in its November 15, 1978 interim report. I believe that these recommendations reflect a strong and thoughtful effort on the part of the Commission to address the immediate financing and benefit problems of the Federal-State UI system. In contrast, the series of "options" for the basic structure of the Federal-State unemployment insurance program which the Commission published in the Federal Register on July 13, 1979 is not a Commission product, but rather a "process" document designed to stimulate discussion and debate.

I believe Congress was correct in mandating a major review of the unemployment insurance system and in establishing a national commission to carry out this task. Given the current financial crisis in the UI system and the pending recession, it is imperative that the vital work of the Commission not be terminated before it has reached its conclusion.

NGA looks forward to working with the Commission, as well as with appropriate Congressional leaders, to make needed improvements in the Federal-State unemployment insurance program.

Sincerely,

J. JOSEPH GARRAHY, *Chairman.*

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[Mailgram]

CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT,
*Sacramento, Calif., September 4, 1979.*

Hon. DAVID L. BOREN,
*Member, Subcommittee on Unemployment and Related Problems,*
*Russell Senate Office Building, Washington, D.C.*

We urge you as a member of the subcommittee to recommend to members of the Senate Finance Committee passage of H.R. 3920 which will extend for an additional year the National Commission on Unemployment Compensation.

To date, the Commission has completed much valuable research on the Federal-State UI system. Because of the initial delay in appointing the Commission members and the complex nature of the Commission's mandate, we believe that the Commission should be renewed for an additional year. This will allow for the completion of the Commission's research projects and for the formulation of final recommendations to Congress and the President.

These recommendations will be particularly valuable in light of the administration's forecast of increased unemployment and the impact of the accompanying economic changes on the long-range needs of the UI Federal-State system.

Sincerely,

GENE LIVINGSTON, *Acting Director.*

Senator BOREN. We will begin with our first witness.

It is a real pleasure for the Chair to introduce Mr. Wilbur Cohen who is the Chairman of the National Commission on Unemployment Compensation, a very distinguished gentleman with a long career dating back to the very beginning in helping to draft some of the basic law on which the unemployment compensation program was founded back in 1935.

He is a former member of the Cabinet, former Secretary of Health, Education, and Welfare. The Chair can say many more things about him, but I would rather give him the time to tell us about the work of the Commission.

Mr. Secretary, we are very glad to have you this morning and hope that you will introduce the other members of the Commission who are there with you.

## STATEMENT OF WILBUR J. COHEN, CHAIRMAN, NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Mr. COHEN. Thank you, Mr. Chairman.

It is always a pleasure for me to be back in this room where I have testified before the present chairman many times. I am very happy to be here.

Senator LONG. Mr. Cohen, sometimes you must wake up in the night and think you are in the Finance Committee room, you have spent so much time here.

Mr. COHEN. Yes, Mr. Chairman, I do. Now I would like first to introduce the members of the Commission and then, with your permission, Mr. Chairman, ask Representative Oakar if she will make her statement first, because she may have to leave, and if that is agreeable with you, I would like to do so.

Senator BOREN. That is fine.

Mr. COHEN. First I would like to introduce Congresswoman Mary Rose Oakar from Ohio, who is a distinguished member of our Commission, and the other members of our Commission who are here.

First, Mr. Crosier from Massachusetts, a former State administrator of unemployment insurance; Mr. Ken Morris from Michigan, a labor representative for the automobile workers on the Commission; Mr. Walter Bivins, a former State administrator in Mississippi; Mrs. Dolores Sanchez, a small business representative from California; Mr. Edward Sullivan, a member from Boston, Mass., an official of the Service Workers Union; Mr. Eldred Hill, a former State administrator from the State of Virginia; Mr. Warren Cooper, an employer representative from West Virginia.

I think that is all of the members of our Commission who are here. Now, I think it would be best, sir, if Miss Oakar made her presentation before I did.

Senator BOREN. We are very glad to have you join us here this morning.

## STATEMENT OF HON. MARY ROSE OAKAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Representative OAKAR. Thank you very much, Chairman Boren and Chairman Long. It is certainly an honor for me to be before the subcommittee and having the chairman of the full committee here is an additional unexpected pleasure that I did not foresee.

I have a statement that I would like to submit for the record, Mr. Chairman, with your permission, because I know all of us have busy schedules this morning. I simply want to say that I support the Chairman of our Commission's testimony today and, as you know, it is imperative for the Senate to act as expeditiously as possible. We have been working on this issue and taking a look at unemployment compensation in a very comprehensive fashion. We want to continue the work that we have not completed, including the suggestions that you and your very able staff have made in terms of financing the system which I am sure would have priority consideration.

I hope that we can have the Senate act as expeditiously as possible. I know that you are aware of the fact that the House did act on July 25 and I thank you very much for letting me submit my testimony for the record.

Thank you.

Senator BOREN. We appreciate your being here this morning. We will certainly consider your statement and it will be entered into the record in full.

I appreciate your coming.

Representative OAKAR. Thank you.

[The prepared statement of Representative Oakar follows:]

PREPARED STATEMENT OF CONGRESSWOMAN MARY ROSE OAKAR

Mr. Chairman, it is with deep appreciation that I present this statement with regard to H.R. 3920, a bill to extend the life of the National Commission on Unemployment Compensation. On July 25, the House passed H.R. 3920 by voice vote. As a member of that Commission, I am concerned that the Senate act as expeditiously as possible on H.R. 3920, so that the Commission's Congressional mandate to thoroughly examine the unemployment compensation program be kept intact. Without this extension of time to prepare a Final Report to the President and Congress, this Commission is scheduled to hold its last meeting this month.

Among the many issues the Commission has already discussed, are several important proposals for improving the fiscal soundness of the unemployment compensation program. These proposals include extending disqualification periods for voluntary quits without good cause, discharge for misconduct, and refusal of suitable work. The Commission will also be looking into proposed changes that would require termination of payment of benefits beyond thirteen weeks in the case of claimant refusal to accept a reasonable job offer. Also under current and future Commission consideration are the questions of seasonal employment, the waiting week, and improved administrative procedures to monitor and prevent fraud and abuse with the unemployment compensation program. H.R. 3920 would provide the necessary time to allow the Commission to complete its study of these and other important areas within the unemployment compensation program.

Other issues which deserve close Commission consideration are the proposed changes in the national trigger for the extended benefits program. We have heard much valuable testimony on ways in which the States might cope more adequately with the cost of extended benefits, expecially in terms of changing the uniform application of the national trigger when the national insured unemployment rate reaches a certain level. Also on the Commission's agenda are the problems involved with State borrowing and repayment of loans to the Federal Government, as well as discussion of the proposed change in the law to reduce unemployment benefits by the amount of retirement income or pensions.

I would like to note, Mr. Chairman, that your suggestions for strengthening the unemployment compensation program reflect many of the Commission's concerns. H.R. 3920 would provide the extension of time needed to address your concerns in a conscientious and complete manner. H.R. 3920 would permit this Commission to finish its work responsibly, with testimony heard from as broad a spectrum of viewpoint as possible. Mr. Chairman, we urge your Committee's favorable consideration of H.R. 3920.

Thank you again, Mr. Chairman, for the opportunity to make this statement in behalf of H.R. 3920.

## STATEMENT OF WILBUR COHEN—Resumed

Mr. COHEN. Mr. Chairman, I appreciate the opportunity to appear before this distinguished subcommittee to request your support for continuation and completion of the work of the National Commission on Unemployment Compensation embodied in H.R. 3920 as passed by the House of Representatives on July 25.

The complete justification for continuation of the Commission is set out in the report of the House Committee on Ways and Means and in the statement by Representative Corman in the discussion in the House of Representatives on July 25.

I would like to bring to your attention the Finance Committee Report of the Senate when it acted on this same matter last year and adopted the continuation legislation. I should like to point out that both the House and the Senate voted in favor of continuation of the Commission in 1978 but the bill failed to be adopted solely

because of the jamup of bills in the closing hours of Congress in 1978.

During the past 45 years there has been only one major reexamination of the system authorized by the Congress, which took place in 1948.

When that report came out, the Senate Finance Committee adopted substantially all of the recommendations of Social Security, but never did get around to the Unemployment Insurance and the Public Welfare recommendations embodied in that report, I have included their recommendations on unemployment insurance in this testimony from page 26 of exhibit 13 of our second report. That advisory council was headed by Mr. Stettinius at that time who most recently had been Secretary of State. It was a most distinguished committee, but the recommendations on unemployment insurance at that time, did not seem to be that urgent in the light of post-war unemployment, and so on, and nothing was done on their unemployment insurance recommendations.

Since that time, there have been a number—in fact, a large number—of ad hoc changes in the financing, benefits, and other provisions in both the Federal law and the State laws. Several Presidents had made recommendations unsuccessfully for changes and the Senate had adopted some changes in 1966 which were rejected in Conference. These changes will be found on page 27 of our second report.[1]

I might add that you have available copies of our two interim reports to date, and they contain a substantial amount of information, plus our recommendations in our first interim report.[1]

Congress and the administration believed in 1976 that the time had come for a comprehensive review to help the Congress and the President improve the program.

The recent financial difficulties of a number of State unemployment compensation programs during the 1974-76 recession only heightened the need for this review.

I might add the potentialities for increased benefit disbursements which I will subsequently develop in the charts would indicate that, as a result of the recession, there is even a greater, heightened need for reexamining how the States and the Federal Government are going to fare in this connection.

Despite the fact that these are considered State unemployment insurance receipts, they all form a part of the unified budget so that every increase and every decrease in the tax and the benefits finds its way into the policy decisions with regard to the Senate budget resolutions.

I think very few people are aware of the fact that, although this is a State unemployment insurance system, that as a result of the Federal law, all of this money comes into the unified budget. Any increase or any decrease in Louisiana or Oklahoma has an effect on the unified budget.

I find very few people who understand that. I will comment on that so that when we talk about the recession later and the increase in expenditures or decrease in expenditures, that finds a way into the income security functions that this committee has responsibility for in connection with the Senate budget resolution.

[1] The reports were made a part of the committee file

Senator LONG. Are you saying that the entire increase or the entire decrease of expenditures goes into the Federal budget, or only a percentage of that increase?

Mr. COHEN. No, sir.

The Federal unemployment tax of, normally, 3.4 percent, is then offset or reduced when the State has an experience rating. That unemployment Federal money, the income and outgo on the trust fund finds its way into the unified budget.

I would have to look up the exact figure. Let us assume—and I think that for the following year that there is a $2 billion surplus in the unemployment insurance income-outgo. That $2 billion surplus in the unemployment insurance fund is deducted from the unified budget deficit.

So let me put it this way. The bigger the surplus in the unemployment insurance system the smaller the unified budget deficit, and very few people realize that.

So it is very important—I am sure it is very important to you as to how this income-outgo in the future will affect your recommendations with the unified budget when you have to consider cutting $300 million out of the unified budget, you have to, by virtue of the present situation, consider the entire unemployment insurance situation.

Let me make another point, since I have said this. I find that very few people understand it.

When you take all of the trust funds—many of which are under the jurisdiction of your committee, Senator Long—the deficit before you apply the trust funds is $49 billion, not $29 billion. You deduct the $20 billion excess income to all of the trust funds by that: social security, unemployment insurance, the highway trust fund, Civil Service, and so forth. And the actual general fund deficit that the President sent up to Congress was $49 billion, not $29 billion, because you only get the $29 billion after you deduct the surplus from the trust funds.

It is not in my province now to suggest it, but I think this is very undesirable. I urge a reconsideration of that policy because I think very few people understand that the impact on the highway trust fund, let us say, affects what the President calls the budget deficit.

But in the case that we are talking about now, yes, sir. The answer is income and outgo of the unemployment insurance fund affects the budget surplus or deficit in a particular year so that when we are talking about the future recession and its implication, it has that impact on your other problem in your recommendations to the Senate Budget Committee.

Now, this Commission was created by the 1976 unemployment compensation amendments, approved by President Ford on October 20, 1976. President Ford appointed seven members of the Commission on January 19, 1977, but did not appoint the Chairman. President Carter made four changes in the initial appointments of President Ford. The full membership of the Commission was not completed until I was appointed Chairman by President Carter and took office in February 1978. The first meeting of the Commission, therefore, was held on March 9-11, 1978.

The Commission was initially requested by the Subcommittee on Unemployment Compensation of the House Committee on Ways and Means to give priority to:

One, H.R. 8291, Mr. Brodhead, and other "cost equalization" or reinsurance legislative proposals including S. 825 introduced by Senators Javits, Williams, Riegle, Ribicoff, Levin, and Bradley. See exhibit 5 of our second report.

Two, the treatment of substitute teachers under the Federal unemployment compensation statutes and proposals that would provide special treatment of such employment.

Three, any recommendations of or proposals under consideration by the National Commission on Unemployment Compensation or the National Commission on Employment and Unemployment Statistics that would change the method of measuring unemployment.

Four, current provisions of Federal law which, upon implementation, would require that States—after March 31, 1980—reduce unemployment compensation payable to an individual by the amount of any governmental or other retirement pay received by the individual.

Five, temporary provisions of Federal law—which expire December 31, 1979—that exclude from the Federal unemployment tax agricultural services performed by aliens who are admitted to the United States pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act; and

Six, proposals to exempt from FUTA coverage certain student farmworkers engaged in hand harvesting of crops.

What I did, as Chairman, of course, was to reverse the program plan which we intended, in order to accommodate the recommendations of the House Committee on Ways and Means and, therefore, in our first interim report made about 7 months later, we made several recommendations. These were recommendations on financing which were directed toward easing the burdens of these States which had very heavy costs during the recession. I have listed those on pages 2 and 3 of our first report.

Fifty responses have been received from our Federal Register request for comments on reinsurance and we are currently continuing our studies. You will hear more about this from States and others about how to deal with the problem of very high costs in about a third of these States.

We have recommended against a blanket exclusion of student farmworkers from coverage and recommended against special action directed exclusively at substitute teachers. We have recommended that the provision on pensions be repealed or postponed and recommended against the taxation of unemployment compensation benefits. We are studying the report of the National Commission on Employment and Unemployment Statistics. We have held a series of hearings on alien farmworkers and intend to make recommendations on that later.

We have made several other recommendations and comments on State solvency and benefit provisions.

Mr. Chairman, I do not know, at this time, what further recommendations our Commission will make. I do not know what the final views of any member of the Commission will be. I do not even know what my own conclusions will be. We have held extensive

hearings, and we are trying to find some way that we can recommend something constructive and legislatively feasible.

As Chairman, I have promised the members of the Commission and the Congress that every member of the Commission would have full opportunity to place before the Commission any proposals for consideration by the Commission.

We have held 16 public Commission meetings and have held public hearings, as required by the law, in 14 cities. In all, 217 witnesses have appeared before the Commission.

We have just completed a 2½-day meeting in New York where we heard testimony from employers and employees. Our next meeting is scheduled in New Orleans where we will meet with all State employment security administrators.

We have made two interim reports to the Congress and the President both of which have been unanimous. The Chairman has made every effort to try to find a consensus on the major issues which face the Commission. We have worked diligently with the State administrators of the program who have widely different recommendations.

I have attended two meetings of the National Governors' Association to consult with the Governors' Committee on Human Resources concerning our work; and we have made arrangements for continued work with the staff of the Governors' Association. I have plans to meet with several Governors separately in the near future.

We are currently at approximately the halfway mark in our work and in my opinion the investment in time and energy which the Commissioners and staff have made could be lost to the Congress if the work of the Commisson is not continued and completed.

The problems and issues involved in unemployment compensation are controversial. They have been controversial ever since the program began in 1932. They will continue to be controversial. That is one of the reasons why I think the Commission was established, namely, to identify the differences, to see what area of agreement could be reached, and to present to the Congress and the President some options, in order that the system might be improved, reformed, changed, or stabilized in the light of the changing economic, social, demographic, and financial conditions.

Employers and unions and States have strong differences of opinion about benefits, disqualifications, experience rating, and the Federal and State roles in the system.

I do not know how we will come out on these and other issues.

I have made every effort to provide the union, employer, and public members on the Commission full latitude to express themselves, to question witnesses, and to request information. But we have not yet voted on key controversial issues. If anyone has determined how the Commission will vote on each of these issues, I believe they have made a determination in advance of all of the evidence. On the other hand, I do not think all our conclusions or recommendations are likely to be enthusiastically received by all parties. But I hope our report will contain information needed by Congress to make its own independent judgments and decisions on these controversial issues and options.

I need not point out to the members of this subcommittee that the Rhode Island unemployment compensation program has the

second highest deficit in term of percentage of total annual payroll, 3.6 percent, and New Jersey has the third highest deficit in dollars, $695. Our Commission has been grappling for many months on whether there should be any Federal reinsurance plan or revised State solvency arrangements to protect the State-by-State system. We have not come to any conclusion on these issues. But it is my hope as Chairman to produce a report which will present information and advice to the Congress and the President so that they can take action, or no action, on these matters with full knowledge of the implications and options.

Senator BOREN. What are the total deficits in the system nationwide if you total together those States that have a deficit? I realize we are in surplus nationally. I am talking about total deficits of those having a deficit?

Mr. COHEN. About $5.1 billion and I have a chart here. I guess I thought you would ask, and we have a small chart, so it can be put into the record. This is a chart of the State loan balances, in a sense how much every State has borrowed in order to maintain their solvency.

On this side of the chart, you have the money and on this you have the percentage of the employer's total annual payroll. So that Pennsylvania has the highest loan balance in dollars. It owes the Federal Government $1.2 billion. That is roughly equivalent of 3 percent of payroll.

Whereas, Rhode Island, as I pointed out, naturally being a smaller State, the dollars are less, $102 million, but it represents 3.6 percent of total taxable payrolls, while Vermont, again a small State in terms of dollars owed, has the highest relative deficit. Altogether for all States this comes to approximately $5 billion. Much of this is money that is owed by the States for the Federal extended benefit program. We also made a recommendation that that be borne by the Federal Government in view of the national pattern at the time.

That gives you the picture of the State-by-State situation and, on any chart that we produce, we will submit the appropriate charts for the record.

Senator BOREN. Are these deficits being reduced? Are some of the States able to make current payments to reduce their deficits?

Mr. COHEN. Yes. I would say probably if there were no serious recession, probably in the next 5 or 7 or 10 years, that might all be taken care of, that is by increased employer contributions under the State systems, which would then repay the indebtedness to the Federal Government. But I think you will hear later from the States about the difficulties in doing that and the impact of those increased costs on employer costs in an inflationary period and also about what might happen if there is a further recession.

But if everything were going really wonderful, yes. I presume, in 7 or 8 years, they could pay it back. I am doubtful myself that that would be feasible in a practical sense.

Senator BOREN. Some States are making payments in this fiscal year?

Mr. COHEN. Yes, sir; however, the loan balance of $5 billion has remained approximately the same during the last year. Oregon and Washington among others have made repayments.

The other interesting fact is that of the $5 billion, four States owe two-thirds of the total. You can see as you look up there at the top of the chart, there, you can see that Pennsylvania, Illinois, New Jersey, and Michigan. Those States and their eight Senators are concerned about their financial problems in the future and the competitive situation that their employers face in refinancing them.

The Commission intends next to study the entire question of the present extended benefits and present alternatives to the triggers in the law, because we are concerned as to what might happen if there is a more serious recession and increase in unemployment than might otherwise be the case, and we feel it is important during the next year to do that.

As I pointed out, our Commission has acted unanimously on all recommendations we have made to date. We have deferred action on controversial issues so that we can obtain the reaction of employers, Governors, Federal and State administrators and employees to these proposals before we take any further action.

We have held hearings on the subject of the existing Federal taxable wage base—$6,000 a year—and five options. We have received nearly 50 comments on this issue.

One other document which I personally prepared for discussion and published by the Commission in the Federal Register—see exhibit 1 in our second report—has been interpreted unfortunately by some employer groups as the outline of the report of the Commission or an indication of the Chairman's conclusions. That was not its intention or purpose.

It was the Chairman's view that a provocative issues paper was needed to focus on some of the key controversial issues affecting both the existing State and Federal legislation which face the Commission so they could be frankly and openly discussed and voted on up or down or modified. I believe that Congress will want to know what proposals we rejected and why, in addition to those we recommend.

Therefore, I included controversial issues which, in my opinion, I did not expect necessarily to support, or any other members to support, but which we felt we must supply the Congress with information about such views.

The Commission has not voted on any of the issues in this or any other paper now pending before the Commission. Nor is our intention to limit our consideration to these 24 issues. We will, if we are continued, consider the various proposals listed in your subcommittee press release of August 6, 1979, along with any other proposals which any Commissioner or interested party may present to the Commission.

Our Commission, at its last meeting, unanimously adopted the position that we would explore those that you have listed, as well as others.

Mr. Chairman, we request your early approval of H.R. 3920 so that the Commission can conclude its work.

I have prepared a series of charts on various items. If you have a question, I would then use an appropriate chart to identify the problem.

Senator BOREN. I would be interested in having you pursue the presentation with the charts, but before we get into that, let me say that Senator Dole has joined us, and I am very glad to have him. I would like to defer to him at this time for any questions or comments he might have before we go on with the chart presentation.

Senator DOLE. I have no specific comments. I do have a statement I would like to have made a part of the record. I am not certain whether I would object to the extension of the Commission or not. I am not sure which way you are headed.

It may be that the Commission itself is dominated by the views of the Chairman, and if the Chairman is headed for a federalized unemployment compensation system, then I don't know why we would want to extend the Commission.

What is your view, as far as the Commission is concerned?

Mr. COHEN. I am not in favor of federalization of the operation of the State unemployment compensation system and I do not know where you got that idea from.

I think people misinterpreted the paper that I presented to the Commission as indicating that that was all to be done by Federal requirements. Quite to the contrary, it was predicated on what should be done by the States, so I believe there was a misunderstanding, Senator.

Senator DOLE. Is there any effort being made by the Commission to look at ways that we can save money in this program?

Mr. COHEN. Yes, sir.

Before you came in, we indicated——

Senator DOLE. Did you look at the specifics, those that are under study by the Commission?

Mr. COHEN. The Commission, at the New York meeting, unanimously—labor, employers, public members, unanimously agreed to explore those and any other issues to save money or to improve the program, yes, sir.

We will do so.

Senator DOLE. You will do so. You have not made any judgments on any of the specifics?

Mr. COHEN. No, sir. That only came up at our last meeting. We have not had a meeting since.

Senator DOLE. How many meetings did you have?

Mr. COHEN. I think we have had 16 meetings so far, sir.

Under the law——

Senator DOLE. How many members are there on the Commission?

Mr. COHEN. Twelve members, plus the Chairman, sir.

Senator DOLE. What has been your average attendance?

Mr. COHEN. Average attendance at the Commission meetings is about 11 or 12. We have had one member who was sick and we have had one member of a State legislature who finds it difficult to attend every meeting. But I will say this. I do not know their views, but all of the members of this Commission, including those appointed by the Speaker of the House, and those appointed by the President pro tempore of the Senate have been very conscientious about attending. They have complete freedom to ask any questions

and to present any recommendations and I have no way of knowing, sir, what their view is on these matters.

I have not asked them. I have not tried to prejudice them. I have not tried to solicit them.

They are all adults who can, at the proper time——

Senator DOLE. I think it is fair to say that you have a lot of expertise and a great deal of influence. I am not suggesting this has happened. I know how many commissions work.

The Chairman hires a staff and he sets the agenda. He decides what the subject matter is going to be, and it is pretty easy to tell what the result is going to be. You don't have to have 3 or 4 years of public hearings if we know in advance that the Chairman of the Commission has one course that he would like to pursue and a judgment that he hopes to make. The rest is eyewash and it costs a lot of money for eyewash in this city.

Mr. COHEN. Well, sir, if you knew my record during the last 40 years, it does not correspond with my record. I have probably testified before this committee, the Senate Finance Committee, for over 40 years. You can ask any chairman of this committee about my fairness and my ability to try to bring people together to solve problems.

I think that interpretation is not borne out by the evidence of my past record.

Senator DOLE. I said it happens on some commissions. I do not know who sets the agenda or who hires the staff or who determines what the subject matter will be to be discussed. I assume the Chairman has some influence. I have not reviewed all of the hearings. I have not reviewed the views of staff members or others on the Commission, but I have been around here long enough to know how some findings are made by commissions, and I think I have a little experience, too.

Mr. COHEN. Sir, rather than making a self-serving declaration, about eight members of the Commission are here. I would prefer you to inquire of them of their views. There are employer members and labor members and public members here. I would rather not state my own view about these things. I have tried to be as fair as I can be in eliciting information.

But I also appreciate, as I said in my statement, that this is a very controversial issue, Senator.

Senator DOLE. Right.

Mr. COHEN. There is a lot of heat in this.

Senator DOLE. There is a lot of heat, but a lot of waste and a lot of cost. When you see people vacationing in Florida in the wintertime on their unemployment compensation benefits, it is pretty hard for us to understand the program.

Maybe you are going to take care of all of that.

Mr. COHEN. I do not know if I can take care of it, but I am going to provide a report that will explain how the system works and the pros and cons and the options for Congress to take.

I do not intend, so far as I am able, to only give you our recommendations, but to give you other options that you may then, and your staff, explore because I believe that is your right.

I believe over the years I have worked cooperatively with the Senate Finance Committee when I was Secretary and when I was

in other positions before this. There are many options. I shall try my best, sir, to give you those options and you can make your own choice.

Senator DOLE. It may already have been asked. I assume you feel you can complete this study by July 1, 1980?

Mr. COHEN. That is my expectation in the light of this situation. However, I do not want to make any amendment to that, but in the light of our having taken this resolution to explore all of these other options, we will have to run twice as fast to complete the work that we had in mind, and I intend to do so.

In that sense, I will say the Chairman will be a slave driver, yes, sir.

Senator DOLE. How much money have you spent already and how much more are you going to need?

Mr. COHEN. We do not need any more money than what we have. The amount of money is listed on page 22 of your blue report here. I will read what it says in there.

The Commission's available budget totals $8.4 million. Of this total, it expects to have spent, or obligated, about $3.8 million by September 30, 1979. Much of this represents contracts for a variety of research projects.

The Commission has a full-time staff of 11 persons and employs a number of other individuals on a consultant basis. We are not asking, in this resolution, for any more money.

Senator DOLE. Mr. Chairman, I just ask that my statement be made a part of the record. I certainly have no quarrel with Mr. Cohen. I do have a quarrel with federalizing the unemployment compensation system. If that is the direction that we are going, then I think we ought to make that judgment in the Congress, not by some commission and have it announced next July that this is the way to go and this is what the commission believes should be done after several years of study.

That puts the Congress on the defensive, and we have to indicate if we disagree, that that is not the way to go.

That is the only point I wish to make.

Mr. COHEN. I think that we have a difference of opinion, Senator. The law states that we are to make recommendations. I cannot tell you now what the 12 other people and myself are going to recommend. There may well be someone on the Commission who is going to recommend some federalization.

I am not aware of it, but it is entirely possible.

I do not think that I can honestly stand before you today and say that I will not allow any member of the Commission to express his view on unemployment insurance.

Senator DOLE. I do not quarrel with that. I do not think we are reluctant to express our point of view on this side; you should not be on that side.

I am on a couple of commissions myself where I have expressed my point of view, but I just wanted to make certain—I know there are going to be some objections raised to the extension of the Commission. There may be some objections on extending the Commission.

Mr. COHEN. I understand.

Senator DOLE. They may be based on the very questions I am trying to get in the record today. I hope you understand, we are trying to make the record so if somebody has the same reservations

that the Senator from Kansas has, that they will have been answered, fully and in the record.

For those Senators who want that knowledge, it is available to them.

Senator BOREN. Thank you, Senator Dole. Your full statement will be placed in the record.

[The statement of Senator Bob Dole follows:]

OPENING STATEMENT OF SENATOR DOLE

Mr. Chairman, I appreciate the opportunity to be with you this morning as you consider H.R. 3920, a bill to extend the reporting dates for the National Commission on Unemployment Compensation and to make other changes in current law. I commend the chairman for scheduling this hearing.

Also, Mr. Chairman, I am pleased that you have announced your intention to hold future hearings to examine other issues related to unemployment compensation, such as the waiting week, disqualifications, control of fraud and error, and elimination of dual benefits. I support your efforts to develop legislation which will improve the effectiveness of the program while reducing its costs.

The review of the unemployment compensation program is an extremely important task, particularly in light of recent financing problems brought on by the 1973-74 economic recession and the prospect of another serious recession this year. Despite past problems, the unemployment compensation system continues to alleviate the financial hardships of many thousands of individuals and families who lose their source of earned income. It is our responsibility to see that the program goes on fulfilling its objective of meeting the nondeferrable expenses of temporarily jobless workers whose unemployment is not of their own making until a new job can be found.

I would hope that the National Commission on Unemployment Compensation would look more carefully at ways to tighten up the unemployment compensation program, including those which this subcommittee plans to review in the future. We must finds ways to balance the program so that it will provide adequate benefits without creating economic disincentives which discourage the jobless from seeking or accepting work. To the extent that we can do that, the more likely we are to be able to provide real help to individuals and families and to meet the needs of society as well.

On the other hand, we must maintain the State flexibility which has always been so important to the success of the unemployment compensation system. As the original planners declared when designing the Federal-State partnership of the program, "All matters in which uniformity is not absolutely essential should be left to the States."

A very delicate balancing act will be required to keep all the competing aspects of the unemployment compensation system going in tandem. However, with 45 years of experience behind us, and a good deal of hard work and determination, we should be able to manage the task. Again, I thank the chairman for initiating this inquiry and planning future hearings on unemployment compensation issues.

Senator BOREN. The Chair would state that I share your view that we should not be moving toward federalizing the system. It is my hope that the Commission can primarily focus on ways in which we can save money in the present system. That is my view of a reform, that is, ways in which we can save money, not spend more.

I hope we can focus on those.

Your comments earlier about the fact that savings in the system do reflect themselves as a part of the unified budget. That was said, Senator Dole, before you came in.

In other words, anyplace that we can save money in this fund. We are talking about the short-range situation. It does reflect itself in reducing the total budgetary deficit that is now figured under current methodology and I would suspect that that may bring about some very short term interest in some of these proposals.

Mr. COHEN. I would like to say this, Senator. I want to be absolutely honest with Senator Dole, because he has raised a very important point.

The existing law says that this Commission, for instance shall study the question of Federal minimum benefits standards for a State system. Some people consider that federalization. If you consider that federalization and some members of our Commission vote for that, obviously you may be displeased. But according to the law that Congress passed, as Chairman, I am required—as I interpret it, anyway—to allow the Commission to explore and vote on that question.

Senator BOREN. On the question of minimum federally mandated benefits?

Mr. COHEN. Yes, sir. That happens to be one of them.

Also, where a lot of misunderstanding came about in connection with our previous statement, it asked us to look at alternatives in financing. Alternatives in financing may involve additional types of Federal taxation. Some people would consider that as a further intrusion of Federal power, I believe.

Senator BOREN. Where are you reading from?

Mr. COHEN. I am reading from the blue pamphlet on page 21. If you would look here, it summarizes the legal language in the statute. Let us go down the list, because I certainly would not want to ask for a continuation on a misunderstanding of what the Commission will be doing.

The first one, examination of the adequacy, economic, and administrative impacts, of the changes already made in coverage benefit provisions and financing. Every one of those questions involves the question of the respective roles of the Federal and State governments.

Two, identification of the appropriate purposes, objectives, and future directions for unemployment insurance. That is where our statement got in trouble.

I had originally written the statement to indicate what I thought the future role of State programs would be. Many employer groups interpreted that to mean Federal requirements. I did not write it that way, but I would recognize that that was a valid, I would say, misinterpretation.

But in answer to Senator Dole, this is a Federal-State system. The Federal Government taxes all of these employers. It sets all these standards. There are now something like 15 to 20 Federal standards. Is the system already federalized?

You can say some people believe that. Some people do believe that.

The Senate Finance Committee last year federalized the provisions on pensions when it set a Federal standard as to how the States of Kansas and Oklahoma are to deal with pensions and unemployment insurance. I would have to say, too, Senator Dole, yes, there is already some federalization in it. There are questions whether there should be more or less. I want to say to him, I do not see how, in carrying out my functions, I can evade this question. It is at the heart of the controversy. I do not imply how we will answer it.

But I would have to say it is on the agenda, sir, and I did not put it on the agenda.

Senator DOLE. I do not quarrel with that. I think the law is specific and requires a study of those matters.

I am just suggesting that, in some cases where someone is predisposed to reach a certain conclusion I do not care what you have in the law, you can reach that conclusion. I am suggesting that there are some who have different views and apparently you do not have any strong views.

There are some who have very strong views in this Congress, in the Senate, on this committee, about further federalization. That does not mean that we can dictate what the Commission should report.

My only suggestion was that there should not be any predisposition to reach some conclusion a year later. If that conclusion is reached and based on full discussion, public hearing, participation by all the Commission members, then that will be the recommendation made.

Mr. COHEN. I want to assure you, Senator—and I have told this to the Commission—while I have spent over 45 years working in the system and obviously I have some views and maybe biases, prejudices—all of us have—I consider my role as Chairman to be distinctive from my role as a member of the Commission, and I have said to the Commission members, I will not try, in any way, to prejudice the views of the Commission regarding my views, but rather to try to find some way that there can be a constructive resolution of some of these issues.

And I sincerely believe that I have tried to do that. If I have not, I will assure you that I will make an extra effort in the next 12 months to do so.

Senator DOLE. I am not suggesting you have not. I am just suggesting that there is going to be some controversy around here, maybe over this, maybe not.

Mr. COHEN. Yes, sir.

Senator DOLE. Let's get it all out on the record. It is not an effort to discredit the Commission, or the Chairman. It is an effort to put something in the record that some of my colleagues who have similar views can read. They could not all come this morning.

Mr. COHEN. Yes, sir. I appreciate that. I respect your point of view, and the point of view of others. I assure you that, insofar as it is humanly possible, there will be a full opportunity for employers and unions and public people and the States to express their point of view. Insofar as is feasible, all of that will be presented to you to make your own independent judgment.

Senator BOREN. Mr. Cohen, let me ask you, would it be proper in interpreting the resolution already passed by the Commission in citing that they would place on their agenda these cost-saving proposals that have been made by the Finance Committee staff, that this could be expedited if the situation called for it? That the Commission staff would stand ready to assist and the Commission might call itself into session on a near-term basis to consider any of those that could be of assistance to members of this committee, that we might expedite consideration of some of those matters?

Mr. COHEN. Yes, sir.

I pointed out our next meeting was in New Orleans to meet with all 50 State administrators. They are here. They will say what they have to say. It was my intention to present to them, not only the ones that we are working on, but these matters that you have stated and try to first get their views.

The reason I do that, and I want to make this clear, having been an administrator myself at the Federal level, I am very conscious and doubly conscious of administrative implications of any item.

I would not want to make a recommendation to the President or the Congress without fully exploring it with the State administrators and the Government. As I said to Senator Dole, I have met with the Governors. I have asked them for their recommendations.

I will be meeting with others, and I intend to meet with the State administrators, until I can find out what their views are on these matters.

Therefore, that has already been set in motion. If you feel that you have to have expedited hearings, if you would get in touch with me I will do my best to expedite the consideration of anything you believe is important, Senator Boren.

Senator BOREN. I appreciate that.

As you probably know, the full committee has given the subcommittee a mandate of finding areas in which savings can be achieved.

Mr. COHEN. Yes, sir.

Senator BOREN. A mandate I very much welcome, given the changes we made in the Oklahoma system when I was Governor there. I think you can see their reflection of my basic philosophy. I do not know if they will be found in terms of the majority of the Commission's recommendations or not, but it is a mandate which I certainly welcome and one that we hope we can have the full support of the Commission on.

Mr. COHEN. As I told you, Senator, we are holding another meeting in Oklahoma City. We will go over all of those changes made when you were Governor. We will evaluate them so when we come back to you, we know exactly what we can tell you about State experience.

I am doing that in a number of other States. That will be useful information for the Senate Finance Committee to have, that kind of evaluation.

Senator BOREN. Senator Long and I were talking and we both commend you on the selection of Oklahoma and Louisiana as two excellent places to commence this study.

Mr. COHEN. We did consider Kansas, though we did not quite get the reception there at the time, so we will reconsider.

Senator BOREN. That might be in order.

Mr. Cohen, would you like to proceed ahead? We should go through this as rapidly as we can.

Mr. COHEN. I am at your disposal. I brought the charts only to answer any specific questions. Some are contained in this blue report.

Senator BOREN. Why do you not briefly go into the highlights now? I do not think you need to go totally into the background of the current law.

Mr. COHEN. All right. Let me take this one first. I will not go through it, but if you look at these two small charts in the book, they present at least in simple form, the complex Federal-State unemployment insurance system.

Let me say this. There is no other structural, institutional system in the United States that is comparable to what Congress created in the Federal-State unemployment system. It is a marriage of the State and Federal Governments in the most unique way that has ever been established in the United States.

I might say that it was partially, largely, created in the Senate Finance Committee in 1935 when Senator LaFollette, from my home State, was a member of this committee.

When I say a unique Federal-State system, outside of the old inheritance law of 1926, there is no other taxation system like the unemployment insurance system, which is called a Federal credit-offset system.

There is a Federal tax. Against the Federal tax may be credited the State tax, and thus you have an intermarriage and a very close interrelationship between Federal and State taxation.

In that sense, in answering Senator Dole, there is already a modicum, a very substantial modicum of federalization, because every employer who was covered has to accommodate himself realistically to the Federal tax amount, the Federal tax standard, the wage base. He has to comply with the State and Federal law and thus, all of these requirements in here virtually dictate the nature of the Federal-State system.

Let me give you one illustration.

The most controversial issue outside of minimum Federal benefits standards is the so-called experience rating. Experience rating, as you know, is the system of varying the employer's contribution rate, in comparison with his compensation rate, compared to the State, subject to the approval of the Federal Government.

That is a provision in the law placed by the Senate Finance Committee in 1935. It was not in the House bill. It was put in because my State of Wisconsin, which was the first State to have a law, had experience ratings. Senator LaFollette had introduced that. It was included in the final bill.

It provides that all experience rating in the United States must be solely related to unemployment or something reasonably related to unemployment so you have a Federal standard in the law which dictates the parameters of experience rating.

That is why my answer to Senator Dole was within that confine there is a very substantial degree of federalization.

The Federal Government has determined the parameters with which States and employers may have experience rating, and if it is not that kind of experience rating, the employer cannot get the credit, the State then would be out of conformity and all of the employers would have to pay 3.4 percent of their payroll up to $6,000 directly to the Federal Government.

So that we have in these two charts, which you will see, the fact that the Federal Unemployment Tax Act was enacted, Wisconsin enacted the first State law in 1932, before the Federal Government came into the system. It is a unique tax offset device.

Its constitutionality was determined in May 1937, although the Supreme Court never did say explicitly whether experience rating was constitutional or not. It was rather silent on it and has been a part of the system ever since.

All States began to comply with the law by June 1937. The first State, Wisconsin, paid benefits in August 1936; the last State came in, Illinois, in June 1939.

Since 1939, we, in effect, have had a complete Federal-State system. Originally, the tax was 3 percent of the total payroll of under $3,000, and if you took your 90-percent offset, that meant you paid 2.7 percent or less into the State, and 0.3 of 1 percent to the Federal Government.

By 1961, it was made 0.4; in 1970, 0.5; in 1977, it became 0.7.

So with the 2.7 in the State, you go to 3.4 percent. In effect, the Federal tax is 3.4 percent with 0.7 offset coming to the Federal Government and the State being able to go from zero to its own maximum, depending on its experience rating, for a credit of 2.7 percent.

The original tax, in 1935 to 1939 was on all wages and then in 1939 it was made $3,000 because in 1939, 95 percent of all wages were below $3,000. Congress thought that it was simplifying the law.

But, over the course of the years, because of inflation and changes in wages, it was increased to $4,200 and then $6,000. Now for the United States $6,000 represents something less than 50 percent of total payroll and that is one of the most controversial issues on which we have held hearings—should the amount be raised? To what? What would the effect be?

Should it be the same as social security? Should it be half of social security? Should it remain at $6,000?

We have held extensive public hearings and received a lot of information on it, and there is a wide difference of opinion on that issue.

Experience rating, which is the essence of the employer contribution structure, is in existence in 1979 in all States, except Puerto Rico, the Virgin Islands and the State of Washington. Washington has had to suspend experience rating temporarily because of the financial difficulties.

When we say that the employer rate is 2.7 percent of taxable payroll up to $6,000, we must recognize that each individual employer pays a different rate. At the present time, an employer in the United States can pay anywhere from zero to—I know it is going to be 9 percent in my State next year. I think it is something like 8 percent now.

The range on the employer is from zero to 9 percent of taxable payroll. That represents one of the key issues, because you have a lot of competition between employers and States, and the zero to 9 percent rate, particularly on an employer who is in foreign trade, let's say, may make quite a difference between the contract he gets or if he is competing with an employer at 7 and 8 percent or competing with an employer in another State at 1 or 2 percent.

You have a very competitive problem.

If you asked me today how I am going to solve that, I could not tell you, but I know that it is a key problem. Then we have another

unique feature of this very unusual Federal-State cooperation. The entire cost of a State administration of unemployment insurance is paid out of the Federal tax. There is no other substantial program that funds State operations in this manner. There are some that go to 90, some 100 percent grants, but of much narrower scope.

Here you have a program involving 40,000 or 50,000 employees and with the Employment Service, maybe 75,000 employees. You know, as Governor, all of that money, except a little for CETA and other things, comes from the Federal grant.

To that extent, Senator Dole, if you ask many States and employers, they will tell you—and I think they are right on this—that because of the Labor Department requirements for the money, there is a large share of Federal dictation because the Federal Government pays 100 percent of the cost, because it is already there.

I am looking into that, because the States ought to have more flexibility in how to handle their administrative problems in the State than a single fiat by the Federal Government on how Kansas and Oklahoma ought to run its system.

I will give you one indication. They do not provide enough money for the computerization of this program, which needs to be computerized, to get people jobs promptly and efficiently. That is due to the fact that the Federal Government, except for a small part in the Employment Service, pays 100 percent of the cost.

Should we consider all alternatives: 50-50, 75-25? Should we delegate to the States the collection of the money? Should they be left to spend it any way they want?

There are all those options and alternatives on which I hope our Commission may be able to render some advice to the Congress. I will not go through all these others except to point out, in one of your points, on special trade adjustment, that there is a big problem here because Congress has passed legislation on special trade adjustment provisions and other displacement programs which supplement unemployment insurance.

Senator BOREN. The recipients there get funds over and above what they draw from unemployment?

Mr. COHEN. Yes.

Senator BOREN. What is the justification for that? I thought unemployment was because of economic dislocation, closing of a plant or a cutback through no fault of their own. They are to be compensated.

If it is due to international trade, or something else, why is that person more or less superior than one who works for another company that has to cut back or lay off for other reasons, say domestic or economic reasons?

Mr. COHEN. I want to be careful because I find it difficult, when you ask me that question, to find out what was in the mind of Congress when it passed all these laws.

I would say this. The original idea of the Trade Adjustment Act, which is before this committee, was originally designed in 1970 on the grounds that individuals become unemployed because of certain import considerations that were related to international factors and therefore, those workers who became unemployed because of national policy ought to, in some way, not be disadvantaged

when they are unemployed for a long period of time, such as a person 62 years of age who lost his job and lived in Vermont, or New Hampshire, or New England, and was not going to move. The idea was let's pay him a reasonable period of adjustment beyond the limited unemployment insurance law.

So, by now, not only in Congress are we paying out $208 million—that was the fiscal 1980 estimate—under the special trade adjustments, which has been modified, I do not know whether you have passed the bill recently—I think you did, did you not?—in effect, you continued that cost under the unified budget.

If I may say so—as a result of that, Congress subsequently—when there are other industries that have some kind of a problem and say gee, these workers are domestic workers. They are in as bad condition as these workers affected by import considerations.

So you have Amtrak legislation, ConRail, disaster assistance, airline deregulation, all providing special provisions.

Again, we have gone into this. I cannot tell you where we are going to come out, but I think it is a very serious problem which you have noted, and I think that you have a big problem of philosophy and politics involved in there as to whether our Nation is going to look at special kinds of arrangements for people who have special economic difficulties.

Of course, there is other legislation that bears on it—the CETA legislation. As you also know, there are supplemental unemployment benefits by collective bargaining, 235 different agreements in some 20 industries affecting 2 million workers that pay supplemental benefits in some cases as high—that is, a State plus a supplemental—in some cases as high as 90 percent, let us say, of take-home pay.

The question there is whether that is appropriate, but that has been done by collective bargaining, except I would point out the employer's contribution to that is a tax deductible item.

Senator BOREN. It does not affect the budget directly.

Mr. COHEN. Yes; in the sense that it is an item there.

We have a series of other things that impinge upon unemployment insurance, all of them which were approved by the Senate Finance Committee: The earned income credit, which gives people their earned income credit for working; the child allowance deductions for women who are working and drawing unemployment insurance or not; taxation of benefits enacted in 1978; and the targeted jobs and WIN credits in 1978, all of which affect the system.

On administration, at the Federal level the unemployment insurance law was originally placed in the Social Security Board in its initial enactment in 1935. It was there until 1948 when it was transferred to the Department of Labor in 1949, where it still is.

The Employment Service was in the Department of Labor from 1933 to 1938, then in the Social Security Board from 1939 to 1940, in preparation with the war effort. Then it was, in a sense, federalized during the war.

The U.S. Employment Service was federalized by common consent—I might say by the request of President Roosevelt—between 1941 and 1945 and came back to the Labor Department and then it

was with the Social Security Board for awhile and is now back in the Labor Department.

Then you have a summary of administrative patterns here. In the States, it is administered by an independent commission or a board in 9 States; in an independent department of State government in 14 States; in the State departments of labor or other agencies in 30 States.

I should, however, point out a very serious problem which we are exploring—that is, the relationship to the so-called Wagner-Peyser Act of 1933. Prior to the enactment of social security and the unemployment system, Congress passed a law, the Wagner-Peyser Act, which created a Federal-State system of employment security offices and there are now 2,796 of these combined unemployment insurance and ES offices in the United States.

Obviously, lots of money is involved in this program because in fiscal 1978, there was a little over $1 billion operating cost for the Employment Service; $669 million, which came from title III, of the unemployment insurance program; $420 million from other sources; a little over 6 million placements at a cost of $89 per placement.

The key issue here, which we are exploring, is how to get people jobs. We would prefer not to pay them unemployment insurance if jobs were available.

However, Congress has limited, at the recommendation of several administrations, the number of State jobs in the Employment Service to 30,000 despite the increase to population and the need to place people in jobs.

My own personal view, which I expressed—I think that has been a very unfortunate situation to limit the job placement function of the States and I hope when you come to consider any of these alternatives, if you are interested in placing more people in jobs, I think you have to look at the role of the Employment Service which is in a sister-brother relationship, or an ice-and-coal relationship, if you want to call it that way, of this system.

If a person can be found a job, the Employment Service should find him or her a job. If they cannot find them a job and he the individual is out of work and available for the work, then the claimant should get unemployment insurance.

So it is a dual system that has to work cooperatively together. It could be made to work a lot better, in my opinion. That is something we are looking into.

Is that sufficient to give you a broad view of the situation?

Senator BOREN. Thank you very much.

Mr. COHEN. There are at least 30 or 40 more charts, so we could go on indefinitely.

Senator BOREN. We appreciate the comments you have made. Are the charts included in the report?

Mr. COHEN. Included in our report here and any that you wish to include in your record, we would be pleased to do so.

[The material referred to follows:]

STATEMENT BY WILBUR J. COHEN, CHAIRMAN, NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

REEXAMING THE UNEMPLOYMENT COMPENSATION PROGRAM

I appreciate the opportunity to appear before this distinguished Subcommittee to request your support for continuation and completion of the work of the National Commission on Unemployment Compensation embodied in H.R. 3920 as passed by the House of Representatives on July 25.

The justification for continuation of the Commission is set out in the report of the House Committee on Ways and Means and in the statement by Representative Corman in the discussion in the House of Representatives on July 25.

I should like to point out that both the House and the Senate voted in favor of continuation of the Commission in 1978 but the bill failed to be adopted solely because of the jamup of bills in the closing hours of Congress in 1978.

During the past 45 years there has been only one major reexamination of the system authorized by the Congress, which took place in 1948. (These recommendations will be found on page 26 of Exhibit 13 of our second report.) Since that time there have been a number of ad hoc changes in the financing, benefits, and other provisions in both the Federal law and State laws. Several Presidents had made recommendations unsuccessfully for changes, and the Senate had adopted some changes in 1966 which were rejected in Conference. (These changes will be found on page 27 of our second report.)

Congress and the Administration believed in 1976 that the time had come for a comprehensive review to help the Congress and the President improve the program.

The recent financial difficulties of a number of State unemployment compensation programs during the 1974-76 recession only heightened the need for this review.

The Commission was created by the 1976 unemployment compensation amendments, approved by President Ford on October 20, 1976. President Ford appointed 7 members of the Commission on January 19, 1977, but did not appoint the Chairman. President Carter made four changes in the initial appointments of President Ford. The full membership of the Commission was not completed until I was appointed Chairman by President Carter and took office in February 1978. The first meeting of the Commission, therefore, was held on March 9-11, 1978.

The Commission was initially requested by the Subcommittee on Unemployment Compensation of the House Committee on Ways and Means to give priority to:

(1) H.R. 8291 (Mr. Brodhead) and other "cost equalization" or reinsurance legislative proposals including S. 825 introduced by Senators Javits, Williams, Riegle, Ribicoff, Levin and Bradley. (See exhibit 5 of our second report.);

(2) the treatment of substitute teachers under the Federal unemployment compensation statutes and proposals that would provide special treatment of such employment;

(3) any recommendations of or proposals under consideration by the National Commission on Unemployment Compensation or the National Commission on Employment and Unemployment Statistics that would change the method of measuring unemployment;

(4) current provisions of Federal law which, upon implementation, would require that States (after March 31, 1980) reduce unemployment compensation payable to an individual by the amount of any governmental or other retirement pay received by the individual;

(5) temporary provisions of Federal law (which expire December 31, 1979) that exclude from the Federal Unemployment Tax agricultural services performed by aliens who are admitted to the United States pursuant to Section 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act; and

(6) proposals to exempt from FUTA coverage certain student farm workers engaged in hand harvesting of crops.

In our first Interim Report the Commission dealt with these and other issues as follows:

(1) We made several recommendations on financing that we believe will ease the burdens of the States. (See pages 2-3 of our first report.) Fifty responses have been received from a Federal Register request for comments on reinsurance, and we are currently continuing our studies.

(2) We have recommended against a blanket exclusion of student farm workers from coverage under the Federal Unemployment Tax Act. (See page 4.)

(3) We have recommended against special action directed exclusively at substitute teachers but are reviewing the entire subject of unemployment compensation as it relates to all persons employed in schools and colleges. (See page 4.)

(4) We have recommended that the provision on pensions be repealed or postponed. (See page 5.)

(5) We have recommended against taxation of unemployment compensation benefits. (See page 5.)

(6) We are studying the report of the National Commission on Employment and Unemployment Statistics as it relates to our mandate and should have recommendations in the near future.

(7) We have held a series of hearings on alien farm workers and intend to make recommendations in the near future.

(8) We made several other recommendations and comments on State solvency and benefit provisions. (See pages 7-8.)

I do not know what further recommendations our Commission will make. I do not know what the final views of any member of the Commission will be. I do not know what my conclusions will be.

As Chairman I have promised the members of the Commission and the Congress that every member of the Commission would have full opportunity to place before the Commission any proposals for consideration by the Commission.

We have held 16 public Commission meetings and have held public hearings, as required by the law, in 14 cities. In all, 217 witnesses have appeared before the Commission.

We have just completed a 2½ day meeting in New York where we heard testimony from employers and employees. Our next meeting is scheduled in New Orleans where we will meet with all State Employment Security Administrators.

We have made two interim reports to the Congress and the President both of which have been unanimous. The Chairman has made every effort to try to find a consensus on the major issues which face the Commission. We have worked diligently with the State Administrators of the program who have widely different recommendations; I have attended two meetings of the National Governors' Association to consult with the Governors' Committee on Human Resources concerning our work; and we have made arrangements for continued work with the staff of the Governors' Association.

We are currently at approximately the half-way mark in our work and in my opinion the investment in time and energy which the Commissioners and staff have made could be lost to the Congress if the work of the Commission is not continued and completed.

The problems and issues involved in unemployment compensation are controversial. They have been controversial ever since the program began in 1932. They will continue to be controversial. That is one of the reasons why I think the Commission was established, namely, to identify the differences, to see what area of agreement could be reached, and to present to the Congress and the President some options, in order that the system might be improved, reformed, changed, or stabilized in the light of the changing economic, social, demographic, and financial conditions.

Employers and unions and States have strong differences of opinion about benefits, disqualifications, experience rating, and the Federal and State roles in the system.

I do not know how we will come out on these and other issues.

I have made every effort to provide the union, employer, and public members on the Commission full latitude to express themselves, to question witnesses, and to request information. But we have not yet voted on these key controversial issues. If anyone has determined how the Commission will vote on each of these issues, I believe they have made a determination in advance of all the evidence. On the other hand, I don't think all our conclusions or recommendations are likely to be enthusiastically received by all parties. But I hope, our report will contain information needed by Congress to make its own independent judgments and decisions on these controversial issues and options.

I need not point out to the members of this Subcommittee that the Rhode Island Unemployment Compensation program has the second highest deficit in terms of percentage of total annual payroll (3.6 percent and New Jersey has the third highest deficit in dollars ($695 million). Our Commission has been grappling for many months on whether there should be any Federal reinsurance plan or revised State solvency arrangements to protect the State-by-State system. We have not come to any conclusion on these issues. But it is my hope as Chairman to produce a report which will present information and advice to the Congress and the President so that they can take action, or no action, on these matters with full knowledge of the implications and options.

Two of the three States represented on this Subcommittee have had long periods of payments under the Federal-State Extended Benefit program because of continuing economic problems.

Rhode Island first began payment of extended benefits in October 1970, the earliest date possible under the Federal-State Extended Unemployment Compensation Act originally enacted that year. The State continued in extending benefit status without a break until December 16, 1978, when it triggered off briefly. Payment of extended benefits resumed in March 1979 and continues.

The State of New Jersey had several periods of extended benefits during the early 1970's. It triggered on again as of October 27, 1974, and has remained continuously in benefit status since that time.

Only two other jurisdictions are presently in extended benefit status: Alaska and Puerto Rico.

The Commission intends to next study the entire question of the present extended benefits and alternatives to the triggers in the law.

Our Commission has acted unanimously on all recommendations we have made to date. We have deferred action on controversial issues so that we can obtain the reaction of employers, Governors, Federal and State Administrators and employees to these proposals before we take any further action.

We have held hearings on the subject of the existing Federal taxable wage base ($6,000 a year) and five options. We have received nearly 50 comments on this issue.

One other document which I personally prepared for discussion and published by the Commission in the Federal Register (See exhibit 1 in our second report) has been interpreted unfortunately by some groups as the outline of the report of the Commission or an indication of the Chairman's conclusions. That was not its intention or purpose. It was the Chairman's view that a provocative issues paper was needed to focus on some of the key controversial issues affecting both the existing State and Federal legislation which face the Commission so they could be frankly and openly discussed and voted on up or down or modified. I believe that Congress will want to know what proposals we rejected and why in addition to those we recommend.

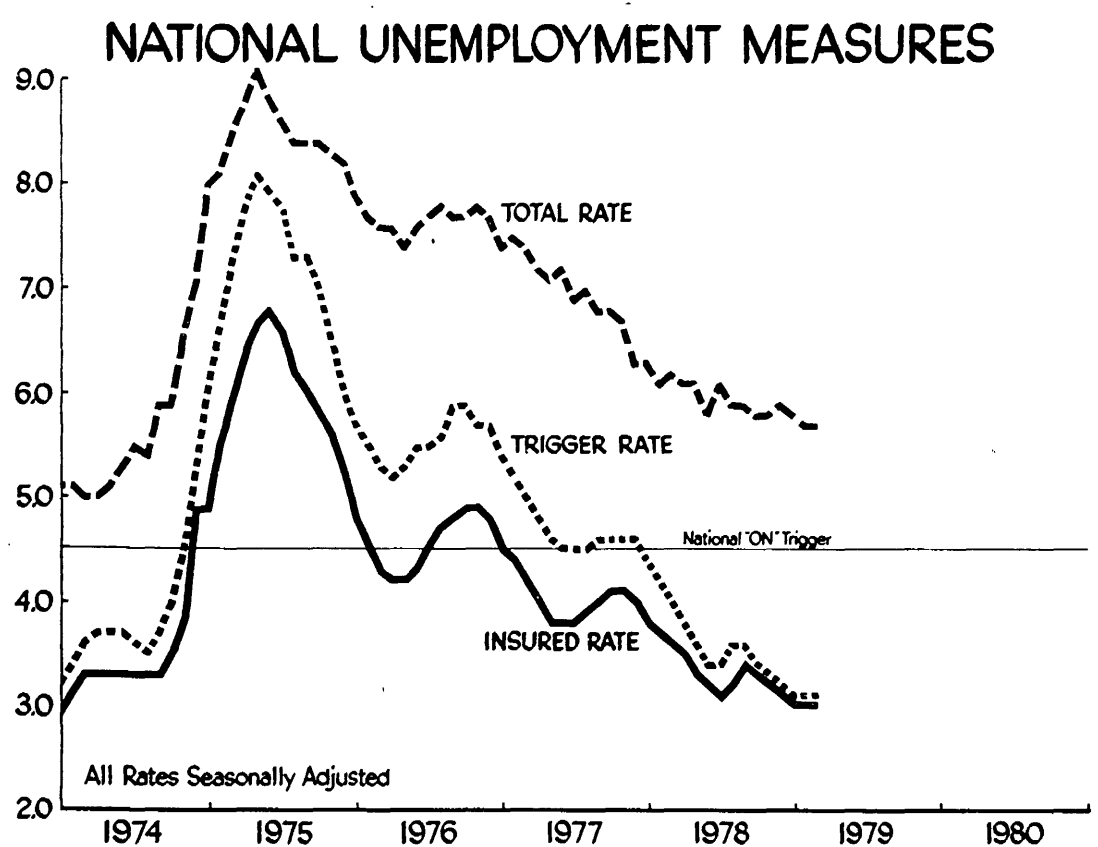
The Commission has not voted on any of the issues in this or any other paper now pending before the Commission. Nor is it our intention to limit our consideration to these 24 issues. We will, if we are continued, consider the various proposals listed in the Subcommittee Press Release of August 6, 1979, along with any other proposals which any Commissioner or interested party may present to the Commission.

We request your early approval of H.R. 3920 so the Commission can complete its work.

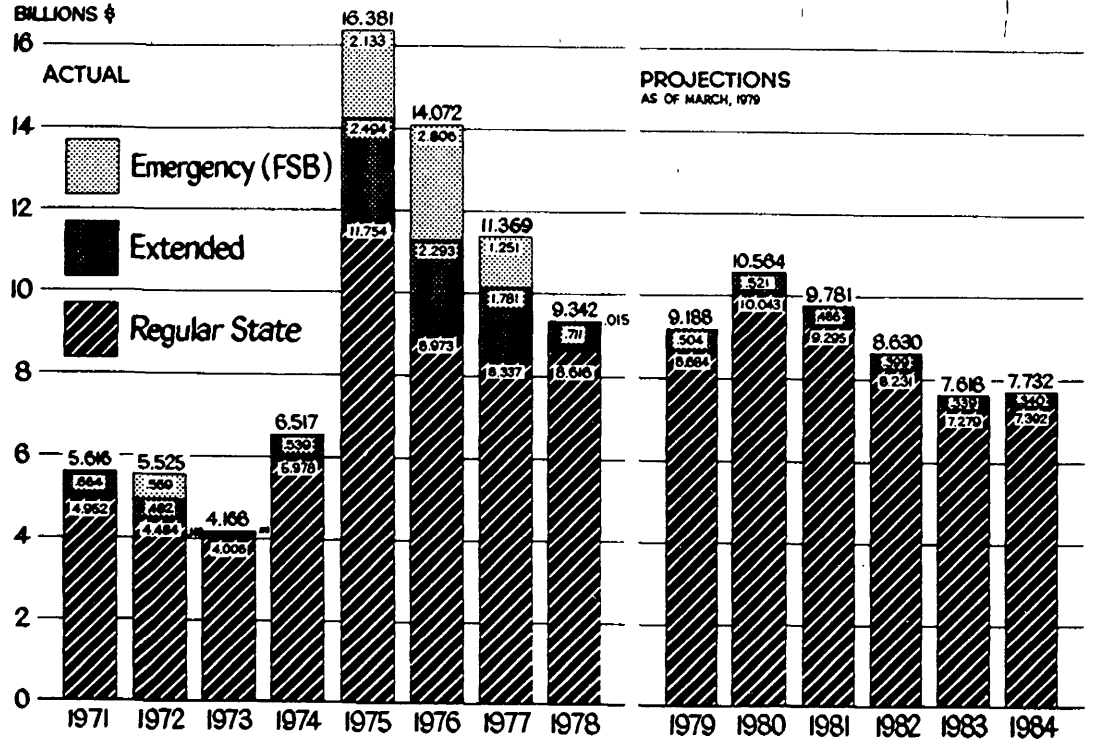
TABLES AND CHARTS ON SIGNIFICANT ASPECTS OF THE FEDERAL-STATE UNEMPLOYMENT INSURANCE PROGRAM

Tables and Charts continued.

Tables and Charts continued.

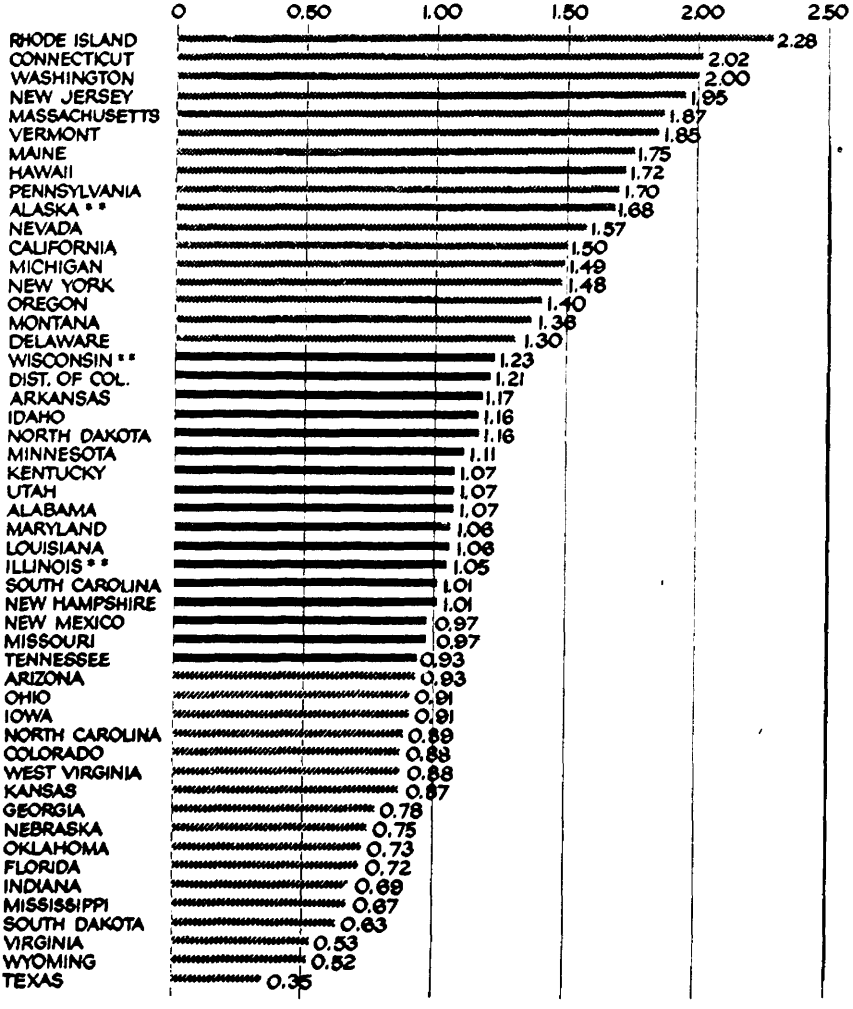

NATIONAL UNEMPLOYMENT MEASURES
9.0
8.0
7.0
6.0
5.0
4.0
3.0
2.0
TOTAL RATE
TRIGGER RATE
National "ON" Trigger
INSURED RATE
All Rates Seasonally Adjusted
1974
1975
1976
1977
1978
1979
1980

## TOTAL UNEMPLOYMENT INSURANCE BENEFITS INCLUDING REGULAR, EXTENDED & EMERGENCY (FSB) BENEFITS • Calendar Years 1971-84




Source: USDOL/ETA/UIS

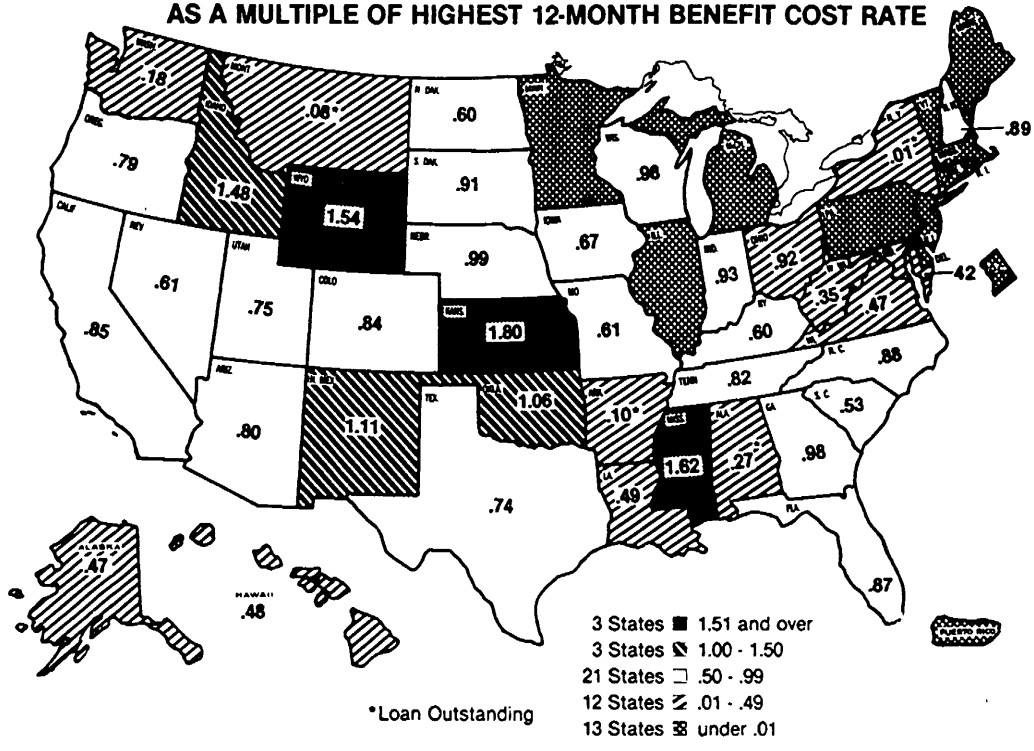
## AVERAGE SEVEN YEAR COST RATE REGULAR STATE PROGRAMS BY STATE, 1970-77 (U.S. Total 1.24)



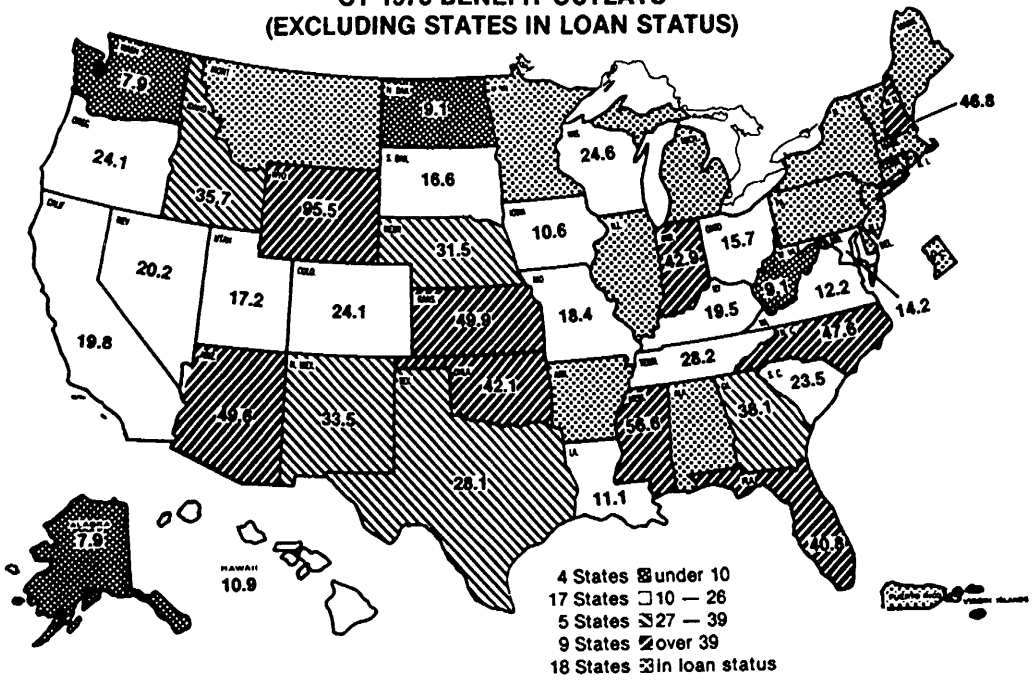

* Annual Benefit costs as a percentage of total wages.

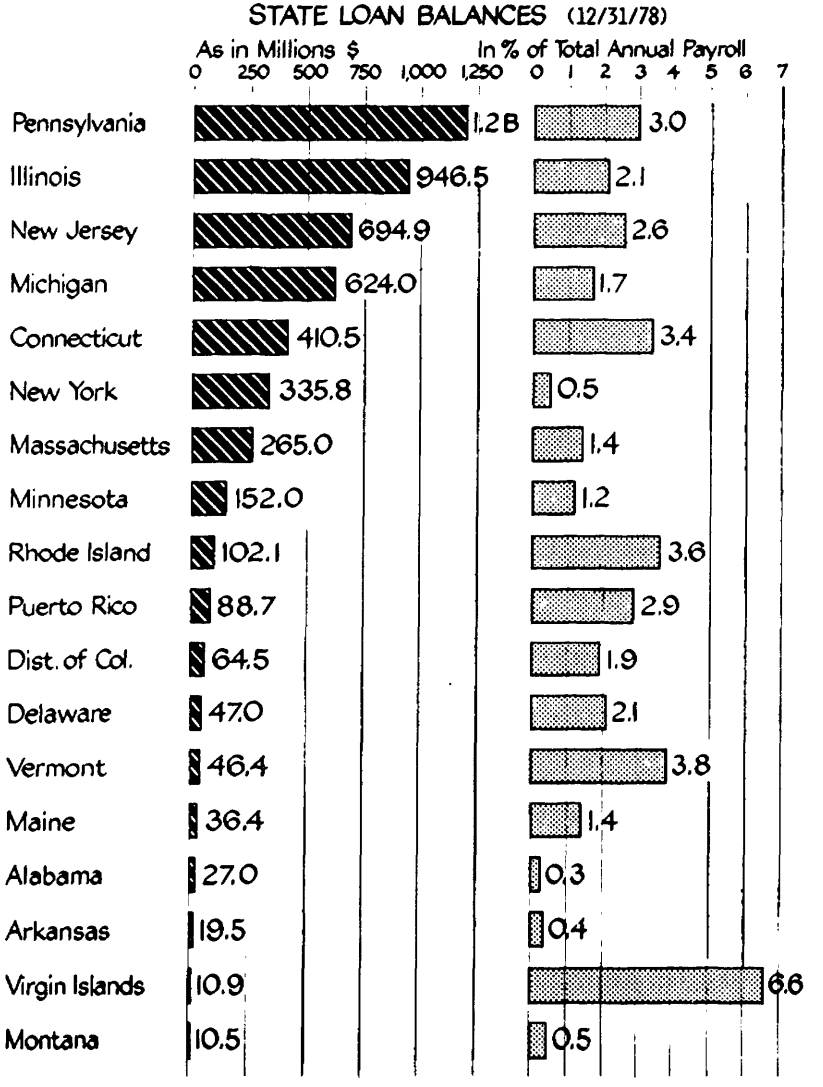
* * For years 1970-76 only

## STATE RESERVE RATIO EXCLUSIVE OF LOANS
## (AS OF DECEMBER 31, 1978)
## AS A MULTIPLE OF HIGHEST 12-MONTH BENEFIT COST RATE



## DECEMBER 1978 TRUST FUND BALANCES IN WEEKS OF CY 1978 BENEFIT OUTLAYS (EXCLUDING STATES IN LOAN STATUS)



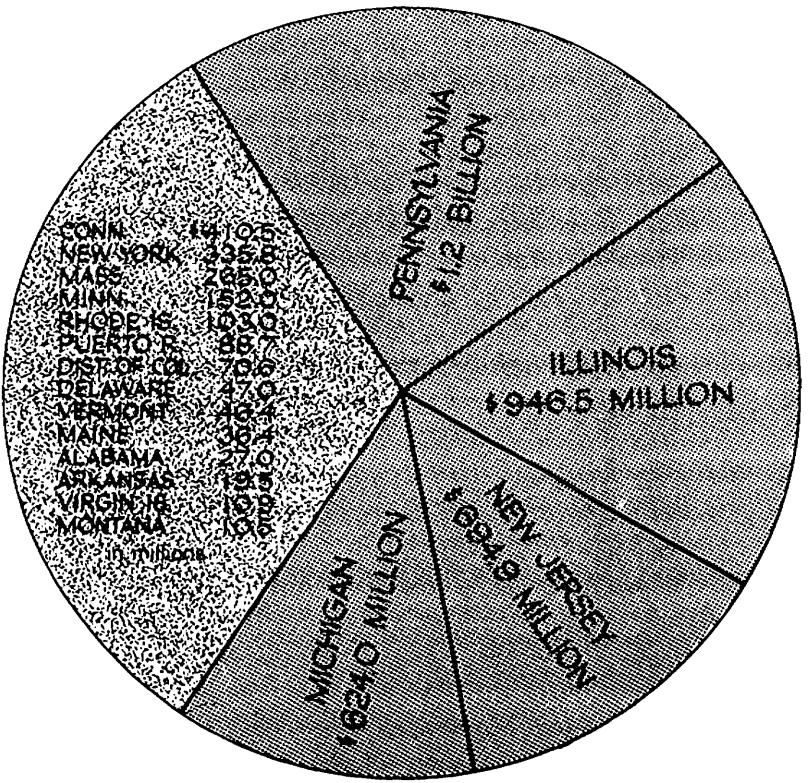

STATE LOAN BALANCES (12/31/78)
As in Millions $
0 250 500 750 1,000 1,250
In % of Total Annual Payroll
0 1 2 3 4 5 6 7
Pennsylvania 1.2 B 3.0
Illinois 946.5 2.1
New Jersey 694.9 2.6
Michigan 624.0 1.7
Connecticut 410.5 3.4
New York 335.8 0.5
Massachusetts 265.0 1.4
Minnesota 152.0 1.2
Rhode Island 102.1 3.6
Puerto Rico 88.7 2.9
Dist. of Col. 64.5 1.9
Delaware 47.0 2.1
Vermont 46.4 3.8
Maine 36.4 1.4
Alabama 27.0 0.3
Arkansas 19.5 0.4
Virgin Islands 10.9 6.6
Montana 10.5 0.5

# STATE LOAN INDEBTEDNESS

## May 1, 1979

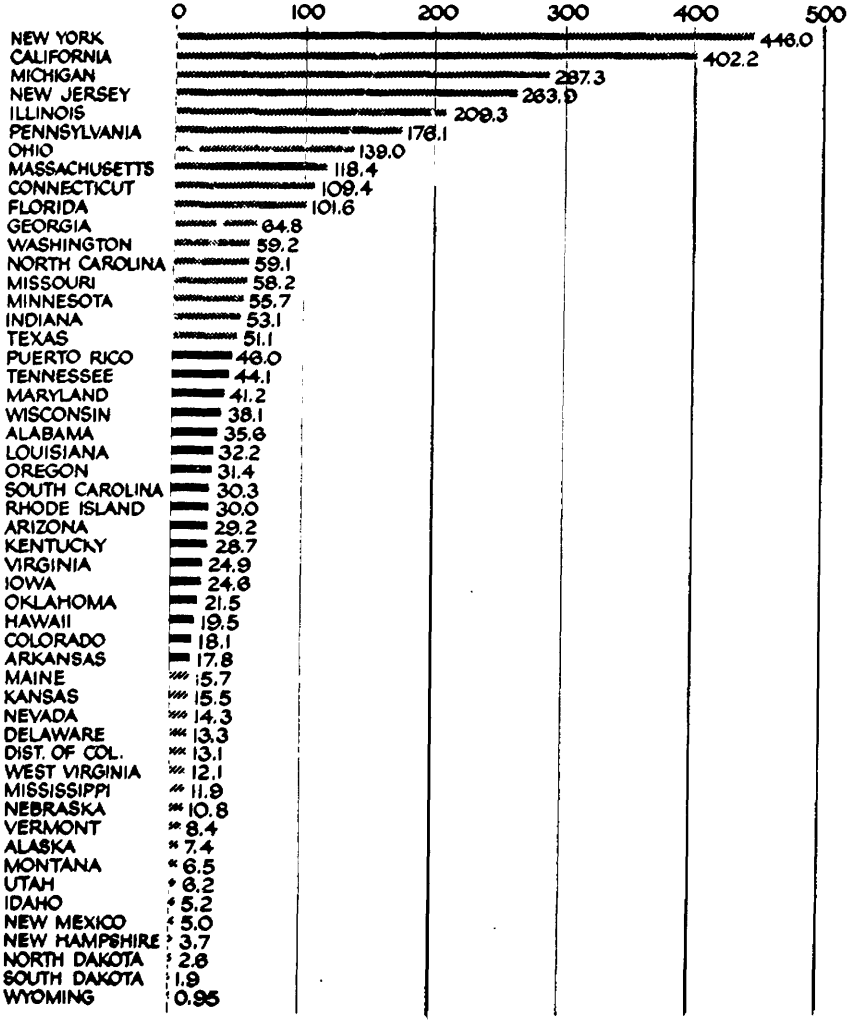
## $5.111 Billion

### Four States Owe Two-Thirds of the Total

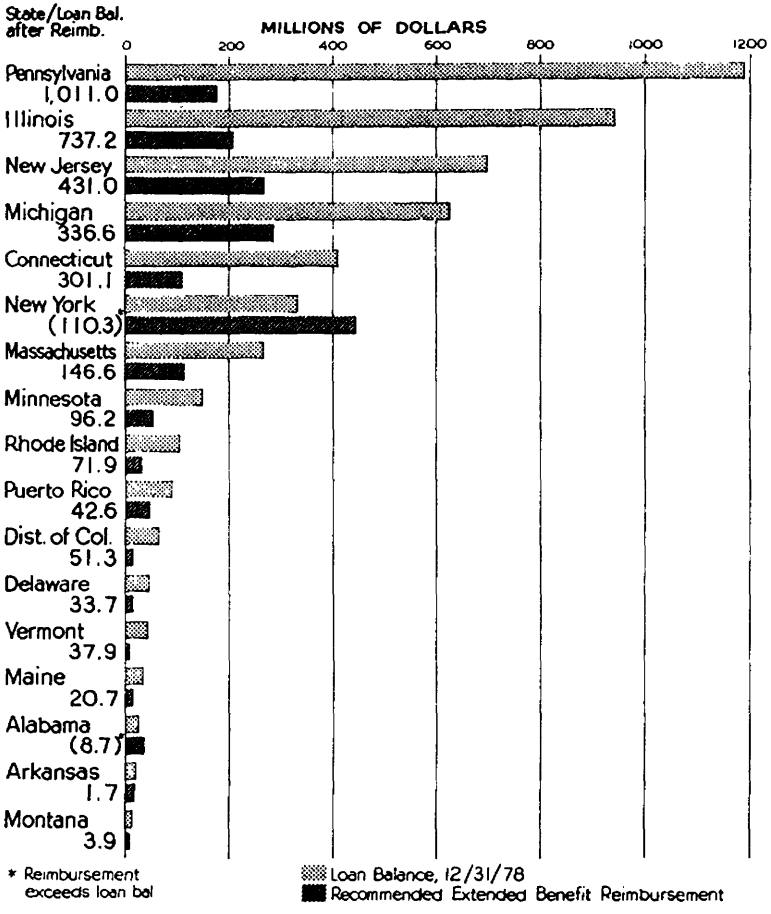


## CREDITS TO UNEMPLOYMENT COMPENSATION TRUST FUNDS UNDER COMMISSION RECOMMENDATION FOR GENERAL FUND FINANCING OF EXTENDED BENEFIT COSTS (1/75 - 1/78)

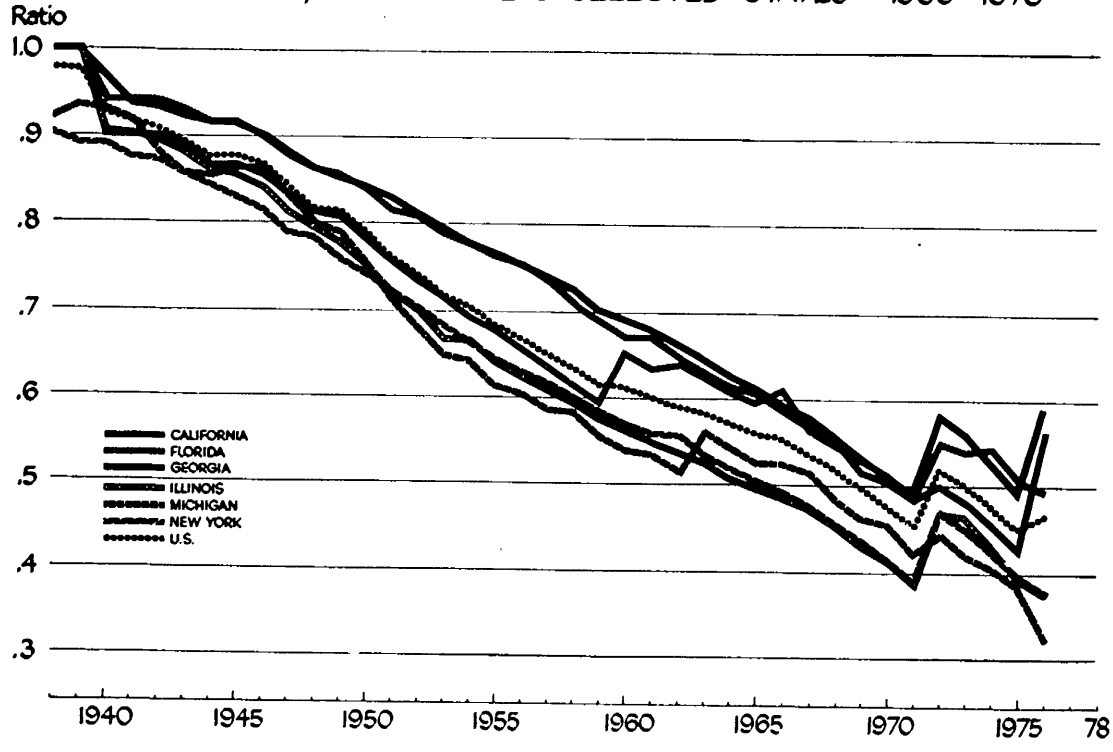
(MILLIONS $) STATES - $3,325 FEDERAL - $3,325

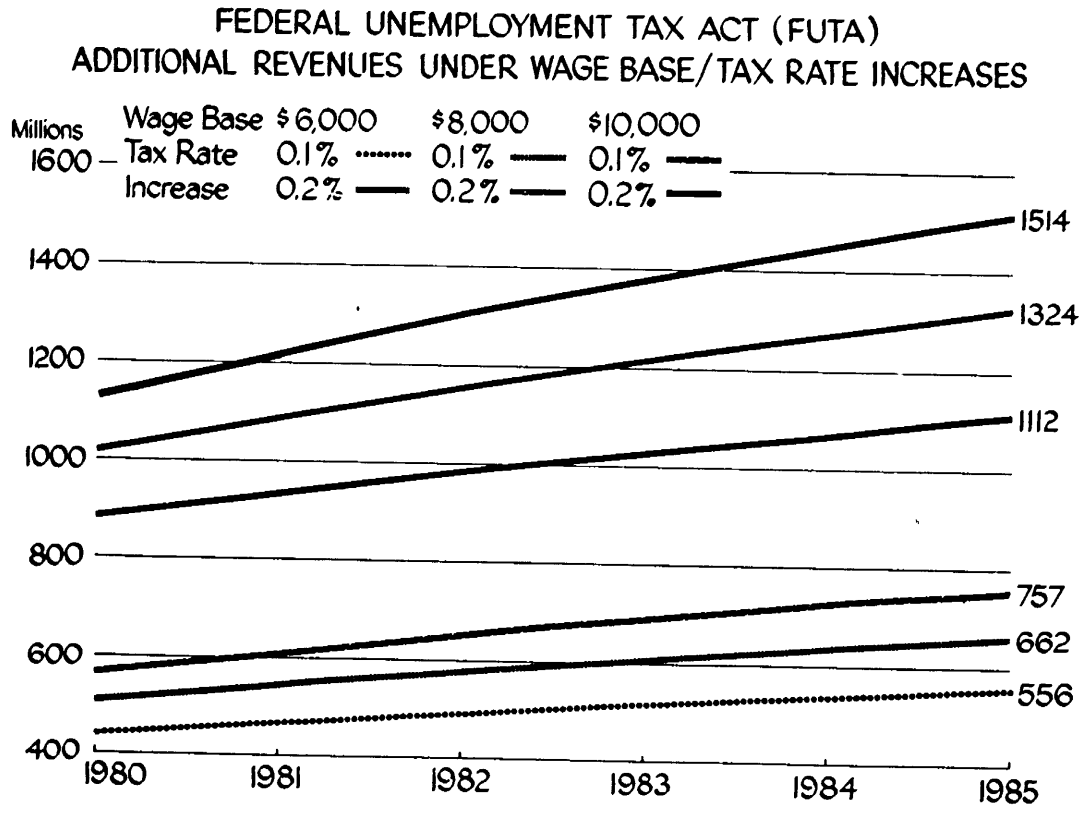


## LOAN BALANCES AND NCUC RECOMMENDED REIMBURSEMENT FOR EXTENDED BENEFITS

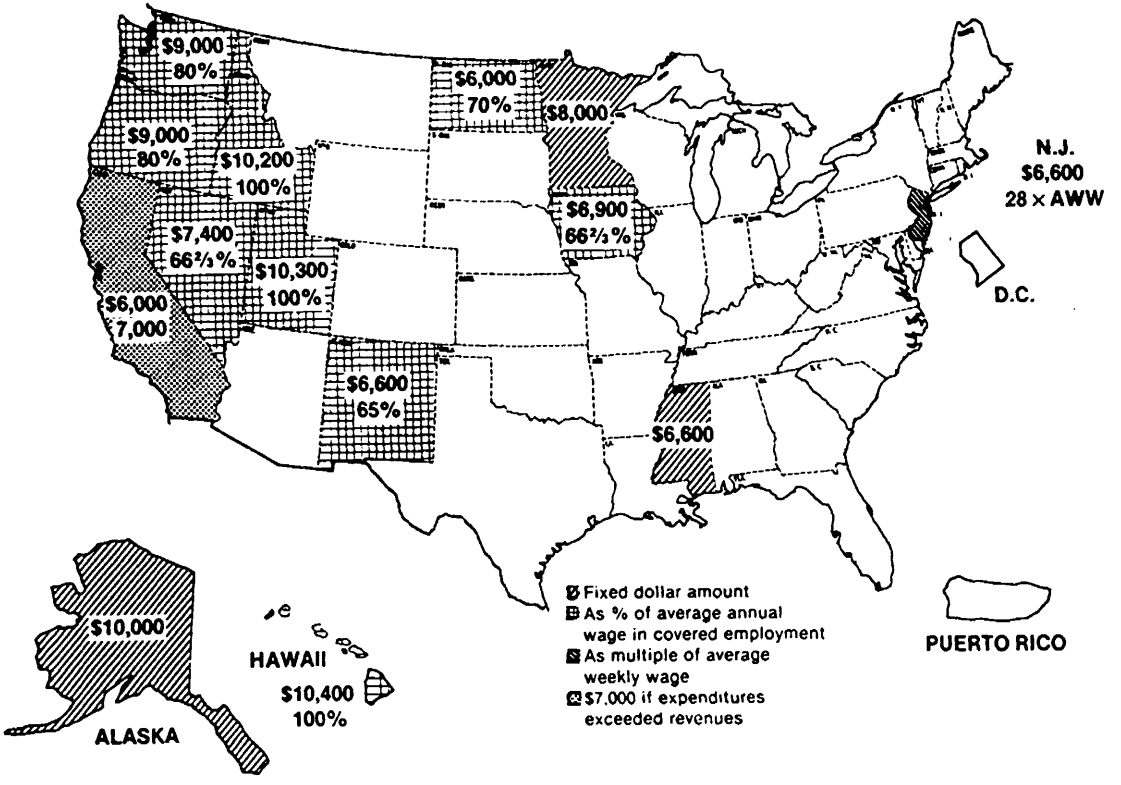


## RATIO OF TAXABLE TO TOTAL PAYROLLS IN UNEMPLOYMENT COMPENSATION, U.S. AVERAGE & SELECTED STATES • 1938-1978

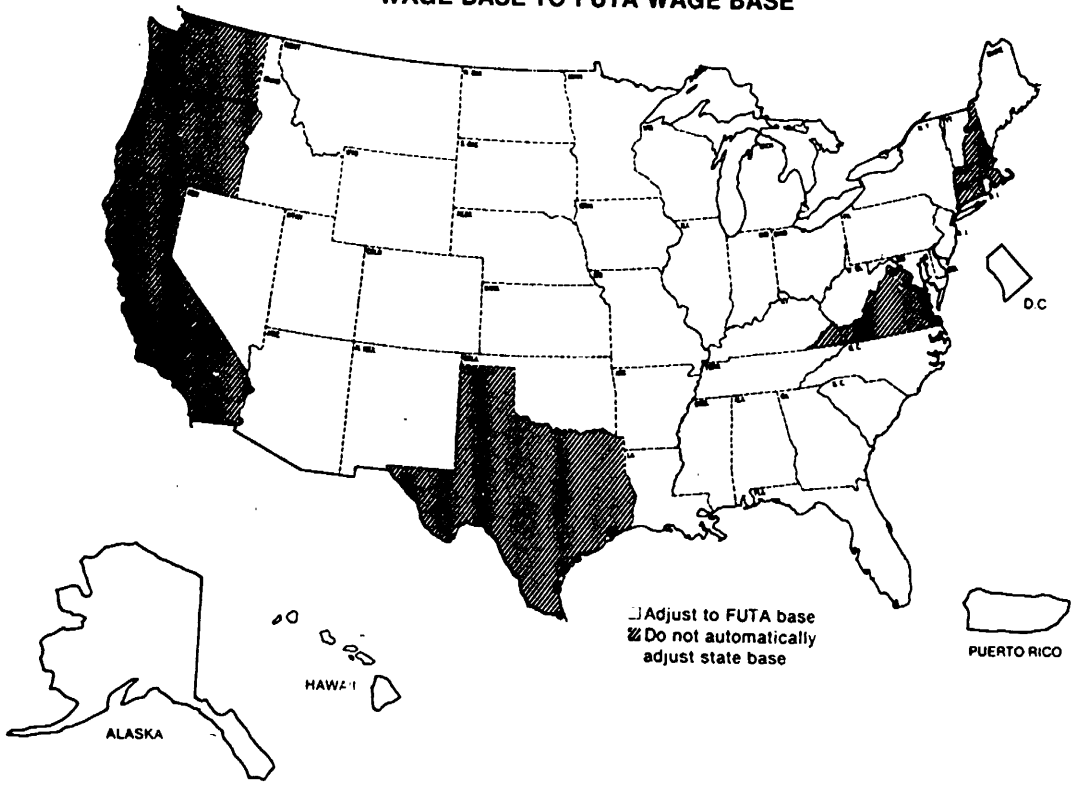



FEDERAL UNEMPLOYMENT TAX ACT (FUTA)
ADDITIONAL REVENUES UNDER WAGE BASE/TAX RATE INCREASES
Millions
Wage Base $6,000 $8,000 $10,000
Tax Rate 0.1% 0.1% 0.1%
Increase 0.2% 0.2% 0.2%
1600
1400
1200
1000
800
600
400
1514
1324
1112
757
662
556
1980
1981
1982
1983
1984
1985

## 14 STATES NOW PROVIDE FOR A TAXABLE WAGE ABOVE $6,000



## 43 STATES ADJUST TAXABLE WAGE BASE TO FUTA WAGE BASE



# EXPERIENCE RATING
# VARIATIONS IN STATE LAWS

- Employer with no unemployment (in computation period)
  1979 range: from 0 to 3.3%

- Employer with State's highest assigned rate
  1979 range: from 2.7% to 8.0%*

- Types of noncharging of benefits
  (not available for "reimbursing" employers)
  - State share of Federal-State extended benefits
  - Payment of benefits after disqualification
  - Benefit award which is reversed on appeal
  - Reimbursements on Combined Wage Claims
  - Benefits paid to seasonal workers outside season
  - Benefits based on employment of short duration
  - Dependents' allowances
  - Benefits paid to claimant in approved training

* 1981 rate can reach 9.0%

## TYPES OF EXPERIENCE RATING

**Reserve Ratio** — 31 States

$$\frac{\text{Employer's Reserve Balance}}{\text{Employer's Payrolls}} = \text{Tax Rate}$$

---

**Benefit Ratio** — 11 States

$$\frac{\text{Benefits Paid to Employer's Workers}}{\text{Employer's Payrolls}} = \text{Tax Rate}$$

---

**Benefit-Wage Ratio** — 5 States

$$\frac{\text{Base Period Wages of Former Workers}}{\text{Employer's Payrolls}} = \text{Tax Rate}$$

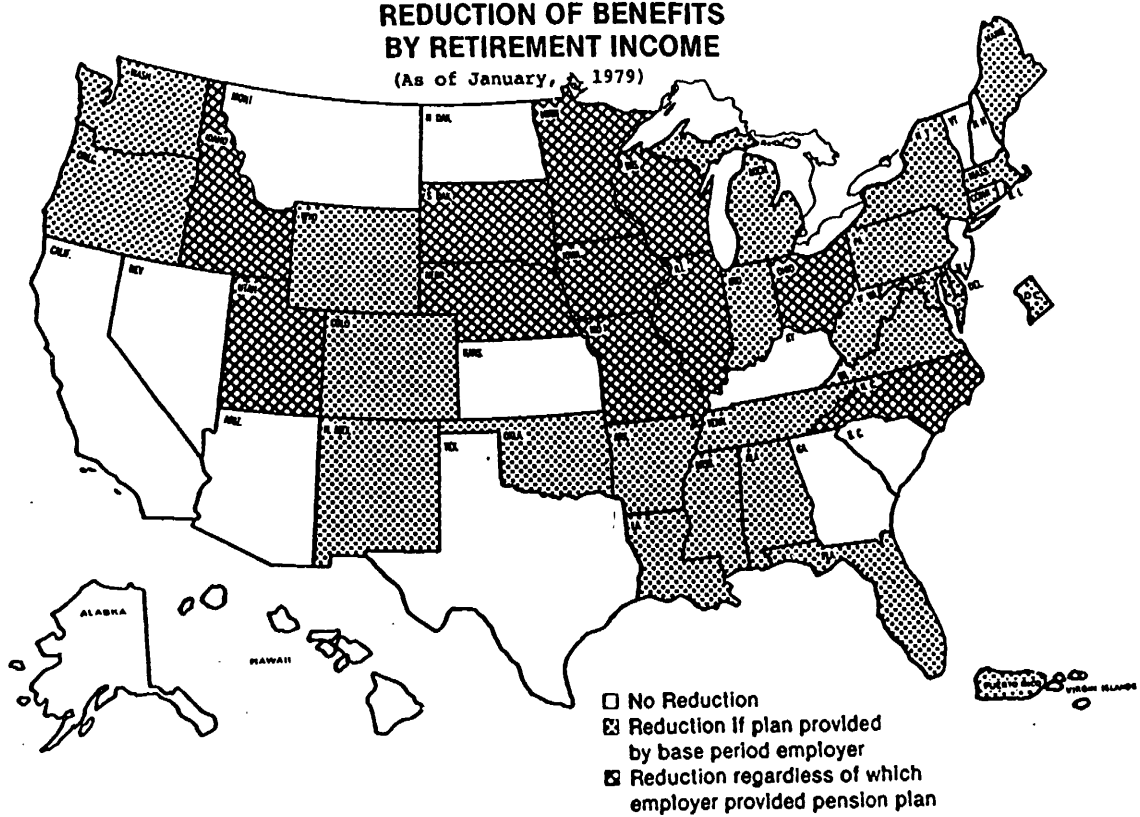
---

**Payroll Declines** — 4 States

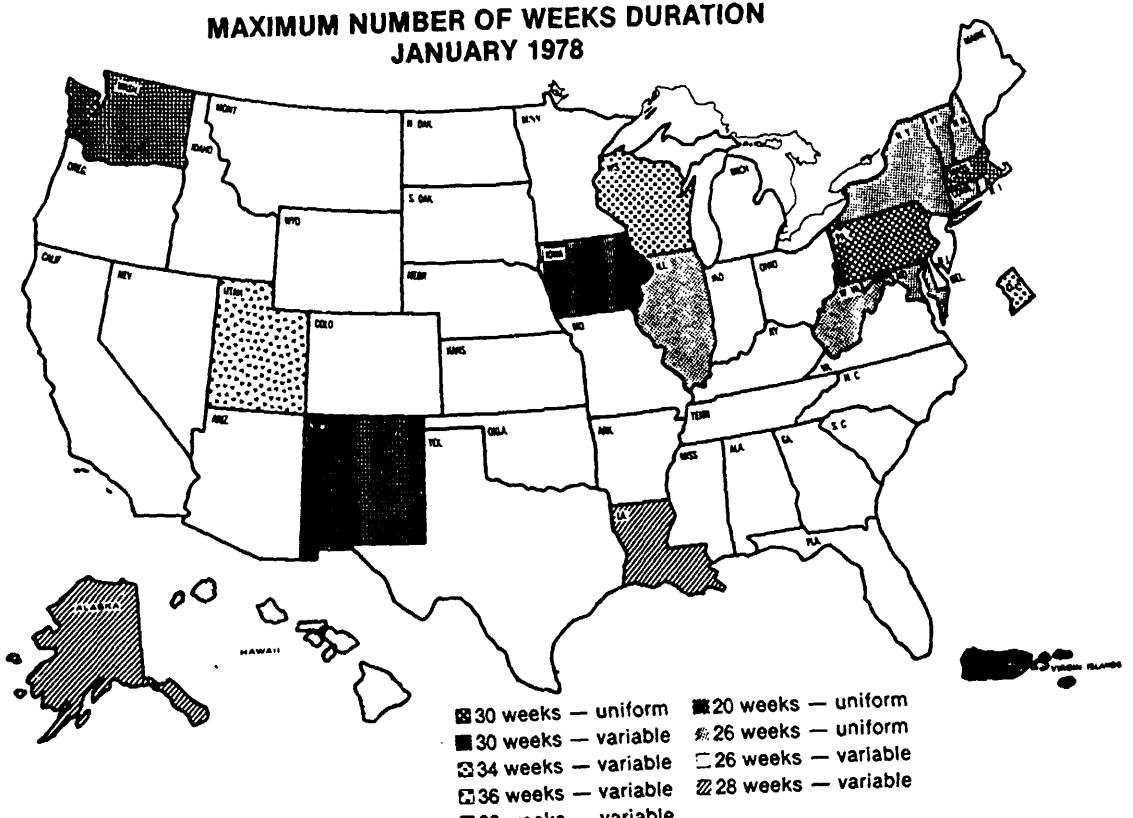
Measure of Variations in $ of Employer's Payroll, Quarter to Quarter and/or Year to Year = Tax Rate or Tax Credit

## REDUCTION OF BENEFITS BY RETIREMENT INCOME

(As of January, 1979)

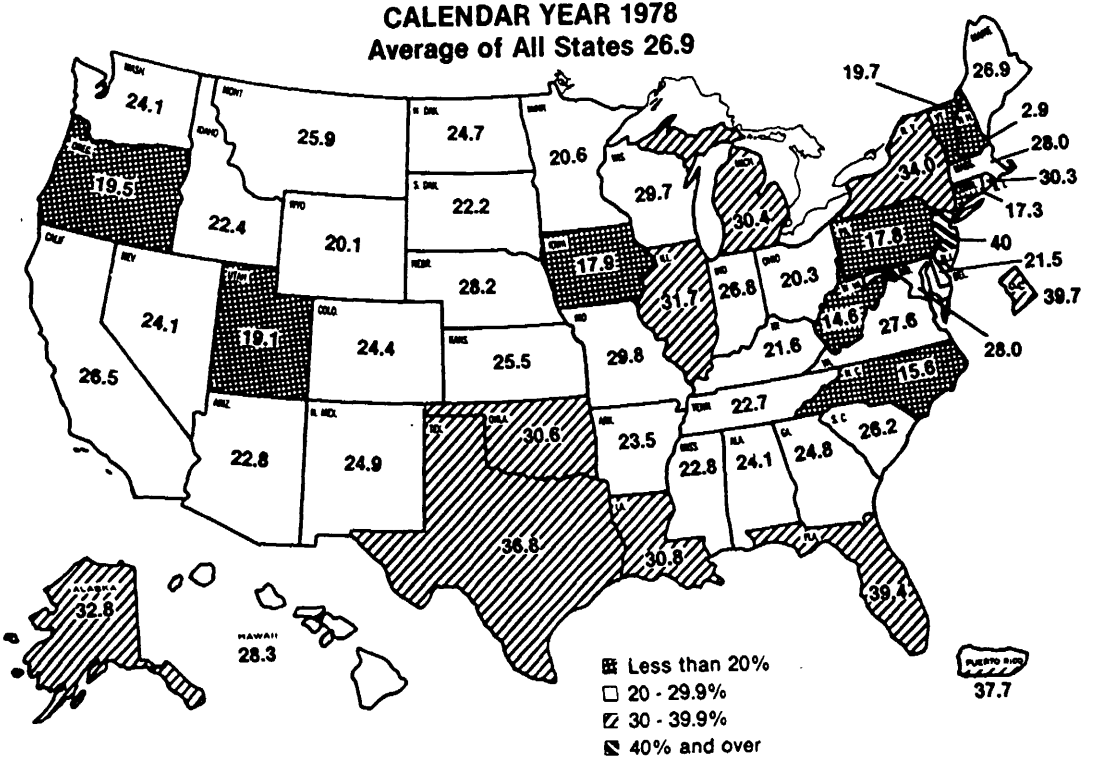


## MAXIMUM NUMBER OF WEEKS DURATION
## JANUARY 1978

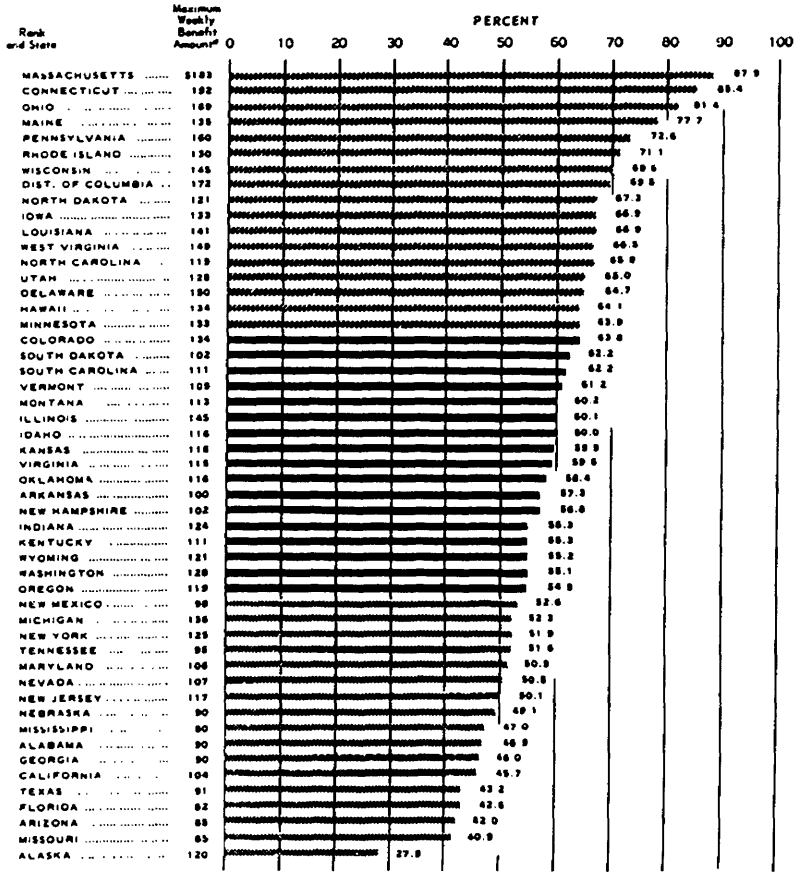


## PERCENTAGE CLAIMANTS EXHAUSTING BENEFIT ENTITLEMENT— CALENDAR YEAR 1978

**Average of All States 26.9**



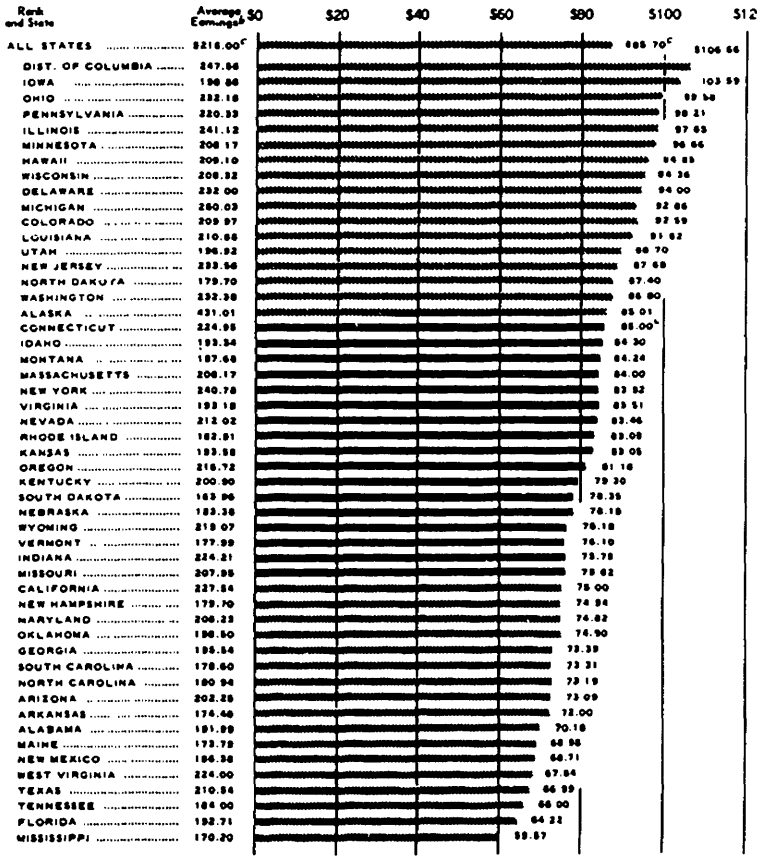
## MAXIMUM WEEKLY BENEFIT AMOUNT AS PERCENT OF AVERAGE WEEKLY EARNINGS IN COVERED EMPLOYMENT, JANUARY 1979




Source: Directors of Research and Statistics, state employment security agencies.

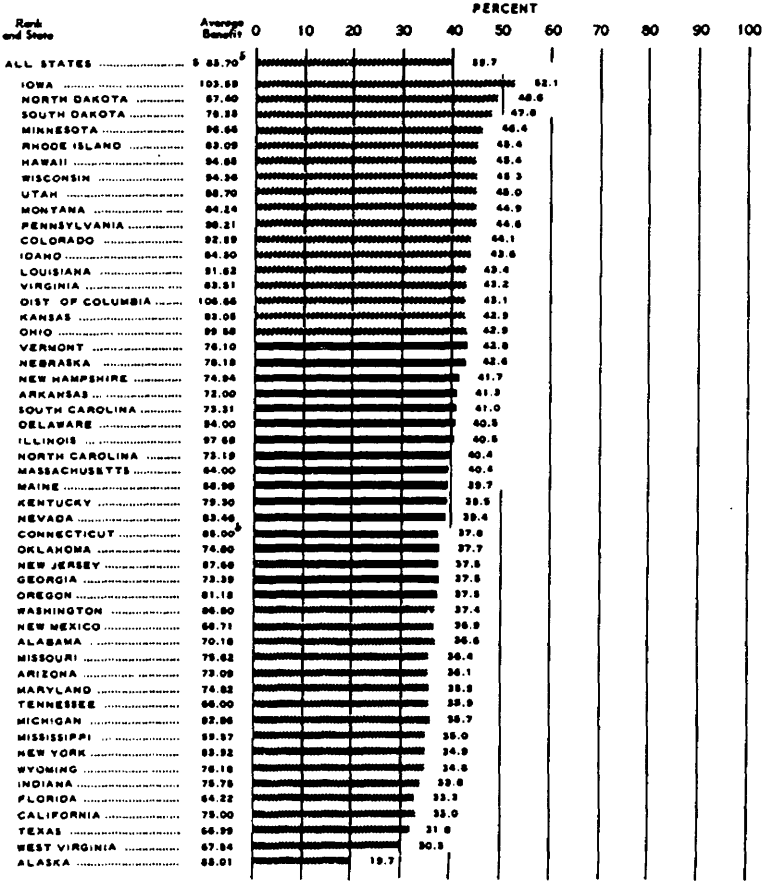
*Maximum weekly benefit amount (including dependents' allowances) as of January 1979, divided by average weekly earnings in covered employment in 1977.

## AVERAGE WEEKLY BENEFIT FOR TOTAL UNEMPLOYMENT UNDER STATE UNEMPLOYMENT COMPENSATION LAWS IN 1978[a]




[a] Data from Directors of research and statistics, state employment security agencies.
[b] Average weekly earnings in 1977 in employment covered under state unemployment compensation laws.
[c] Estimated.

## AVERAGE WEEKLY BENEFIT FOR TOTAL UNEMPLOYMENT AS PERCENT OF AVERAGE WEEKLY EARNINGS IN COVERED EMPLOYMENT, 1978[a]

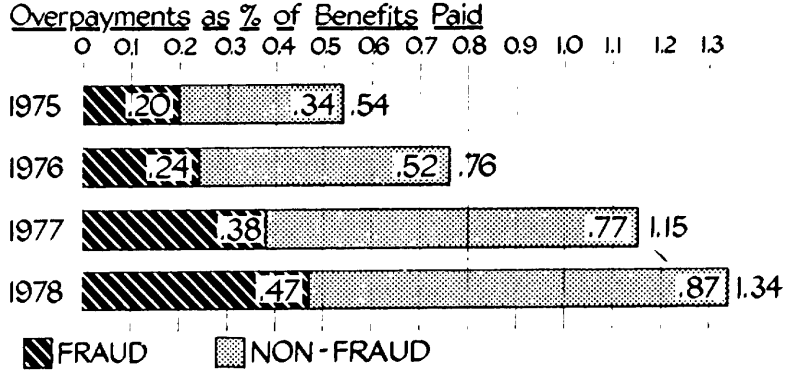


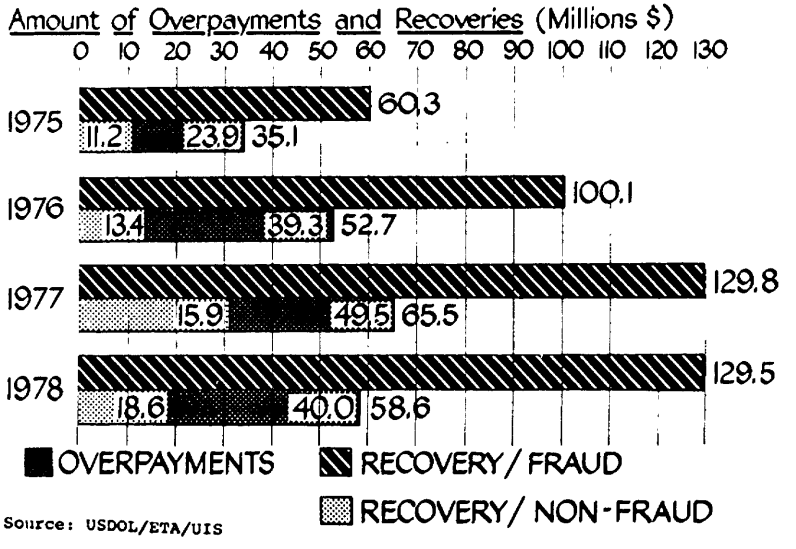

Source: Directors of Research and Statistics, state employment security agencies.

[a]Average weekly benefit in 1978 related to average weekly earnings in 1977.

[b]Estimated.

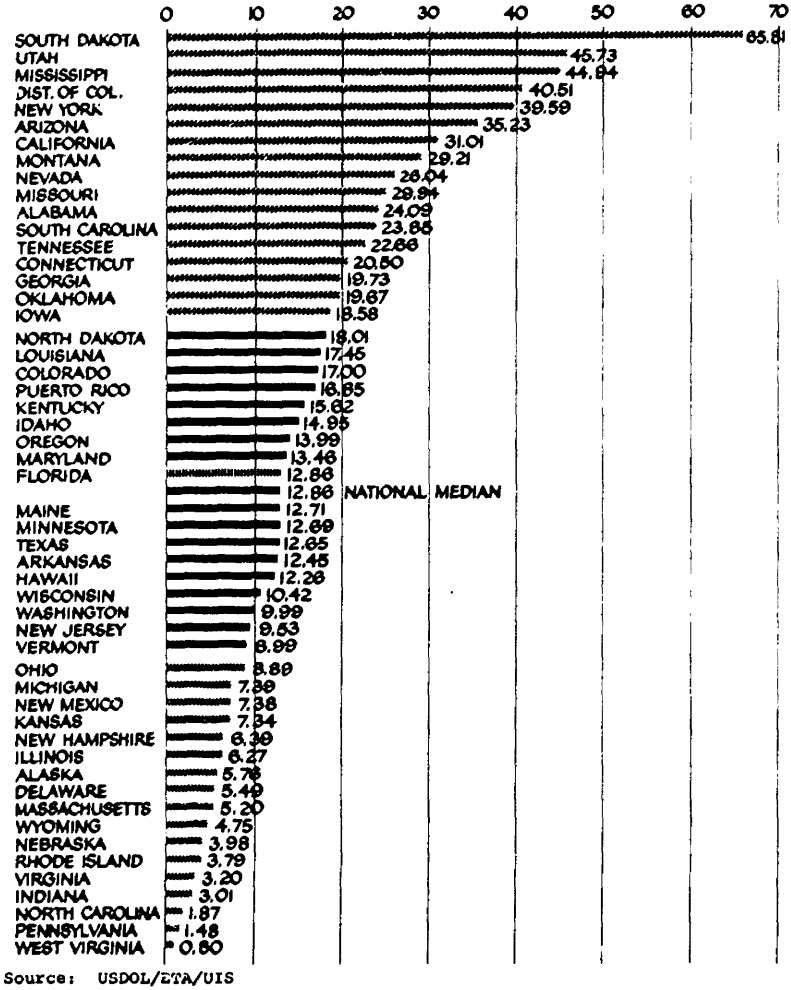
## BENEFIT PAYMENTS CONTROL
July, 1974 - June, 1978



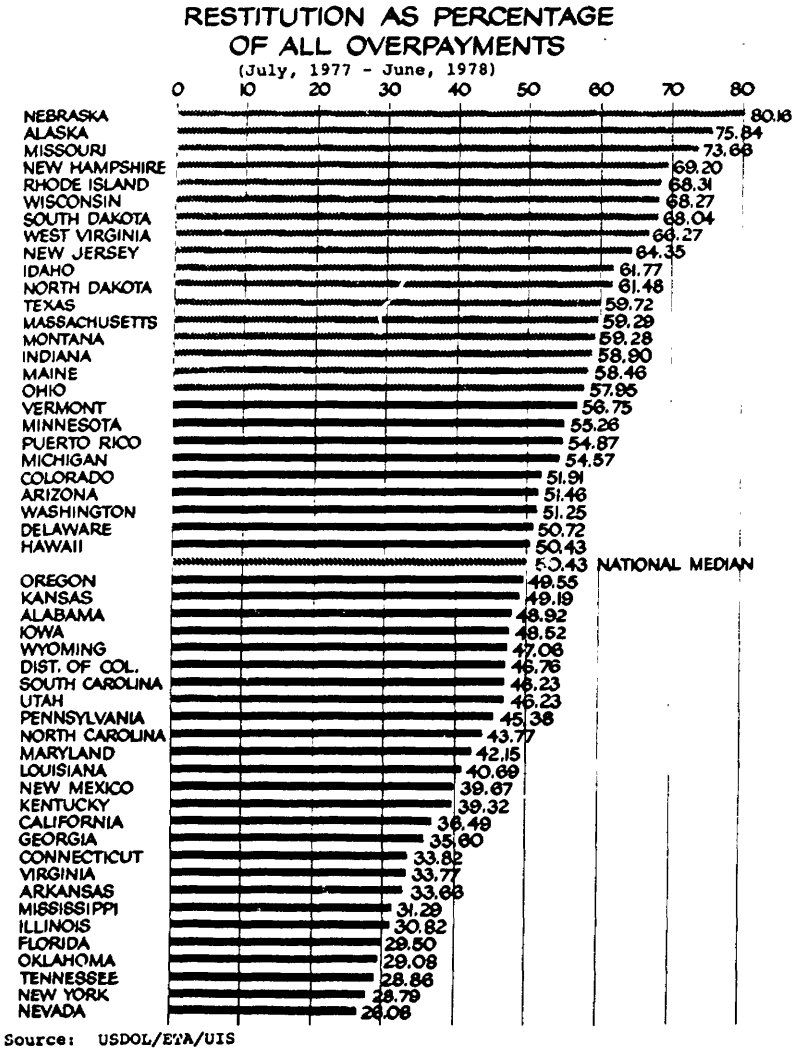




Source: USDOL/ETA/UIS

## FRAUD CASES PER 1,000 FIRST PAYMENTS
(July, 1977 - June, 1978)



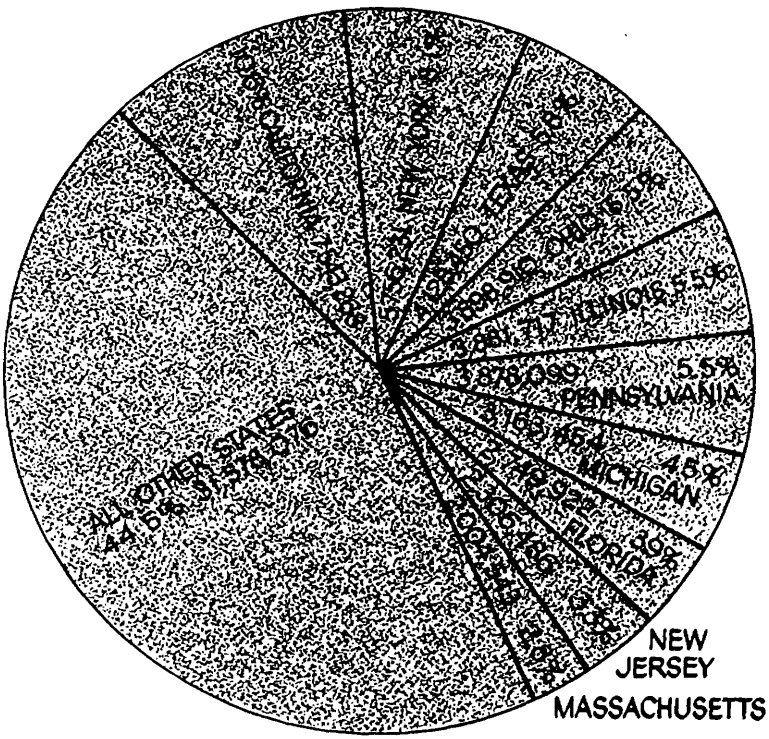

Source: USDOL/ETA/UIS




Source: USDOL/ETA/UIS

# AVERAGE EMPLOYMENT COVERED UNDER STATE UNEMPLOYMENT COMPENSATION LAWS IN TEN LARGEST STATES AND ALL OTHER STATES, 1977

## One-Fifth of the States Employ Nearly Three-Fifths of the Covered Workers




All States: 70,889,156 100.0%
Ten Largest: 39,311,080 55.5%

Source: Directors of Research and Statistics, state employment security agencies

# ADVISORY COUNCIL ON SOCIAL SECURITY - 1948
# RECOMMENDATIONS ON UNEMPLOYMENT INSURANCE

1. Minimum State Contribution Rate
   a. 0.6% by employers  b. 0.6% by employees
2. Federal Unemployment Tax
   a. 0.75% by employers  b. 0.75% by employees  c. 80% credit offset
   d. No additional credit for experience rating
3. Loan Fund
   a. Loans for 5 years
   b. Interest to be paid at average rate of all government obligations
4. Experience Rating
   a. Experience rating permitted above minimum State contribution rates
   b. Employee contribution rate no higher than the lowest rate payable by an employer
5. Interstate Claims
   Combining wage credits in more than one State required by Federal government
6. Standards for Disqualification
   States prohibited from: reducing or cancelling benefit rights except for fraud or misrepresentation, disqualifying those who are discharged because of inability to do the work, postponing benefits for more than six weeks as a result of disqualification except for fraud or misrepresentation

Membership of Council:
Stettinius, Slichter, Bane, Brown, Bryan, Cruikshank, Donlan, Falk, Folsom, Linton, Miller, Myers, Rieve, Sabin, Smith, Walker, Young

SIGNIFICANT PROVISIONS OF

# H.R. 15119 - 1966

## AS PASSED BY SENATE
## AUGUST 8, 1966
## 53 YEAS, 31 NAYS

Provisions Required to be Included in State Laws:

1. Not more than 20 weeks of employment in base period to qualify, or 5 times State-wide average weekly wages and either 1½ times high quarter earnings or 40 times weekly benefit amount, whichever is appropriate under State Law.
2. Maximum weekly benefit amount (exclusive of dependents' allowances) shall be no less than 50% of Statewide average weekly wages.
3. An individual with 20 weeks of employment (or equivalent) in base period shall receive at least 26 weeks of benefits.
4. Individual required to have had some work in order to qualify in a second benefit year. (Now Sec. 3304(a)(7), IRC.)
5. Benefits will not be denied by reason of cancellation of wage credits or total reduction of benefit rights except for discharge for misconduct connected with work or fraud. (Now Sec. 3304(a)(10), IRC.)
6. Benefits not denied because of training. (Now Sec. 3304(a)(8), IRC.)

NCUC/6/30/79

# THE FEDERAL-STATE SYSTEM OF EMPLOYMENT SECURITY AND RELATED PROGRAMS

Total Benefits: 1975-$16.4 B; Administrative: 1979-$2.1 B;
State Reserves: 1978-$11 B; Loans Outstanding: 1978-$14.1 B.

1. The Wagner-Peyser Act of 1933: A Federal State System of Employment Security Offices (2,796 ES/UI; 444 UI)
   - Federal Operation during World War II - 1941-1946
   - FY 1978: $1,091.6 million operating costs ($669.9 M Title III; $421.7 M other sources); 6.2 million placements; $89 per placement

2. The Federal Unemployment Tax Act (FUTA)
   (Originally Title IX of the Social Security Act, 1935)
   - Wisconsin enactment (1932)
   - A unique Federal tax-offset device: Constitutionality, May, 1937
   - All States complied by June, 1937; first State (Wisconsin) paid benefits in August, 1936; last State (Illinois) in June, 1939
   - Originally 3/10%; 4/10% in 1961; 5/10% in 1970; 7/10% in 1977; revenue FY1979, $2.9 billion
   - Originally tax on all wages; $3,000 in 1939; $4,200 in 1972; $6,000 in 1978
   - Experience Rating: in 1979 all States except Puerto Rico, Virgin Islands, and Washington: 1970-77 U.S. average 1.24% total wages

3. Administrative Financing - Title III of Social Security Act
   - 100% grant to State
   - $1,715.2 million appropriated in FY1979 or 0.4% of FUTA taxable payrolls ($995.6 M unemployment compensation; $719.6 M employment service); ES: 30,000 positions, UI: 48,522

The Federal-State System of Employment Security & Related Programs

4. U.C. for Federal Employees (UCFE) 1955; Ex-Servicemen (UCX) 1958

5. Special Trade Adjustment Provisions: 1970, 1974, 1979 proposal ($208.5 million, FY 1980)

6. Other Special Programs: Amtrak (enacted 1970); Conrail (1974); Disaster Assistance (1974); Redwoods (1978); Airline Deregulation (1978)

7. AFDC-UP Legislation (1961, 1965, 1968); Community Work and Training Program (1961-65); WIN Program (1968)

8. State general relief provisions: 31 States (includes D.C., P.R., V.I.)

9. Comprehensive Employment and Training Act (CETA, 1974) MDTA (1962-1974)

10. Supplemental Unemployment Benefits: 235 agreements in 20 industries, 2million workers - 1975

11. Tax Provisions: Earned Income Credit (1975); Child Allowance Deductions (1976); Taxation of UI Benefits (1978); Targeted Jobs and WIN Credits (1978)

12. Administration:

- Federal: UI: SSB 1935-48; DOL 1949-
  ES: DOL 1933-38; SSB 1939-40; War Manpower Commission 1941-45; DOL 1945-47; SSB 1948; DOL 1949-
- State: Independent Commission or Board - 9 States
  Independent Department of State Government - 14 States
  In State Department of Labor or other Agency - 30 States

# SUMMARY OF MAJOR PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS

| | NEW JERSEY |
|---|---|
| BENEFITS<br>Qualifying Requirement | 20 weeks employment at $30 or more; or $2,200 in BP |
| Waiting Week | One; compensable when benefits are payable for 3rd week following waiting period |
| Computation of WBA | 66⅔% of claimant's AWW up to 50% of State AWW |
| Dependents' allowance | None |
| WBA for Total Unemployment: Min. | $ 20 |
| Max. | $117 |
| Max. Benefit as % of AWW-1977 | 50.1% |
| Duration - Proportion of BP wages | ¾ weeks of employment |
| Weeks: Min. | 15 |
| Max. | 26 |
| Disqualification for: Voluntary Leaving, Benefits Postponed for | Duration of unemployment +4 x WBA; good cause restricted to that connected with work, attributable to the employer |
| Misconduct, Benefits Postponed for | week of discharge +5 |
| Refusal of Suitable Work, Benefits Postponed for | week of refusal +3 |
| Labor Dispute, Benefits Postponed | During stoppage of work due to dispute |
| Exhaustions (as % of first payments): | |
| 1973 | 35.5% |
| 1974 | 41.2% |
| 1975 | 43.4% |
| 1976 | 49.6% |
| 1977 | 43.6% |
| 1978 | 40.7% |
| Years (all or part) Extended Benefits Paid | 1971 to present |

IN NEW JERSEY, OKLAHOMA AND RHODE ISLAND - 1979

| OKLAHOMA | RHODE ISLAND |
|---|---|
| 1½×HQW; not less than $1,000 in BP; or $6,000 in BP | 20 weeks employment at $53 or more; or $3,180 in BP |
| One | One; may be suspended by Governor following disaster |
| 1/25 of HQW up to 62% of State AWW | 55% of claimant's AWW up to 60% of State AWW |
| None | $5 per dependent up to $20 |
| $16<br>$132 | $26-31<br>$120-140 |
| 58.4% | 60.1-71.1% |
| 1/3 BP wages<br>20+<br>26 | 3/5 weeks of employment<br>12<br>26 |
| Duration of unemployment +10 × WBA; good cause restricted to that connected with work, attributable to the employer | Duration of unemployment +4 weeks of work with earnings of 20 x min. hourly wage in each |
| Duration of unemployment +10 x WBA | Duration of unemployment +20 x min. hourly wage in each of 4 weeks |
| Duration of unemployment +10 x WBA | Duration of unemploym't +20 x min. hourly wage in each of 4 wks |
| During stoppage of work due to dispute; excluded if lockout | 6 weeks + waiting week |
| 40.6 %<br>39.0 %<br>47.4 %<br>46.8 %<br>41.9 %<br>30.6 % | 35.3 %<br>37.5 %<br>44.7 %<br>42.3 %<br>37.6 %<br>30.4 % |
| 1972; 1975 to 01/28/78 | 1971 to present |

| | NEW JERSEY | OKLAHOMA | RHODE ISLAND |
|---|---|---|---|
| COVERAGE | $1,000 payroll in any year | One worker in 20 weeks | One worker any time |
| FINANCING<br>Type of Experience Rating System | Reserve Ratio | Benefit Wage Ratio | Reserve Ratio |
| Tax Rates - 1979: Min. | 1.2% Tax Bs: $6,600 | 0.4% Tax Bs: $6,000 | 2.2% Tax Bs: $6,000 |
| Max. | 6.2% | 4.7% | 4.0% |
| Avg. | 3.9% | 2.0% | 2.9% |
| New Empl. | 3.4% | 3.1% | 2.7% |
| Emp'er Temp. Dis. Ins. | 0.4-1.1% | None | None |
| Emp'ee Cont. | 0.5% UI; 0.5% TDI | None | 1.5% TDI |
| 10 Yr. Aver. Benefit Cost Rate as % of Total Wages 1968-77 | 2.08% | 0.74% | 2.34% |
| Trust Fund Balance: | | | |
| Sept. 30, 1978 | $219.0 million | $102.6 million | $15.1 million |
| Mo's of FY78 outlays | 5.1 months | 36.5 months | 2.6 months |
| June 30, 1979 | $164.4 million | $149.3 million | $13.0 million |
| Loan Balance: | | | |
| July 31, 1979 | $694.9 million | None | $102.9 (0.3% reduced tax credit 1979) |

HQW = High Quarter Wage
BP = Base Period
WBA = Weekly Benefit Amount
AWW = Average Weekly Wage

NCUC 08/79

## STATE SOLVENCY PROVISIONS

**NEW JERSEY**
Triggers on highest rate schedule when the State fund balance is less than 2.5% of annual payroll; minimum rate, 1.2%; maximum rate, 6.2%.

**OKLAHOMA**
Triggers on highest rate schedule when the State fund balance is less than 2 times the average amount of benefits paid in the last 5 years; minimum rate, 0.5%; maximum rate, 5.2%.

**RHODE ISLAND**
Triggers on highest rate schedule when the State fund balance is less than 4.5% of annual payroll (or 3 year average, if lesser); minimum rate, 2.2%; maximum rate, 4.0 %.

**IN SUMMARY:**

23 States trigger on highest rate schedules when the State fund balance is less than a prescribed percentage of annual payroll.

10 States trigger on highest rate schedules when the State fund bal. is less than prescribed dollar amount. (One State triggers highest rate schedule when the fund balance is less than a prescribed dollar amount and less than a percent of payrolls).

4 States trigger on highest rate schedules when the State fund balance is less than a prescribed multiple of benefits paid during a preceding period.

3 States trigger on highest rate schedules when the State fund balance is less than a prescribed multiple of the benefit cost rate.

9 States trigger on highest rate schedule pursuant to individual formulas.

In addition, 18 States suspend all reduced rates (rates below the standard rate, usually 2.7%) under certain fund conditions.

# INTERSTATE CLAIMS AND APPEALS PROCEDURE

1.
Claimant with qualifying wages from LIABLE STATE goes to local office in AGENT STATE

2.
local office in AGENT STATE accepts claim; obtains wage & separation information from claimant; forwards it to LIABLE STATE

3.
LIABLE STATE determines claimant's eligibility, amount and duration of benefits. Mails copy of determination to AGENT STATE and claimant

4a
Claimant is eligible. LIABLE STATE mails checks to him. He visits AGENT STATE's office to fulfill availability and job search requirements; AGENT STATE reports on these to LIABLE STATE

OR

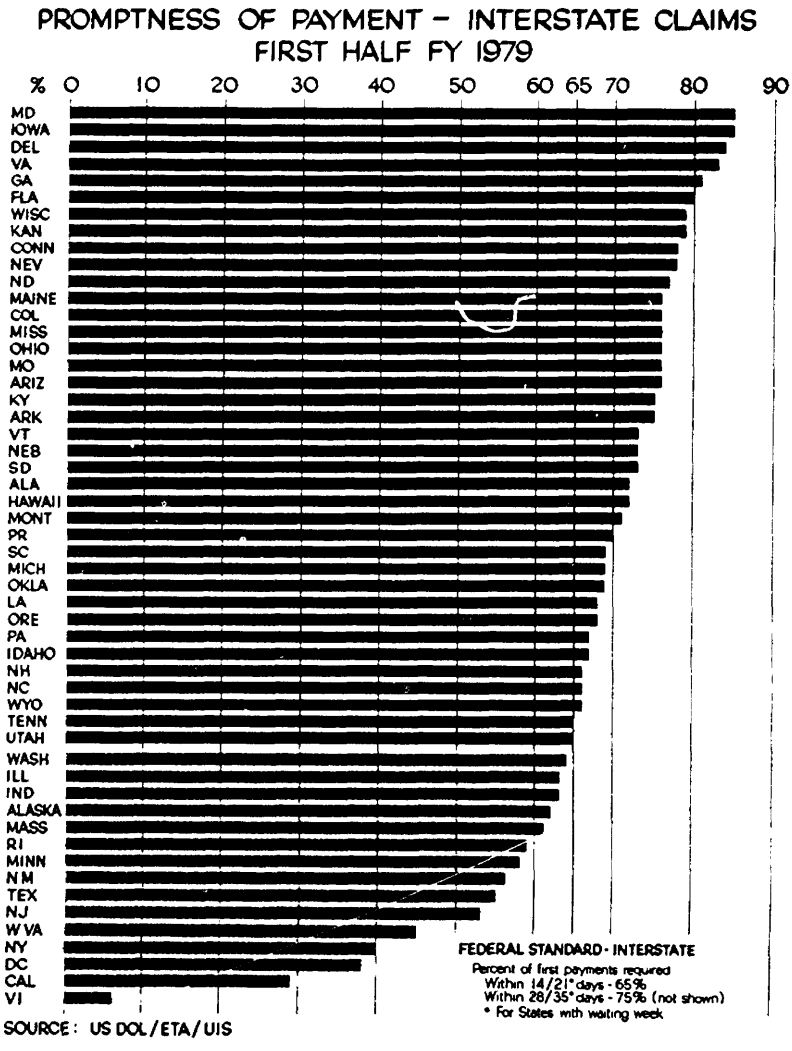
4b
Claimant is disqualified, decides to appeal

5.
AGENT STATE holds hearings to take claimant's testimony; forwards transcript or tape to LIABLE STATE. LIABLE STATE holds hearing to take employer evidence

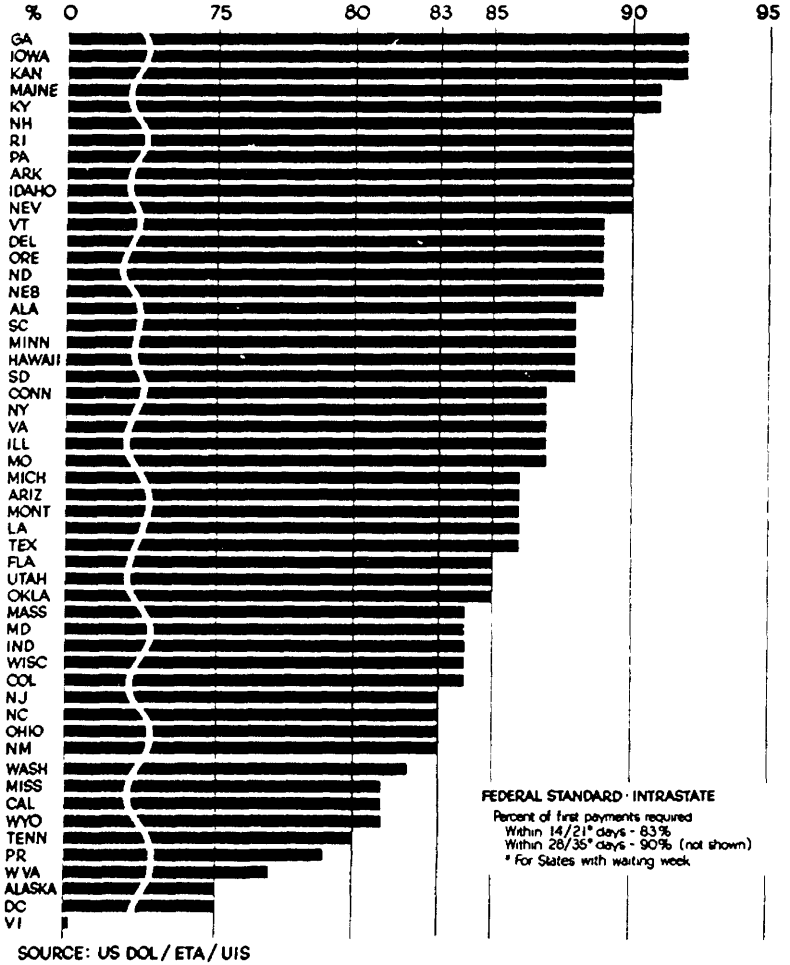
6.
Referee in LIABLE STATE examines evidence from both hearings and makes a determination. Copies are sent to AGENT STATE and claimant

7a
Claimant is eligible for benefits (See 4a)

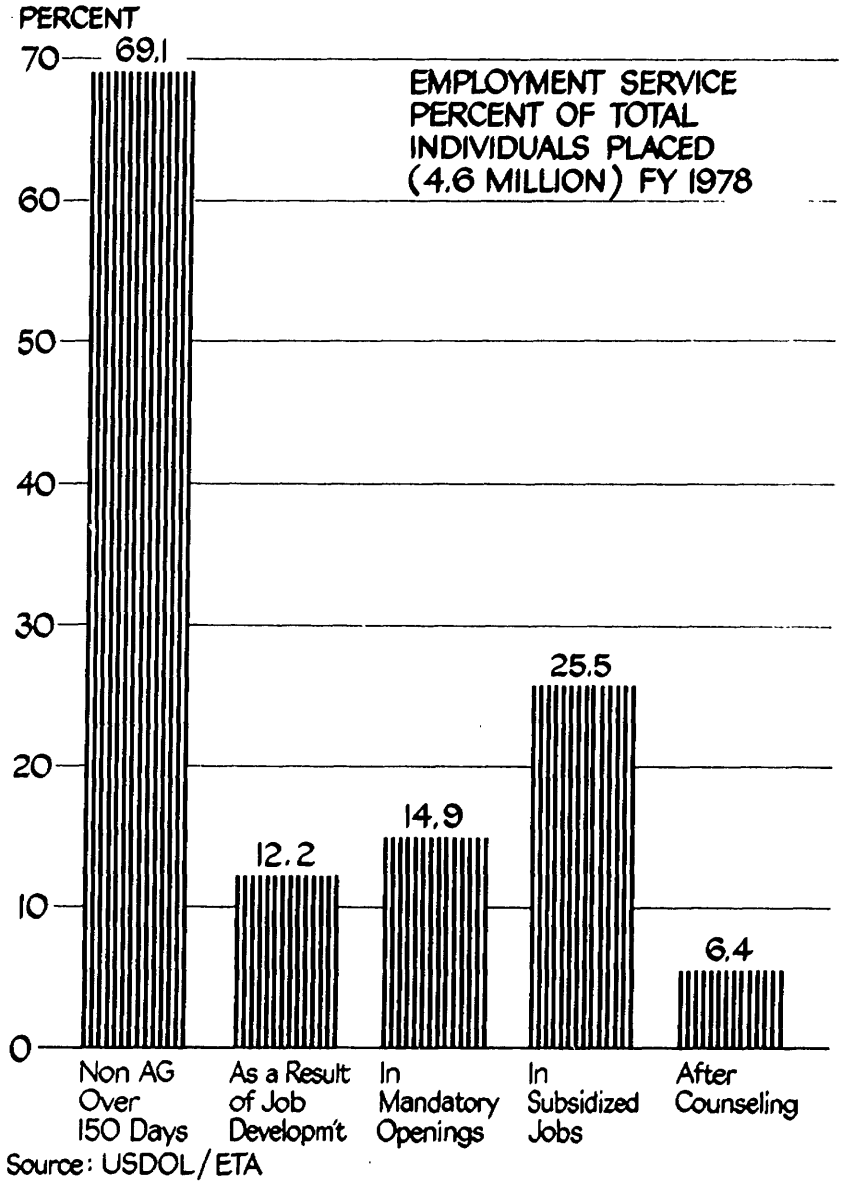
OR 7b
Claimant is ineligible for benefits (See 4b)


PROMPTNESS OF PAYMENT – INTERSTATE CLAIMS
FIRST HALF FY 1979
% 0 10 20 30 40 50 60 65 70 80 90
MD
IOWA
DEL
VA
GA
FLA
WISC
KAN
CONN
NEV
ND
MAINE
COL
MISS
OHIO
MO
ARIZ
KY
ARK
VT
NEB
SD
ALA
HAWAII
MONT
PR
SC
MICH
OKLA
LA
ORE
PA
IDAHO
NH
NC
WYO
TENN
UTAH
WASH
ILL
IND
ALASKA
MASS
RI
MINN
N M
TEX
NJ
W VA
NY
DC
CAL
VI
FEDERAL STANDARD - INTERSTATE
Percent of first payments required
Within 14/21* days - 65%
Within 28/35* days - 75% (not shown)
* For States with waiting week
SOURCE: US DOL/ETA/UIS

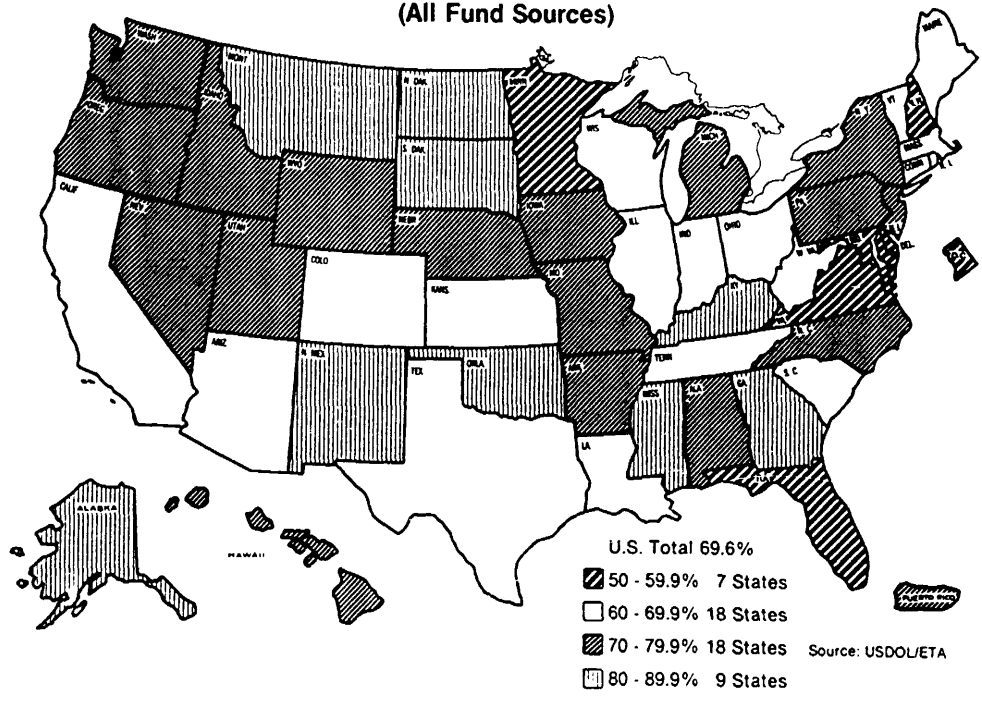
# PROMPTNESS OF PAYMENT - INTRASTATE CLAIMS
## FIRST HALF FY 1979



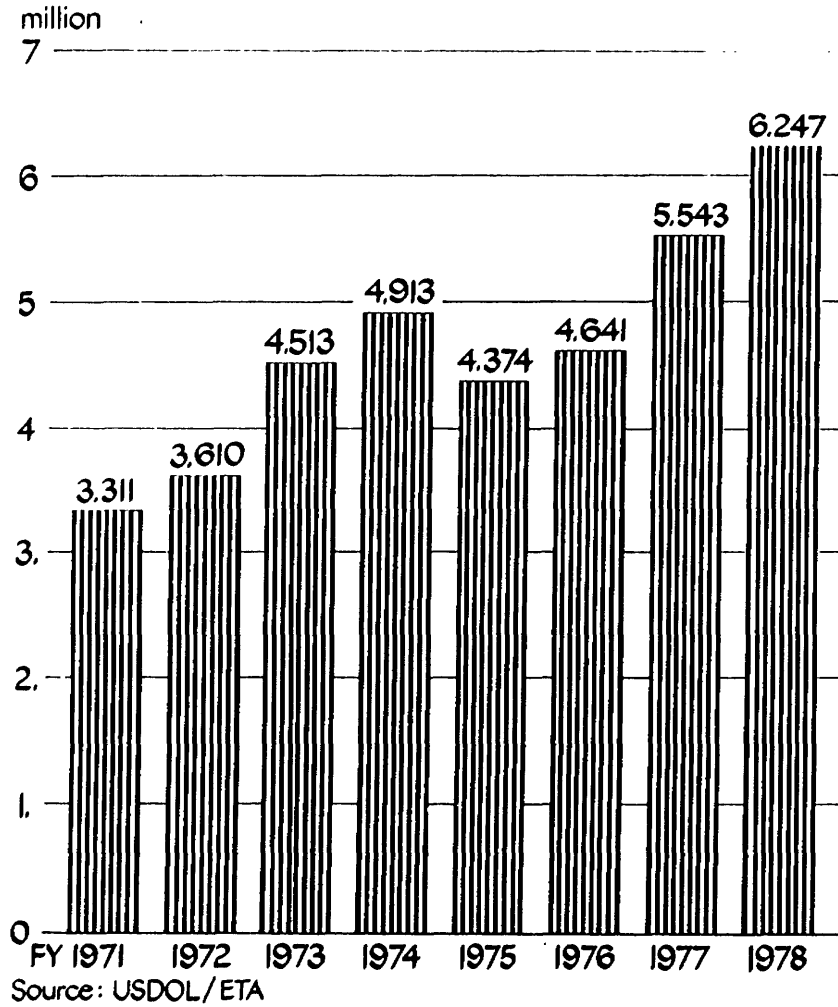

SOURCE: US DOL / ETA / UIS


PERCENT
70
60
50
40
30
20
10
0
69.1
12.2
14.9
25.5
6.4
EMPLOYMENT SERVICE
PERCENT OF TOTAL
INDIVIDUALS PLACED
(4.6 MILLION) FY 1978
Non AG Over 150 Days
As a Result of Job Developm't
In Mandatory Openings
In Subsidized Jobs
After Counseling
Source: USDOL/ETA

## EMPLOYMENT SERVICE
## FILL RATES FOR JOB OPENINGS RECEIVED
## FIRST HALF FY 1978
## (All Fund Sources)



# EMPLOYMENT SERVICE
# NON-AGRICULTURAL PLACEMENT TRANSACTIONS
# FY 1971 - 78

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Senator BOREN. Our next witness this morning is Mr. Martin Taylor, president-elect of the Interstate Conference of Employment Security Agencies and director of the Michigan Employment Security Commission.

Mr. Taylor, we are very glad to have you here this morning, and we welcome you, either to present your prepared statement or, if you should prefer, you may summarize it, hit its highlights, and we will include it all in the record.

STATEMENT OF MARTIN TAYLOR, PRESIDENT-ELECT, INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES AND DIRECTOR, MICHIGAN EMPLOYMENT SECURITY COMMISSION, ACCOMPANIED BY BILL HEARTWELL, EXECUTIVE VICE PRESIDENT, INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES; CHERYL TEMPLEMAN, UI; AND SANDI BATES, RESEARCH DIRECTOR

Mr. TAYLOR. Thank you, Mr. Chairman. I will summarize my written statement which has been provided to you.

My name is Martin Taylor, and I am the director of the Michigan Employment Security Commission. I am president-elect of the Interstate Conference of Employment Security Agencies.

With me, from our Washington office, on my right, is Bill Heartwell, executive vice president of the association; on the extreme left, Cheryl Templeman, in charge of UI matters; and Sandi Bates, on my immediate left, who is our research director.

I am delighted to be able to be here with you today to discuss the National Commission on Unemployment compensation and H.R. 3920, extending the life of this body, which your subcommittee is now considering.

As you know, the Interstate Conference of Employment Security Agencies is the representative of the State employment security agencies here in Washington. Our membership includes the 50 States, the District of Columbia, the Virgin Islands, and Puerto Rico. We are committed to the continuing improvement of the unemployment insurance program, the employment service and the many programs that the State agencies operate. We have supported the efforts of the National Commission on Unemployment Compensation to assist us, and the Nation, by studying many of the important issues which exist in our system of providing benefits to those eligible persons who are temporarily out of work.

It is without reservation that I am pleased to state today that we continue to support the work of the National Commission by requesting that the subcommittee consider this legislation favorably and offer their support for its swift passage.

H.R. 3920 contains two major sections. The first provisions focus on the compensation of the Commissioners, the exemption of the Commission from the requirements of the Federal Reports Act and OMB clearance procedures, and the others change the dates for filing the interim and final reports, thereby extending the life of the Commission by 1 year.

We agree that the Commissioners should be compensated for their per diem expenses during the periods when they are meeting and traveling to their meetings. One of the most important aspects of the Commission's work has been to meet in many locations

throughout the country, thus affording many individuals an opportunity to meet with them who would otherwise be unable to do so. We think that this is commendable and support the provision.

In addition, we also support the exemption of the Commission from the Federal Reports Act and the OMB clearance procedures. We concur with the House Committee on Ways and Means, who point out that the Commission is a temporary body, without executive authority. It is, indeed, cumbersome to require the Commission to obtain clearances whenever they need to send information or inquiries out to the State employment agencies or other organizations which will provide them with needed information and data.

We are most concerned that the life of the National Commission be extended. We believe that there are many reasons to support this extension, not the least of which is the fact that there were unavoidable delays in the formation of the Commission and the appointment of its membership after the passage of Public Law 94-566.

More importantly though, there are many fine studies, currently underway, which are reviewing many complex aspects of the unemployment insurance program in our country. These studies, when completed, will form a large body of information of great value to you, the Members of Congress, to us, the administrators of the unemployment insurance program, and we believe, to the American public.

We have no doubt that all of us want to know how this 40-year-old system has measured up over its history. We believe that the findings of the Commission will show that, while there is room for improvement, the unemployment insurance system in the United States has provided the citizens of our Nation with a soundly administered, reasonable, and cost-effective insurance against the involuntary loss of their employment.

We believe that it is essential that the Commission have the opportunity to continue their work for another year. This extension of time will provide adequate opportunity for the completion of current projects, review of the findings by the Commission, and for a complete and thorough set of recommendations for the improvement of the unemployment insurance program.

During the months the Commission has been meeting, the members of the Interstate Conference of Employment Security Agencies have had the opportunity to participate in each of the meetings. Those of us charged with the responsibility of operating the unemployment insurance programs in each State are particularly proud of our contributions to the deliberations of the National Commission.

We commend them on their continued support of our work with them. We are pleased to report to you that beyond the documentation of the operation of the current system, we have been able to offer many new and innovative suggestions which will improve the system.

For example, one of the issues of major concern to all of us is the financing for the State trust funds. During our meetings with the Commission, we have shown how the system has managed through many minor and major swings in the economy, also documenting

the severe impact of the 1974-75 recession on the unemployment insurance system.

ICESA is proud to have offered to the Commission a plan for reinsuring the State trust funds during or after a severe unemployment crisis such as the one we experienced during 1974 and 1975. Many other witnesses before the Commission have also presented their proposals for methods by which the State trust funds could be reinsured during periods of catastrophic unemployment.

These many proposals are the product of some of the best thinkers in this country and are currently before the Commission for review. We hope to see the Commission have the chance to continue their work and offer their recommendations on a system of reinsurance which is based on responsible fiscal policy.

The Commission has discussed with us the significance of insuring that both the benefit and administrative financing of the unemployment insurance program are sound. And, in fact, the Commission has asked us to conduct a major study of the administrative financing of the unemployment insurance system and the employment service which provides the work test to claimants and employment to jobseekers.

In addition, we are examining other aspects of administrative financing, including the costs of automating the unemployment benefit programs in the States. We have welcomed this challenge and have commenced the study as requested. With congressional support for H.R. 3920, we can look forward to presenting our findings to the Commission during December and the months thereafter.

There are many, many other equally valuable studies which also will provide us with important information. For example, just underway, there is a study of the frequency of overpayments of benefits to claimants, and an analysis of methods which would reduce the occurrence of such overpayments.

Additionally, there are studies which will examine the impact of the duration of benefit payments, the adequacy of weekly benefit amounts, and alternatives which are available to mandated standards for the system. We cannot stress enough the importance of this type of examination and analysis of this program and of allowing adequate opportunity for this work to continue.

The second major provision of H.R. 3920 would extend the current exclusion from coverage of services performed by nonresident, alien farmworkers for an additional 2 years. Although ICESA opposes exclusions from coverage, as a part of our conference policy, we have also supported the notion that the National Commission should have the opportunity to review any measures affecting the unemployment insurance system prior to implementation.

Therefore, the continued extension will provide the additional time to more thoroughly review the impact of assessing the employers of short term, contract farmworkers FUTA tax.

In conclusion, we fully support H.R. 3920 and thank you for this time to share our views with you. We will be happy to answer any questions that you may have.

Senator BOREN. Thank you very much, Mr. Taylor. We appreciate your comments, and I gather from what you have said that you do feel that those who are administering the programs at the State

level have had adequate input and opportunity for input at the Commission. Is that correct?

Mr. TAYLOR. Yes, sir. I think that is very, very clear.

All of the States, individually or through the association, have had the opportunity.

Senator BOREN. I know that there is a joint meeting of the Commission with the State association planned. If we needed to proceed ahead at an earlier time, I would gather that the State officials and the members of your association would be willing to share, at least informally, their views with the Commission earlier?

Mr. TAYLOR. Absolutely. At any time that that was called upon. We stand continuously ready.

Obviously, this whole area is very critical to us as being responsible in each individual State for administering the program.

Senator BOREN. You mentioned the delay in the Commission's starting its work. How long was that delay, as a matter of practical effect?

Mr. TAYLOR. As I am informed, it was about 7 months.

Senator BOREN. Really, the year's extension, to some degree is reflecting almost a year of delay in terms of getting off the ground, through appointments and so on?

Mr. TAYLOR. That is correct, Mr. Chairman.

Senator BOREN. Thank you very much.

Senator DOLE. I appreciate your testimony.

Mr. TAYLOR. Thank you very much.

Senator BOREN. Thank you.

Our next witness will be Mr. Julius Kubier, and he will testify on behalf of the Associated Industries of Oklahoma and also he will represent the National Association of Manufacturers.

I might say it is a pleasure to welcome him here. He was of immense help to me and helped to draft legislative changes in the proposals in the unemployment compensation system in the State of Oklahoma, and we welcome you to the committee.

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

Mr. KUBIER. Thank you, Mr. Chairman. It is a pleasure to be here. I am Julius Kubier, president of the Associated Industries of Oklahoma.

We were early supporters of a national commission to study unemployment compensation, particularly from a financial perspective in the wake of widespread system bankruptcies.

We have several concerns relative to the existing national commission. These concerns should be considered carefully in the course of making your decision on the extension.

Obstacles appear to exist to meaningful employer input. These barriers to participation have seriously affected the credibility of the Commission.

An examination of the Commission's areas of inquiry, as expressed in the Federal Register of July 13, raises more confusion than enlightenment.

Several of the more essential elements of unemployment compensation, such as experience rating, appear to be the focal point for erosion instead of enhancement.

The Commission does not appear to have charted a well-balanced course, and has, to a far too great degree, ignored the essential questions of financing. It has focused on benefit expansion with little or no thought given to cost savings.

We believe the committee must consider three options: One, allow the Commission to expire and transfer the remaining work to the Advisory Council on Unemployment Compensation; two, extend the Commission with explicit instructions and direction from the Congress; or three, grant a simple extension and channel research on the many aspects of financing and cost through other congressional resources.

Senator, this is a summary of the statement that we have filed and I stand, in the interests of time, ready to answer questions, and I appreciate the opportunity to appear not only for the National Association of Manufacturers and Associated Industries, but I have been instructed that the State Chamber of Commerce in Oklahoma and the Manufacturers Association would like to be specifically named as participating in this testimony.

Senator BOREN. I appreciate that very much. I would like to go back.

You said that an examination of the Commission's areas of inquiry is expressed in the Federal Register, July 13. Could you be specific about that?

I gather that you feel that that is leading the Commission more in the direction of increased benefits, that sort of thing, which I very strongly—as I said a moment ago—do not regard as reform as something that ends up costing the taxpayers more money.

I think that that is not a reform. That is something that is a movement in the wrong direction.

What do you mean by this reference to the Commission's area of inquiry as expressed in the July 13 statement?

Mr. KUBIER. Let's just take a couple off the top, if I remember.

The No. 1 item that they had out of the 20, suggested 26 weeks, every State suggests 26 weeks of benefit.

I do not know if that is uniform, maximum, or what. It is kind of incomplete.

The waiting period should be no longer than 1 week. Does that imply that there should be no waiting week? I am not sure what that is.

Senator BOREN. Half the States have no waiting period. That could be taken either way, that you extend a waiting period to those who do not have it.

Mr. KUBIER. Yes. I am not sure which they have in mind.

Take the area of increasing the taxable base for Federal tax purposes. I am not sure what they have in mind, but I think most States would run, like Oklahoma, where better than 80 percent of the employers hire nine people or less.

Perhaps we need a separation of the base and let the States pick their own tax base.

If you go up to $8,000, and you have a recession, the higher tax limits are going to apply in any States where the funds are going down. So the buy gets a double whammy.

As I look just at the figures based on taxable wages and average rates for the first quarter of 1978 in Oklahoma, going from $6,000 to $10,000, assuming everything else remained the same on those small employers, you are talking about a 30-percent tax increase.

It gets worse. We are looking at this thing far too often if we are all big companies, but the fact that most taxpayers are small employers. The total cost impact has not been evaluated on the employer community at all here.

Senator BOREN. Many of these also, of course—we have had mentioned to this committee before that that is where the most severe problem in the economy is. We have had the small business share of sales in the country shrinking significantly over the past 20 years.

Looking at these charts, giving special unemployment compensation for certain categories of people, if I had special sympathy for anybody, it is those who have been forced out of small business because primarily the hand of Government.

I gather that the recent action of the Commission in saying that they would specifically lend their help to consideration of the proposals made in the Finance Committee staff booklet would be an encouraging sign to you.

Mr. KUBIER. It would be helpful if you do not have a balanced program; it cannot work well, as you discovered in Oklahoma.

Senator BOREN. Senator Dole?

Senator DOLE. Do you feel that employers are adequately represented on the Commission?

Mr. KUBIER. My observation has been they are not. It is not a balanced approach. I have had complaints from a number of areas by employers where hearings had been held who felt they had not been given a fair shake in getting in to testify, that it has been made difficult, that they did not have sufficient advance knowledge of the particular area of inquiry.

It would be like trying to answer those 24 things in the Federal Register, not knowing where you are headed.

You have to scatter your shot to the extent you cannot do a definitive, objective job.

Senator DOLE. I think that in the full text there is some specific mention of lack or resistance to employer input by the Commission. I assume that may be the employer's view.

It is difficult in any hearing. Some may leave this hearing wondering whether they had enough input—maybe too much—but, in any event, I can appreciate the problems that the Commission may have in trying to measure how much time or how much stress or how much focus to put on any issue or point of view.

Mr. KUBIER. My point on that, Senator, was that the employer community had that perception. That does affect the credibility for whatever recommendations, regardless of how well balanced they are when they are finally made.

If the one side or the other perceives to have been treated unfairly, the credibility then becomes a question of what can be done. Even if everything has been right up on top and has been

totally fair, if one side or the other perceives themselves to have been treated unfairly—it is the same old story when you try a lawsuit.

Senator DOLE. I think it is a very sensitive, difficult balancing act, as you have indicated, and I know that there may be some here wondering why there are not, more Senators here this morning. This is very important. I assume they are off on some other committee hearing.

I think Mr. Cohen has indicated his continuing fairness in trying to make certain that there is total input from all sides without bias on his part. If we are convinced that the business input has been downplayed or excluded, or there has been resistance to input from the employers, then I think the report itself will lose a lot of impact.

If, on the other hand, there is a feeling that it may not come down on your side, but if you have the input and been able to testify, you have not been badgered, that is a different story.

Of course, we badger people, too. That is not illegal. It is tough.

I understand the point you make. I am certain that those who represent labor have the same feeling at times, that they may be getting the short end of the stick.

I appreciate your testimony.

Do you think we are going to save any money when this is all over? Is that very optimistic?

Mr. KUBIER. I would say that is optimistic. It is possible, though, because we have done so in Oklahoma and I know other States have recently rewritten their law, and the indications are that the cost-saving effectiveness will eventually allow a reduction in tax rates, and they complain more about rates than they do about the wage base at times. But the two are always interrelated.

Senator BOREN. Perhaps a contribution can be made by some of the actions that have been taken by States, shared by others, particularly those who have developed the large deficits.

Speaking as one member of the committee, and one Member of the Senate, I am not going to be sympathetic at all to any kind of bearing of increased costs by the Federal Government unless as a condition precedent there have been attempts at the State level to adopt some of the things that have worked clearly in other States.

I would think that would be one of the great contributions that the State Conference of State Officials could make, is in sharing some of the savings. If there are to be increased Federal mandates, I would hope in the area of mandating savings steps that must be taken before additional Federal assistance to the programs will be forthcoming.

Are there any specific items that you would want added to the agenda that are not mentioned here in the staff booklet, any potential other areas of savings that perhaps have been overlooked at this point, that should be added to the agenda for consideration?

Mr. KUBIER. It is very difficult. There is an area that is barely mentioned, that is the seek-work provisions, and you get into that. The Chairman talked about a controversial area; this is probably one of the most controversial areas in any unemployment compensation law.

At what stage do you eliminate a shopping period or require an individual to take work?

Senator BOREN. This is something that might be—I am sorry. I do not recall whether that is specifically mentioned here.

For example, you might, during the first so many weeks of unemployment, require that suitable employment would have to come very close to being the same compensation. The longer the person has been unemployed, the suitable employment might be a lesser compensation.

Is that the kind of thing you are talking about?

Mr. KUBIER. Yes, or if you have moved yourself so many miles away—.—

Senator BOREN. You may have to be required to move further to take a job, the longer you have been unemployed. But that is the kind of thing you are talking about?

Mr. KUBIER. Yes.

Senator BOREN. Thank you very much. I appreciate your testimony and I can assure you that there are many who feel that we do want the Commission to focus on areas of potential savings and to give that priority in the future.

Mr. KUBIER. Senator, any way that we can help this committee we would stand ready, both in our own association and with the National Association of Manufacturers to render whatever help we can.

Senator BOREN. Thank you very much.

[The prepared statement of Mr. Kubier follows:]

STATEMENT OF JULIUS KUBIER, ON BEHALF OF THE ASSOCIATED INDUSTRIES OF OKLAHOMA AND THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman, Members of the Subcommittee. My name is Julius Kubier, President of the Associated Industries of Oklahoma. I would like to thank the Subcommittee for providing me with the opportunity to testify on H.R. 3920, legislation to extend the National Commission on Unemployment Compensation. Today, I am representing not only the Associated Industries of Oklahoma, which is a member of the National Industrial Council, but also the National Association of Manufacturers. The NAM represents approximately 12,500 employers, 80 percent of which are small businesses; the NIC, which is affiliated with NAM, represents an additional 158,000 businesses.

Since the Federal-State Unemployment Compensation system is financed solely by taxes on employers, with few exceptions, our interest and concern over any developments impacting upon the system is intense. In fact, our positions have frequently been expressed before the Congress, the Administration, and, on one occasion, the National Commission.

NAM supported the establishment of a national commission in testimony before the House Ways and Means Committee on July 23, 1975. At that time, we stated, "Improvement of the program has too long been in the form of patchwork, myopic responses to changing conditions.

Unemployment compensation is a complex, interrelated system and no one element of the system can be treated without affecting others. Each modification of the structure implies diverse direct effects as well as various ramifications on other aspects of the system. It is hoped that a commission would provide the perspective that, especially of late, has been lacking."

At the same time we urged the establishment of a national commission, we also urged that the commission focus its attention on the fundamental problems underlying the unemployment compensation system. For instance, what are the goals of the program? Have they subtly changed over the years to a point where the program goes beyond the goal of providing temporary partial income maintenance to people who, through no fault of their own, become unemployed?

We urged that attention be paid not only to the adequacy and duration of benefits but also to the abuses within the program, to the funding alternatives available—particularly during times of protracted unemployment. The bottom line of our

concerns was the long-range fiscal health of a balanced, responsive Federal-State unemployment compensation system, especially in light of the financial instability that characterized the unemployment compensation systems in many States at the time the commission was established and which still exists today.

Our reason for appearing here today is to share some of our concerns with you as you deliberate over whether or not to extend the Commission. We need to explore whether the Commission has contributed meaningfully to our overall understanding of the problems of the system * * * whether the Commission has grappled with the truly complicated questions of financing, the interrelationship with other benefit programs, the current Federal-State relationship * * * whether the Commission has devoted the money expended to date on substantive research that can lead to meaningful, well-reasoned recommendations * * * whether the Commission has sought cost-effective solutions * * * whether the Commission's future program, as expressed in the Federal Register of July 13th, is adequate and will lead us any closer to the level of understanding necessary for future considerations.

When dealing with these significant questions, the best place to begin is with our own experience with the National Commission—with the experience of many of the employers throughout the country. Unfortunately, we cannot report that they have been positive. We were unprepared for the resistance to employer input. In Florida, for instance, employers as a group reported great difficulty in securing time to testify at the hastily called hearing. In Michigan, unfortunate "exchanges of words" took place between some Commission members and representatives of the employing community. Employers have expressed concern that they were never notified of the subject matter being considered at specific hearings, and thus had to testify in the most general of terms. Others have expressed concern to our associations that the hearings were held in comparatively remote locations. Still others have expressed concern, and often confusion, because they have not been allowed to answer questions but have instead been subjected to a philosophical and ideological treatise by specific members of the Commission.

These might well be isolated instances. They might be reflective more of initial organizational difficulties than of true attitudes on the part of Commission members. The reasons, however, are not important. What is important is our sincere concern that these occurrences, however unintentional, have led to a diminution, if not a total loss, of the commission's credibility within the employer community. We question whether a Commission that at times has not even given the appearance of exploring the deeper issues in a more or less academic, impartial fashion will be able to positively affect any future directions we might take in the area of unemployment compensation. This Subcommittee should certainly focus on methods of restoring basic credibility to the Commission.

We are concerned as well about the ability of the Commission to consider the areas enumerated by the Congress. A review of the twelve basics indicates that much remains to be done, and we would be extremely interested in knowing whether the more substantive issues, including the basic structure of the program, can be completed in the time allowed under the proposed extension.

In this context, we might well begin with the 24 basic topics for Commission consideration enumerated in the Federal Register of July 13th. We are not certain whether these are all the issues the Commission plans to consider if granted an extension or if still others will be added to the agenda. If the former is true, are these areas adequate. If the latter is the case, what other topics will be considered? As matters currently stand, the employer community can exude little enthusiasm for the broad subject of "Intent to Hold Hearings on the Subject of the Basic Structure of a Federal-State Unemployment Insurance Program and Related Supporting Provisions".

Our concerns in this area are multiple. Admittedly, a significant number of points raised are relatively non-controversial in that they parallel existing features in most, if not all, State programs. These include numbers 1, 2, 3, 6C and 10A. The employer community would have little difficulty commenting on these issues.

Others, however, pose a real problem for those of us wishing to have meaningful input into any future recommendations which could impact upon us. For instance, what is to be considered as a period of disqualification? "One to — weeks" certainly leaves question as to what is being considered (11). Similarly, what types of solvency requirements and replenishment formulas will be considered (15)? What is the definition of "weeks of employment", and why, when only one State (New York) uses such a system, are we considering a "weeks of employment in a base period" of 104 weeks criteria (17)? When considering alternatives to eligibility requirements for the duration of benefits, 19 B is certainly the most intriguing. Each of these questions are quite important to the overall issue of the Federal-State program, yet

each provision is incomplete. Consequently, it is difficult at best to offer meaningful comment without engaging in fruitless second-guessing of intent or direction.

Still other provisions are totally incomprehensible and were perhaps offered simply as mind-teasers. For instance, why would "an individual who is disqualified without good cause * * * be required to obtain employment for two weeks before being eligible for benefits" (12)? What is, and who provides, "representation in disputed claims" (23)?

Many of the other issues enumerated at a very late date by the Commission would result in radical departures from existing practices. One of the most important elements is experience rating. Under the various State experience rating systems, the employer's experience with unemployment is factored into the State taxation formula, and on this basis the employer's tax rate is computed. Experience rating thus serves as an equitable method of cost allocation, an effective incentive toward job stabilization, and an incentive for employers to carefully monitor the system, thereby providing cost control and a checks and balances system against abuse. It is particularly useful in that it can widen the differential between minimum and maximum tax rates. While the Commission will be considering "permitting" experience rating, there is apparently no thought to expanding this tool as has been recommended by many employers. This is one of the greatest strengths of the program, and we should certainly consider enhancing it. Instead, the Commission will be considering steps that would almost, if not totally, eliminate a basic stabilizing element in the system.

A number of other specifics within the 24 provisions cause us concern because they appear to indicate the direction which is being pursued. However, we will reserve these comments for a later time. There are several other points which must predominate this discussion.

These focus on costs. What will the cost consequences be if the consideration of raising the wage base to $8,000 in 1981, $9,000 in 1982, and $10,000 in 1983 becomes a reality? We have a cost estimate for the State of Oklahoma which we wish to share with this Subcommittee (Appendix), and we feel strongly that all States should be conscious of the potential ramifications. What would the costs be of establishing a weekly unemployment insurance rate averaging 60 percent of average weekly earnings for the first 26 weeks? These are important considerations in any review, yet to the best of our knowledge, cost evaluations have not been developed by the National Commission.

Perhaps the major concern we have over the conduct of the National Commission is its apparent lack of "issue balance". There have been few deliberations, and even fewer votes, on changes which would reduce costs. Instead, the vast majority of areas of consideration address raising more money (whether or not it is needed), liberalizing benefits, and making them easier for people to obtain. While these are important considerations, they are only a part of the overall equation. It is critical that we view unemployment compensation as a total system—which includes efforts to reduce costs whenever possible and reasonable. This is particularly important at this stage in the history of unemployment compensation because 20 State systems have already gone bankrupt.

This Subcommittee has provided us with a list of 11 possible methods of reducing costs and improving the budgetary status of the unemployment compensation program. We feel that each of these deserves consideration. We also believe that these would have been even more appropriate for an independent Commission to develop and review since several of them are strictly within the States' domain. Unfortunately, the Commission did not develop these areas for consideration. We would certainly like to see them add these factors to future considerations if the Commission is indeed extended.

We have attempted to share a few of our thoughts and suggestions with you today. We sincerely hope they will be helpful to you in answering the final question: Should the National Commission on Unemployment Compensation be extended? Our associations believe there are several options which can be considered. These include: (1) allowing the Commission to expire, transferring the bulk of the remaining work to the Advisory Council on Unemployment Compensation. This Council is already well-established and covers many of the same issues. It even shares some members in common with the Commission; (2) extending the life of the Commission, but providing greater direction by the Congress as to the areas to be explored, including those areas that can recognize cost savings; and (3) granting a simple extension of the Commission, investigating the intricate and essential funding questions through other Congressional channels.

Much work remains to be done in the area of unemployeement compensation, as the on-going activity of the Federal Advisory Council and many State groups indicates. We sincerely hope that whatever option or combination thereof you might

select that you will insure a balanced study of those elements of the unemployment compensation system which are essential to its financial stability and continued ability to meet the needs of our citizens who are truly unemployed through no fault of their own

Again, we thank you for this opportunity to testify.

APPENDIX.—ESTIMATED TAXABLE WAGES AND CONTRIBUTIONS AT SELECTED TAXABLE WAGE LIMITS—OKLAHOMA; 1ST QUARTER 1978

| Employer size | Computed average tax rate | Taxable wages at $8,000 [1] | Contributions due at $8,000 [3] | Taxable wages at $10,000 [2] | Contributions due at $10,000 [3] |
|---|---|---|---|---|---|
| 0 to 3 | 1.74 | $294,157,825 | $1,638,346 | $105,354,131 | $1,833,162 |
| 4 to 9 | 1.86 | 183,454,815 | 3,412,260 | 205,269,426 | 3,818,011 |
| 10 to 19 | 2.09 | 195,046,740 | 4,076,477 | 218,239,746 | 4,561,211 |
| 20 to 49 | 2.32 | 297,861,989 | 6,910,398 | 333,280,755 | 7,732,114 |
| 50 to 99 | 2.44 | 244,959,193 | 5,977,004 | 274,087,289 | 6,687,730 |
| 100 to 249 | 2.49 | 328,562,582 | 8,181,208 | 367,631,956 | 9,154,036 |
| 250 to 499 | 2.37 | 208,353,836 | 4,937,986 | 233,129,189 | 5,525,162 |
| 500 to 999 | 1.88 | 211,066,038 | 3,968,042 | 236,163,898 | 4,439,881 |
| 1,000 and over | 1.78 | 403,993,114 | 7,191,077 | 452,031,932 | 8,046,168 |
| Total | 2.14 | 2,167,456,132 | 46,383,561 | 2,425,188,322 | 51,899,030 |

[1] 21.1 percent increase
[2] 35.5 percent increase
[3] Assuming tax rate as computed for 1st quarter 1978

FIRST QUARTER—1978, SIZE OF FIRM SUMMARY—OKLAHOMA, EXPERIENCED RATED EMPLOYERS ONLY

| Employee size | Number of employers | January | February | March | Total wages | Taxable wages | Tax due |
|---|---|---|---|---|---|---|---|
| 0 to 3 | 25,110 | 48,571 | 45,745 | 44,700 | 89,281,798 | 77,752,126 | 1,349,520 |
| 4 to 9 | 14,072 | 79,172 | 78,411 | 81,633 | 175,297,708 | 151,490,351 | 2,823,822 |
| 10 to 19 | 5,925 | 77,238 | 76,454 | 79,809 | 184,338,487 | 161,062,543 | 3,666,399 |
| 20 to 49 | 3,885 | 113,173 | 112,841 | 117,102 | 275,552,525 | 245,963,657 | 5,700,886 |
| 50 to 99 | 1,327 | 87,717 | 87,705 | 90,619 | 226,614,453 | 202,278,442 | 4,935,807 |
| 100 to 249 | 699 | 104,327 | 104,745 | 106,605 | 300,141,934 | 271,315,097 | 6,744,203 |
| 250 to 499 | 195 | 66,931 | 65,596 | 66,991 | 190,042,456 | 172,051,062 | 4,077,418 |
| 500 to 999 | 90 | 61,476 | 61,120 | 62,179 | 200,477,543 | 174,290,700 | 3,270,827 |
| 1,000 and over | 50 | 112,426 | 111,732 | 112,063 | 389,320,375 | 333,602,902 | 5,948,510 |
| Total | 51,353 | 751,031 | 744,349 | 761,701 | 2,031,067,279 | 1,789,806,860 | 38,217,392 |

Senator BOREN. Our next witness is Pamela Browning, representing the National Association of Farmworker Organizations, and I believe our next two witnesses will be speaking specifically to the exclusion which was made on the alien farmworkers which was included by the House as a part of the resolution.

Miss Browning, we are very pleased to have you testify.

## STATEMENT OF PAMELA BROWNING, LABOR/IMMIGRATION ADVOCATE, NATIONAL ASSOCIATION OF FARMWORKER ORGANIZATIONS

Ms. BROWNING. Thank you very much.

Mr. Chairman, members of the committee, my name is Pam Browning and I am here today to speak on behalf of the National Association of Farmworker Organizations—NAFO. NAFO is a nonprofit, national coalition of farmworker-governed, community-based organizations committed to protecting the rights of migrant and seasonal farmworkers. The issue which I wish to address today is of particular importance to the workers whom we represent.

Agricultural workers are among the hardest working of this Nation's poor. The severe hardships which they endure due to low wages and harsh working conditions are magnified by the seasonal and unpredictable nature of their work.

USDA data reveals that the average annual income for a migrant worker in 1977, including income from both farm and nonfarmwork, was only $3,761. For the families of farmworkers living on these marginal incomes, unemployment compensation is not a cushion, but an economic necessity, hard earned through long hours of manual labor.

However, unfortunately, the historical reality of discrimination still persists against farmworkers and they are not eligible for unemployment insurance on a basis equal to other workers. While nonagricultural employers must provide unemployment insurance coverage to workers if they pay wages of $1,500 in a given calendar quarter, or if they employ one individual for at least 1 day in each of 20 weeks, agricultural employers need provide coverage only if they pay as much as $20,000 or more in cash to workers in a quarter or if they employ 10 or more workers on 20 different days in 20 different weeks of the calendar year.

This basic inequity in unemployment insurance coverage is exacerbated by many of the procedures and requirements related to establishing eligibility, determining employers—including crew leaders—dealing with interstate employment, establishing wages earned, hours worked and base periods employed, and the economic necessity which requires workers to migrate to find work before they ever receive long overdue unemployment insurance benefits.

However, today, I would like to address myself most specifically to one inequity in the unemployment insurance system which I have not yet mentioned, and which seriously affects farmworkers. Labor performed by aliens admitted to the United States to perform agricultural labor pursuant to section 214(c) and (101)(a)(H) of the Immigration and Naturalization Act, is excluded from the definition of agricultural labor. This exclusion is due to expire December 1979, however, section 4 of H.R. 3920 would extend the expiration date to 1982.

Let me explain this more clearly.

Section 4 of H.R. 3920 provides that employers who import temporary alien agricultural workers under an alien certification program known as the H-2 program, need not pay unemployment insurance tax on the wages paid to these aliens. This special exclusion provides a significant financial savings to employers to hire increasing numbers of aliens rather than U.S. workers. By hiring alien workers, growers are saved approximately 3.4 percent of their total wages, plus the inconvenience of unemployment insurance paperwork.

Unfortunately, the ultimate result of such a preference for foreign laborers is the increasing unemployment of workers in this country. Already, according to BLS statistics, the unemployment rate of U.S. farmworkers ranges from a low of 9 percent in summer months to more than 18 percent in winter. Maintaining the jobs and wages of U.S. workers without the depressant effect created by an influx of large numbers of temporary aliens is vital to the health and survival of farmworker families existing on marginal incomes.

Let me explain a little about the H-2 temporary alien worker program.

While the Immigration and Naturalization Act allows for the importation of temporary alien workers only if U.S. workers are unavailable for work, employers motivated to hire aliens may easily circumvent the law by failing to make good faith efforts to recruit U.S. workers.

Employers prefer to hire temporary alien workers because it provides them with a guaranteed, cheap, intimidated labor force. If a foreign worker complains, he may be sent back home and blacklisted, never to return to the United States again. If a U.S. worker asks for one penny more than the prevailing wage he will not be considered available for work, and a foreign worker may be hired in his place.

In addition to the financial savings created by depressed wages, employers need not pay into the social security or unemployment insurance funds on the wages paid to temporary foreign workers. Thus, the agricultural employer who hires temporary alien workers is insulated from many of the natural demands of the free marketplace and the employment-related responsibilities incurred by all other employers.

Last year approximately 15,000 alien workers were imported under the H-2 program. These workers came from Jamaica to harvest sugarcane in Florida and pick apples in Virginia, West Virginia, New York, and New England. Growers actively discouraged U.S. workers from applying for those jobs.

More than 2,000 U.S. mainland and Puerto Rican workers were registered with the Employment Service for jobs which they never were given, or from which they were harassed by employers and summarily fired so that Jamaicans could be hired in their place.

This year, the Puerto Rican government is refusing to send any workers to the apple harvest, because of the ill treatment that these U.S. citizens suffered at the hands of growers last year. This is extremely unfortunate when we consider that Puerto Rico suffers from an unemployment rate approaching 50 percent.

Unfortunately, employers' attempts to obtain temporary foreign labor have escalated at an alarming rate in the last several years. While a select group of growers have traditionally used foreign labor to pick apples in the east coast harvest, and sugarcane in Florida, within the last several years growers have attempted to obtain temporary alien workers to harvest tomatoes, citrus, peaches, onions, tobacco, pears, and cantaloupes in more than 12 new States.

While exemption of H-2 employers from unemployment insurance tax is not the only factor motivating employers to request H-2 workers, it cannot be denied that it is a significant financial inducement.

Congress anticipated that such an inducement might exist. House Report No. 94-755 explains that the 2-year time limitation placed on the exclusion of aliens from coverage will permit Congress to assess the impact of the exclusion in terms of whether employers are encouraged to hire aliens rather than U.S. citizens as a result of this provision.

In light of the dangerous escalation of H-2 foreign worker requests, there can be no justification for an extension of this exclusion, as proposed in section 4 of H.R. 3920.

As more employers learn of the financial benefits created by this exemption, an increasing number of U.S. workers will be displaced from jobs by alien H-2 workers. These unemployed U.S. workers will place a burden on the unemployment insurance fund, and yet the same employers responsible for this job displacement will not even be required to pay into the unemployment insurance fund.

The rationale offered in support of the exemption provided in section 4 of H.R. 3920 is that employers should not be taxed on behalf of workers who will not receive unemployment insurance benefits. However, this rationale ignores the basic foundation on which the insurance system rests—the need to spread the risk of unemployment over as wide a base as possible so as to minimize the cost to any one employer or industry. Without this sharing, the unemployment insurance fund would collapse.

The Department of Labor also opposes section 4 of H.R. 3920. For your information and for the record, I have enclosed a letter from Secretary Marshall to a member of the House Ways and Means Committee in response to an inquiry. To keep my testimony short, I will only read excerpts from the letter but I urge you to read the whole text.

The Department is opposed to this provision which would continue to exempt employers from paying Federal unemployment taxes on the wages of nonimmigrant alien farmworkers. We believe that this provision is harmful to domestic farmworkers and is inconsistent with the intent of the Immigration and Nationality Act which allows for the admission of temporary workers only when unemployed workers in this country are not available * * *

Anything which offsets the cost of foreign workers, such as the unemployment tax exemption, would tend to make them more attractive to employers. A true test of the labor market requires the good faith and active participation of employers in efforts to find U.S. workers. When an employer has a preference for foreign workers, there is a tendency for unemployed U.S. workers to be overlooked or discouraged.

The Department is concerned over the growing interest of agricultural employers in the importation of foreign workers. In the past 2 years, in addition to requests for foreign workers from the relatively few growers who have used them before, we

have received first-time requests from growers in nine States for a variety of crop activities and serious inquiries from many more.

The Department believes it is important that employers not be given any further incentives to hire foreign workers. When employers try to avoid hiring American workers, unemployment is perpetuated. The cost of unemployment in this country bears heavily not only on the unemployed, but on taxpayers who support the welfare system and on employers who support the unemployment compensation program.

The unemployment tax exemption tends to make foreign labor more attractive and reduces the incentive of employers to recruit and hire domestic labor. The Department is therefore opposed to its continuation.

The adverse effect wage rates (AEWR) is the wage that must be offered by employers who hire H-2 workers. It is set at the prevailing wage and is intended to prevent the depression of wages where H-2 workers are being used.

However, U.S. workers may not ask for one penny more than this wage, or they will be considered unavailable for work and alien workers will be certified in their place. Thus, the H-2 program places an artificial ceiling on farmworkers' wages, and in those States employing H-2 workers, wages have been depressed significantly below wages in non-H-2 employing States.

While the average adverse effect wage rate for all H-2 States is only $3.07 an hour, the average rate for States not using H-2 workers is $3.70. Furthermore, the disparity is increasing. In 1979, wages in non-H-2 States rose 8.2 percent over 1978 while in H-2 States they rose only 6 percent.

I would like to give you some examples to make it more striking for you. These are some of the States that used H-2 workers and these are some of the wages that are offered under the adverse effect wage rate:

Connecticut, $3.02; Maryland, $3.01; Massachusetts, $2.86; New York, $3.06; Virginia, $2.96; West Virginia, $3.10; Maine, $3.01.

I would like to remind you that these are wages paid to seasonal workers. They do not earn these wages all year round.

In the non-H-2 employing States, Alabama—these are where the wages have not yet been depressed because we have not had H-2 workers yet—Alabama, $4.51; Kentucky, $4.61; Louisiana, $4.08; Mississippi, $4.40; Tennessee, $4.27; South Carolina, $4.20; Minnesota, $4.84.

Again, just to clarify some points, alien H-2 workers may not change employers. Their only choice is to return unemployed to their homeland. They will not be given the opportunity to return to the United States again if they complain.

The point here is that H-2 workers make extremely hard working and docile employees, accepting working conditions that would not be considered desirable in this country. If they do complain, they will be sent back home and blacklisted from future employment in the United States.

I want to emphasize again that the Department of Labor has testified that it is difficult to monitor or enforce regulations where growers are not motivated to make good-faith efforts to hire U.S. workers.

Also, in response to some things that have been said by people who would like the continuation of the exemption: In reference to Florida, it should be noted that sugarcane is somewhat distinct from other crops. First of all, the adverse effect wage rate for

sugarcane is not the typical wage rate. It is the highest adverse affect wage rate offered in the country—$3.79. The next highest adverse affect rate is only $3.15 for apples in New Hampshire.

Sugarcane is an extremely difficult and dangerous crop to harvest. It is not desirable work. While it may be true that the sugar corporations attempt to recruit U.S. workers at $3.79, there has been no test of the labor market to see if U.S. workers will harvest sugarcane for $3.80 or $4 an hour or $4.50 an hour, which might be a more appropriate wage for such hard work.

In Louisiana, the adverse effect wage rate is $4.08. That is what sugarcane workers would be paid there, where in Florida it is $3.79.

While the sugarcane corporation may be making a recruiting effort, there is no comparable effort made by any other H-2 user corporation in apples or tobacco. The regulations require employers to place only two advertisements for job opportunities in local newspapers.

Also, while the regulations require that growers hire U.S. workers up to 50 percent of the way through the harvest, the reality is the Department of Labor will not recruit U.S. workers where the jobs are already filled by H-2's. They have stated this to us again and again, and have stated it in court.

Crew leaders will not travel long distances to jobs that are filled. U.S. workers do not know the regulations, nor do they wish to work where they were unwanted. They would not travel thousands of miles to jobs where H-2 workers were already working.

The Department of Labor has explained in testimony and in the letter that I have attached to my testimony that any costs for transportation of H-2 workers is offset by savings under social security and unemployment insurance, and it goes into a great deal of detail in the letter. I suggest you look at that.

Furthermore, the Department of Labor has stated that growers traditionally have offered transportation, housing, and meals for a fee to U.S. workers and therefore these are not new or increased expenses being incurred by H-2 employers but a part of the traditional agricultural hiring process in the United States.

In conclusion, the National Association of Farmworker Organizations urges you to begin to put an end to the discrimination which has historically persisted against farm laborers in this country.

Agricultural workers receive inferior protection in almost every area of legislation. For example, minimum wage, child labor, occupational safety and health, workers compensation and collective bargaining, unemployment insurance, and the importation of alien workers.

It is very late, indeed, for this Nation to begin providing equitable protection for the poorest of this Nation's working poor. We urge you to delete section 4 of H.R. 3920.

Senator BOREN. Miss Browning, you mentioned that some States have H-2, some do not have H-2 workers. Is this done on a State-by-State basis? What is the procedure for the determination?

Ms. BROWNING. I am being a little loose in my language, I think. Employers have to request H-2 workers. When I refer to H-2 using States, I am saying that is the State where employers——

Senator BOREN. No employers have requested?

Ms. BROWNING. If it is not an H-2 State, employers have not, up to this point, received H-2 workers.

The State——

Senator BOREN. The State is not officially involved?

Ms. BROWNING. It is, in the sense that the employment service ultimately is involved in certifying. The employment services are supposed to make a determination if there are workers available, either locally or through the interstate clearance system.

It is not the State that requests it. I speak loosely.

Senator BOREN. Are you aware of any activity by the Commission on Unemployment Compensation with regard to the alien farmworker issue? Is the Commisson looking at this issue?

Ms. BROWNING. It is my understanding that they will make a recommendation on this before they are terminated, yes. They have looked at similar issues, such as the 15- and 16-year-old hand harvesters that the employers want to exempt from unemployment insurance. They recommended that there be no exemptions.

Senator BOREN. Do you have an opinion—while you testified, of course, on the amendment, do you have any feelings or do those you are representing have feelings on whether or not the Commission itself should be extended?

Ms. BROWNING. Well, I have not taken a poll of farmworkers, but I think it is safe to say we think it is very unfortunate that this section was attached to this bill. They are not related in any fashion.

I think the Commission is a good thing. I speak for myself. I really have not been asked by the national association to speak on behalf of the whole bill. Personally I find it extremely distasteful that these were put together and I think that the bill has been held hostage by this section.

Senator BOREN. Do you know the total number of farmworkers that are working under the H-2 provisions in the United States this past year?

Ms. BROWNING. The total number of farmworkers?

Senator BOREN. Yes.

Ms. BROWNING. Approximately 15,000, if you do not count logging and sheepherding as agricultural workers.

Senator BOREN. 15,000.

Ms. BROWNING. In apple and sugarcane, and some onions. The 15,000 is for 1978.

This year, there are already H-2 workers working in areas where they were not employed last year so that it will be considerably higher this year. We know that already.

Senator BOREN. In areas like sugarcane in Florida, for example, what would be the percentage that are H-2?

Ms. BROWNING. One hundred percent.

Senator BOREN. One hundred percent?

Ms. BROWNING. Yes.

Senator BOREN. In certain crop harvesting it approaches 100 percent in some States?

Ms. BROWNING. Yes.

Senator BOREN. Do you have any questions, Senator Dole?

Senator DOLE. I think it is very interesting testimony. If you have evidence that the Americans are available in these areas—I

think that you made some reference to Puerto Ricans—I would appreciate your furnishing that for the record, say in the State of Florida, for example, where you say it is 100 percent——

Ms. BROWNING. The Florida case, I think personally, gets back to the adverse effect wage rate. I do not think there are U.S. workers in Florida, probably, who are available at $3.79. It is a question of whether they would be available at $4.25 or $4.08 which is what they are paying in Louisiana.

The whole nature of the system is such that where you have H-2 workers over time, the wages get lower and lower because the employer does not respond to a supply-and-demand situation. He knows he has workers. If he cannot get the U.S. worker, he knows he has the foreign worker.

In this case, he actually wants the foreign workers, so he certainly is not going to raise the wage a penny above what he has to. That is why you have this increasing discrepancy in wages.

Senator DOLE. Does the Labor Department play some role in making a determination where American workers are available there to harvest crops?

Ms. BROWNING. I am sorry.

Senator DOLE. Does the Labor Department make a determination that Americans are not available to harvest crops, or are available?

Ms. BROWNING. The Department of Labor has a responsibility to make that determination. However, as they have said in their letter and other testimony, it is a difficult burden, if employers will not take it upon themselves to recruit in a sincere effort. There are farmworkers all over the country and there are unemployed people all over the country and increasing numbers of H-2 employers. It becomes difficult to put the total responsibility for this labor recruitment process on the Department of Labor, which is what is happening.

It could be disastrous then to farmworkers because the Department of Labor will never be able to handle the demands of the employer if the Department of Labor becomes the sole agent responsible for recruiting farmworkers in this country.

Senator DOLE. I assume that the other group testified that it cost more to hire alien workers so it is not a question of whether it is payment or nonpayment of unemployment and social security taxes are a factor in whether they hire H-2 or American workers. I think any evidence you have that there are American workers available and the evidence that there is a cost advantage to hiring H-2 workers, would be helpful to me and others who have to make a decision.

Ms. BROWNING. Picking through the letter from Secretary Marshall, he says specifically for the Florida case that the current tax rate is 6.13 percent. It amounts to $196.19, so they would save that much on the H-2 worker for social security.

Senator DOLE. Does it cost more to get the H-2 worker into Florida? Do you offset that, saying that is the additional cost?

Ms. BROWNING. Right.

The most accurate comparison of the cost of foreign and American workers is the cost to growers who use the employment service. In certain circumstances, the cost of transportation for foreign

workers may offset the payroll tax savings to employers of foreign workers.

However, the payroll tax savings to the employers is a significant incentive for hiring foreign workers, for example, in the case of the sugarcane workers in Florida who average about $3,200 per season. At the current average combined Federal and Florida tax rate at 2.7 percent, the savings would amount to $86.40 per worker.

Employers are also not required to pay social security tax. The current tax rate is 6.13. The savings on a salary of $3,200 amounts to $196.16.

He is saying here that that would more than offset the cost of transportation to the Jamaican worker.

When we get into the issue of transportation—well——

Senator DOLE. An even more basic question. Do you collect taxes from someone who is not entitled to benefits?

If you are going to collect the tax for someone who might benefit later on, I can understand that, but if they are not eligible for benefits, why collect the tax?

Ms. BROWNING. One reason would be it would certainly strengthen the unemployment insurance fund and the more we bring in H-2 workers into this country, the more employers you are going to have not paying into the fund and the more unemployed U.S. workers you are going to have taking from the fund.

That would be one good reason, I think.

Senator DOLE. How many members are in NAFO?

Ms. BROWNING. Approximately 70, I believe, at this time.

Senator DOLE. Seventy.

Ms. BROWNING. Seventy organizations, community-based organizations, farmworker organizations.

Senator DOLE. I have not heard of NAFO. If you could furnish us some information for the record, it would be helpful.

Ms. BROWNING. All right. Yes.

[The material to be furnished follows:]

Since its inception in 1973, NAFO has been an alliance of community based, farmworker governed organizations which works for the protection of the civil labor rights of America's migrant and seasonal farmworkers and for the development and implementaton of policies, activities, and programs which impact on their lives and futures.

NAFO has become a comprehensive, nationwide organization of and for farmworkers and is profoundly committed to the struggle for equity, basic reform of laws and regulations affecting farmworkers; and for the recognition and development of local farmworker organizations.

Presently NAFO's membership is in 40 states, the District of Columbia and Puerto Rico. The membership works in 1,399 counties and have offices in 611 municipalities.

Senator BOREN. Thank you very much.

Ms. BROWNING. Thank you very much.

[The prepared statement of Ms. Browning follows:]

STATEMENT OF PAM BROWNING, NATIONAL ASSOCIATION OF FARMWORKER ORGANIZATIONS

Mr. Chairman and members of the committee: My name is Pam Browning and I am here to speak on behalf of the National Association of Farmworker Organizations—NAFO. NAFO is a non-profit, national coalition of farmworker-governed, community based organizations committed to protecting the rights of migrant and seasonal farmworkers. The issue which I wish to address today is of particular importance to the workers whom we represent.

Agricultural workers are among the hardest working of this nation's poor. The severe hardships which they endure due to low wages and harsh working conditions are magnified by the seasonal and unpredictable nature of their work. USDA data reveals that the average annual income for a migrant worker in 1977, including income from both farm and non-farmwork, was only $3,761. For the families of farmworkers living on these marginal incomes, unemployment compensation is not a cushion, but an economic necessity, hard-earned through long hours of manual labor.

However, unfortunately, the historical reality of discrimination still persists against farmworkers, and they are not eligible for unemployment insurance on a basis equal to other workers. While non-agricultural employers must provide unemployment insurance coverage to workers if they pay wages of $1,500 in a given calendar quarter, or if they employ one individual for at least one day in each 20 weeks, agricultural employers need provide coverage only if they pay as much as $20,000 or more in cash to workers in a quarter or if they employ 10 or more workers on 20 different days in 20 different weeks of the calendar year.

This basic inequity in unemployment insurance coverage is exacerbated by many of the procedures and requirements related to establishing eligibility, determining employers (including crew leaders), dealing with inter-state employment, establishing wages earned, hours worked and base period employed, and the economic necessity which requires workers to migrate to find work before they ever receive long over-due unemployment insurance benefits.

However, today, I would like to address myself most specifically to one inequity in the unemployment insurance system which I have not yet mentioned, and which seriously affects farmworkers. Labor performed by aliens admitted to the United States to perform agricultural labor pursuant to section 214(c) and (101) (a) (15) (H) of the Immigration and Nationality Act, is excluded from the definition of agricultural labor. This exclusion is due to expire December 1979; however, Section 4 of H.R. 3920 would extend the expiration date to 1982.

Let me explain this more clearly.

Section 4 of H.R. 3920 provides that employers who import temporary alien agricultural workers under an alien certification program known as the H-2 program, need not pay unemployment insurance tax on the wages paid to these aliens. This special exclusion provides a significant financial savings to employers to hire increasing numbers of aliens rather than U.S. workers. By hiring alien workers, growers are saved approximately 3.4 percent of their total wages, plus the inconvenience of U.I. paperwork.

Unfortunately, the ultimate result of such a preference for foreign laborers is the increasing unemployment of workers in this country. Already, according to BLS statistics, the unemployment rate of U.S. farmworkers ranges from a low of 9 percent in summer months to more than 18 percent in winter. Maintaining the jobs and wages of U.S. workers without the depressant effect created by an influx of large numbers of temporary aliens is vital to the health and survival of farmworker families existing on marginal incomes.

Let me explain here a little about the H-2 temporary alien worker program.

While the Immigration and Nationality Act allows for the importation of temporary alien workers only if U.S. workers are unavailable for work, employers motivated to hire aliens may easily circumvent the law by failing to make good faith efforts to recruit U.S. workers.

Employers prefer to hire temporary alien workers because it provides them with a guaranteed, cheap, intimidated labor force. If a foreign worker complains, he may be sent back home and black-listed, never to return to the U.S. again. If a U.S. worker asks for one penny more than the "prevailing wage," he will not be considered available for work, and a foreign worker may be hired in his place.

In addition to the financial savings created by depressed wages, employers need not pay into the social security or unemployment insurance funds on the wages paid to temporary foreign workers. Thus, the agricultural employer who hires temporary alien workers is insulated from many of the natural demands of the free market place and the employment-related responsibilities incurred by all other employers.

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hands of growers last year. This is extremely unfortunate when we consider that Puerto Rico suffers from an unemployment rate approaching 50 percent.

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In light of the dangerous escalation of H-2 foreign worker requests, there can be no justification for an extension of this exclusion, as proposed in Section 4 of H.R. 3920.

As more employers learn of the financial benefits created by this exemption, an increasing number of U.S. workers will be displaced from jobs by alien H-2 workers. These unemployed U.S. workers will place a burden on the unemployment insurance fund, and yet the same employers responsible for this job displacement will not even be required to pay into the U.I. fund.

The rationale offered in support of the exemption provided in section 4 of H.R. 3920 is that employers should not be taxed on behalf of workers who will not receive unemployment insurance benefits. However, this rationale ignores the basic foundation on which the insurance system rests—the need to spread the risk of unemployment over as wide a base as possible so as to minimize the cost to any one employer or industry. Without this sharing, the unemployment insurance fund would collapse.

The Department of Labor also opposes section 4 of H.R. 3920. For your information and for the record, I have enclosed a letter from Secretary Marshall to a member of the House Wages and Means Committee in response to an inquiry. To keep my testimony short, I will only read excerpts from the letter but I urge you to read the whole text:

"The Department is opposed to this provision which would continue to exempt employers from paying Federal unemployment taxes on the wages of non-immigrant alien farmworkers. We believe that this provision is harmful to domestic farmworkers and is inconsistent with the intent of the Immigration and Nationality Act which allows for the admission of temporary foreign workers only when unemployed workers in this country are not available * * *.

"Anything which offsets the cost of foreign workers, such as the unemployment tax exemption, would tend to make them more attractive to employers. A true test of the labor market requires the good faith and active participation of employers in efforts to find U.S. workers. When an employer has a preference for foreign workers, there is a tendency for unemployed U.S. workers to be overlooked or discouraged.

"The Department is concerned over the growing interest of agricultural employers in the importation of foreign workers. In the past 2 years, in addition to requests for foreign workers from the relatively few growers who have used them before, we have received first-time requests from growers in 9 states for a variety of crop activities and serious inquiries from many more.

"The Department believes it is important that employers not be given any further incentives to hire foreign workers. When employers try to avoid hiring American workers, unemployment is perpetuated. The cost of unemployment in this country bears heavily not only on the unemployed, but on tax-payers who support the welfare system and on employers who support the unemployment compensation program.

"The unemployment tax exemption tends to make foreign labor more attractive and reduces the incentive of employers to recruit and hire domestic labor. The Department is therefore opposed to its continuation."

In conclusion, the National Association of Farmworker Organizations urges you to begin to put an end to the discrimination which has historically persisted against farm laborers in this country. Agricultural workers receive inferior protection in almost every area of legislation, for example, minimum wage, child labor, occupational safety and health, workers' compensation, collective bargaining, as well as unemployment insurance and the importation of temporary alien workers.

It is very late, indeed, for this nation to begin providing equitable protection for the poorest of this nation's working poor. We urge you to delete section 4 of H.R. 3920.

Thank you for your consideration.

COMPARISON OF PREVAILING PIECE RATES AND PERCENTAGE OF H-2 WORKERS EMPLOYMENT IN APPLE HARVEST FOR 2 REGIONS OF NEW YORK STATE[1]

| | Hudson Valley | | Clinton, Essex, and Washington | |
|---|---|---|---|---|
| | Prevailing piece rate per 1⅛ bushel | Percentage of H-2 workers in work force | Prevailing piece rate per 1⅛ bushel | Percentage of H-2 workers in work force |
| 1978 | $0.38 | 46.3 | $0.45 | 20.7 |
| 1977 | .38 | 37.6 | .45 | 17.4 |
| 1976 | .35 | 30.2 | .45 | 18.4 |
| 1975 | .35 | 39.8 | .45 | 17.2 |
| 1974 | .35 | 58.7 | .40 | 19.2 |
| 1973 | .35 | 49.7 | .40 | 15.6 |
| 1972 | .30 | 37.9 | .35 | 14.3 |
| Average | .35 | 42.6 | .42 | 17.7 |

[1] This table shows that in Hudson County, where H-2 workers are employed at more than twice the rate of Clinton, Essex, and Washington counties, workers are paid an average of 7 cents less per every 1⅛ bushel of apples than in Clinton, Essex, and Washington counties. Furthermore, the disparity between wages in the 2 regions is increasing. Over the 7 years wages have risen only 8 cents per 1⅛ bushel in Hudson Valley, while they have risen 10 cents per 1⅛ bushel in Clinton, Essex, and Washington.

Source: New York State Department of Labor, Agricultural Prevailing Wage Survey Summary Reports.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
*Washington, D.C., July 18, 1979.*

Hon. FORTNEY H. STARK, Jr.,
*House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN STARK: This is in response to your recent letter to Aaron Bodin, requesting additional information following his testimony before the House Ways and Means Committee on Section 4 of H.R. 3920.

The Department is opposed to this provision which would continue to exempt employers from paying Federal unemployment taxes on the wages of nonimmigrant alien farmworkers. We believe that this provision is harmful to domestic farmworkers and is inconsistent with the intent of the Immigration and Nationality Act which allows for the admission of temporary foreign workers only when unemployed workers in this country are not available.

In order to determine the availability of U.S. workers, the Department, in accordance with its regulations at 20 CFR 655, relies on the results of recruitment efforts by the employer and by the State employment security agencies on the employer's behalf. Work must be offered to U.S. workers under minimum terms and conditions set forth in our regulations. Aliens, if they are admitted, must also be employed under these same terms and conditions. Anything which offsets the cost of foreign workers, such as the unemployment tax exemption, would tend to make them more attractive to employers. A true test of the labor market requires the good faith and active participation of employers in efforts to find U.S. workers. When an employer has a preference for foreign workers, there is a tendency for unemployed U.S. workers to be overlooked or discouraged.

The most accurate comparison of the cost of foreign and American workers is the cost to growers who use the employment service pursuant to 20 CFR 655. These are the only growers who can legally hire foreign workers. In certain circumstances the cost of transportation for foreign workers may offset the payroll tax savings to employers of foreign workers. However, the payroll tax savings to the employer is a significant incentive for hiring foreign workers. For example, in the case of sugarcane workers in Florida who average about $3,200 per season (at the current average combined Federal and Florida tax rate of 2.7 percent) the savings would amount to $86.40 per worker. Employers are also not required to pay social security tax on foreign workers. At the current tax rate of 6.13 percent, the savings on a salary of $3,200 amounts to $196.16.

It has been suggested that foreign workers are more expensive than U.S. workers when the cost to growers not using the employment service is considered. First, since these growers cannot legally use foreign workers the comparison is invalid. Second, it is very difficult to estimate the cost of U.S. workers relative to what the cost would be for foreign workers. Employers who hire out-of-area workers commonly negotiate terms of employment with crewleaders. Usually the crewleader is compensated for providing transportation and daily meals. The crewleader is also compensated if he or she provides housing or controls housing provided by the employer. The rate of pay is also negotiated between the employer and the crewleader.

Added to this potential cost advantage is employer preference for foreign workers. We have heard from many employers that they prefer foreign workers for reasons not related to labor costs per se. They claim that foreign workers are more productive and less trouble. For many foreign workers U.S. minimum wages would be considered high wages in their native countries. A Jamaican worker, for example, can earn more in 6 weeks picking apples in the U.S. than can be earned during the rest of the year in Jamaica. While not conceding the claimed greater productivity, foreign workers do provide the employer with a worker who is more compliant. The worker may only remain in this country so long as he is employed by the employer who sponsored his admission. A worker who is fired for any reason is subject to deportation and not likely to be invited back. Further, once certified by the Department, a grower may recruit a foreign work force that is all male and of prime working age. Such criteria may not, of course, be legally applied with respect to domestic workers.

The Department is concerned over the growing interest of agricultural employers in the importation of foreign workers. In the past 2 years, in addition to requests for foreign workers from the relatively few growers who have used them before, we have received first-time requests from growers in 9 States for a variety of crop activities and serious inquiries from many more.

The Department believes it is important that employers not be given any further incentives to hire foreign workers. When employers try to avoid hiring American workers, unemployment is perpetuated. The cost of unemployment in this country bears heavily not only on the unemployed, but on taxpayers who support the welfare system and on employers who support the unemployment compensation program.

The unemployment tax exemption tends to make foreign labor more attractive and reduces the incentive of employers to recruit and hire domestic labor. The Department is therefore opposed to its continuation.

You might find helpful a copy of the statement by David North (enclosed) presented at the Department's hearing on May 12, 1979, in Martinsburg, West Virginia, on proposed regulations governing the certification process for temporary foreign agricultural workers.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAY MARSHALL.

Senator BOREN. Our next witness, and the concluding witness in this hearing, will be Mr. Perry Ellsworth who is executive vice president of the National Council of Agricultural Employers.

And I believe that Mr. Ellsworth will be accompanied by Mr. George Sorn, manager of the Labor Department of the Florida Fruit and Vegetable Association, and Mr. Horace Godfrey of Horace Godfrey and Associates.

Mr. Ellsworth, we are very glad to have you before the committee.

STATEMENT OF PERRY R. ELLSWORTH, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS, ACCOMPANIED BY GEORGE F. SORN, MANAGER, LABOR DEPARTMENT, FLORIDA FRUIT AND VEGETABLE ASSOCIATION; AND HORACE GODFREY, HORACE GODFREY AND ASSOCIATES

Mr. ELLSWORTH. Thank you very much, Senator. I am afraid that this gets down to a little bit of a debate situation where the previous witness, having read my statement, has rebutted, so I guess I go into the rerebuttal phase of it, for whatever it may be worth.

My name is Perry Ellsworth, executive vice president of the National Council of Agricultural Employers, located in Washington, D.C., and, as you said, Mr. Sorn is here on my left and Mr. Godfrey on my right.

The National Council of Agricultural Employers favors approval of H.R. 3920 as it is written and we recommend that the Commission's life be extended in order that it can answer many of these complicated questions and make recommendations to you relative to them.

Our special concern, as you stated earlier, is that section 4 be included and be retained in H.R. 3920.

This is an extremely complicated subject. We could go at it all day long, and I think Miss Browning and I could sit up here and give you information and aspects of this with which we are in full agreement which would show the tremendous scope of this particular problem of agricultural labor, illegal aliens, U.S. workers and so forth. But limiting it to the point of the H-2 worker, or the legal alien worker, I will proceed by saying that under the Immigration and Nationality Act the Immigration and Naturalization Service can admit temporary foreign agricultural workers to perform specific agricultural jobs for specific employers for specific periods of time.

The INS cannot, however, admit such workers if their presence will have an adverse effect on the wages or working conditions of U.S. workers similarly employed.

The act further specifies that such workers cannot be admitted until and unless the U.S. Secretary of Labor certifies that a sufficient number of U.S. workers who are able, willing and qualified to perform such labor are not available in this country. An employer may request temporary foreign agricultural workers but not a single such worker can enter this country until the Secretary of Labor certifies to the INS that it cannot locate enough U.S. workers.

The decision rests solely and completely with the Secretary of Labor as to whether a grower or growers are certified.

The Unemployment Compensation Act presently provides that employers of temporary foreign workers need not count such workers nor include the earnings of such workers when determining whether they—the employers—come under the act's coverage: A cash payroll during any calendar quarter in the calendar year or the preceding calendar year of $20,000 or more paid to individuals engaged in agricultural labor or 10 or more employees employed in agricultural labor on each of some 20 days during the calendar

year or the preceding calendar year, each day being in a different calendar week.

During markup in the House earlier this year, the very valid point was made that excluding the numbers of temporary foreign agricultural workers and their earnings from the coverage test for unemployment compensation coverage could result in U.S. workers being denied coverage.

This would occur on a farm where a large number of H-2's may be used during a harvest period, but the rest of the year there may be three or four full-time hired workers. Under the present coverage test where you cannot count the H-2 workers or the payroll paid to such workers to determine coverage, the U.S. workers were denied that coverage.

Senator BOREN. That is no longer true?

Mr. ELLSWORTH. The National Council of Agricultural Employers agreed to amending the law as is in H.R. 3920 to correct this deficiency by including those temporary foreign workers for payroll and employee purposes, so as to bring this protection to U.S. workers who are hired full time.

The Unemployment Compensation Act specifically exempts employers from paying unemployment compensation taxes on the earnings of temporary foreign agricultural workers until January 1, 1980. NCAE urges the extension of this exemption as provided in H.R. 3920 until January 1, 1982. Our reasons for this position are two in number:

One, the National Commission on Unemployment Compensation has been asked by the Congress to study the matter and make its recommendations to Congress. The Commission has not yet made its report.

Two, not a single temporary agricultural worker coming to this country under the so-called H-2 program can file a claim for unemployment compensation payments. Agricultural employers do not mind paying taxes to protect U.S. workers in times of no-fault unemployment, but they do object to paying taxes for insurance from which their temporary agricultural employees can never benefit.

During committee meetings in the House of Representatives and during consideration of H.R. 3920 by the House, opponents of the proposed extension made several charges which bear examination.

One, opponents charge that the extension will exacerbate the poverty of farmworkers. Just the opposite is true. U.S. workers who accept employment with employers who have filed a request for use of temporary foreign agricultural workers will automatically receive a higher wage because that employer must pay all workers the federally mandated adverse effect wage rate rather than the prevailing wage rate.

Two, opponents charge that the extension will deprive U.S. workers of the opportunity to change employers. Nothing could be further from the truth. U.S workers can change jobs any time they choose.

Three, opponents charge that the extension will deprive U.S. workers of the freedom to express grievances without fear of reprisal. Every U.S. worker can express grievances to the U.S. Department of Labor. In fact, where employment of temporary foreign

agricultural workers is concerned, the Wage and Hour Division, the U.S. Employment Service and farmworker organizations are especially vigilant and receptive to grievances.

Four, opponents charge that employers can indiscriminately hire temporary foreign agricultural workers. No U.S. employer can hire a single such farmworker unless the U.S. Department of Labor certifies that able, willing, and qualified workers are not available in this country.

Turning now to other aspects of this legislation, opponents seemingly overlook the fact that before a single temporary foreign agricultural worker can be hired by an employer, that employer must file a job order of need, and promise to pay any U.S. worker who accepts the job, at least the adverse effect wage rate—a measurable increase over the minimum wage and the prevailing wage rate.

During the 80-day period when an employer's job order is in the interstate clearance system of the U.S. Employment Service, employers are required to conduct positive recruitment efforts by advertising in papers and by radio. Substantial sums of money have been spent by employers. Let me give you one example.

Sugar corporations, located in Florida, spent $20,159 for the 1975-76 season and $22,685 for the 1976-77 season. In addition, they advanced, and lost through no-shows or refusals or physical inability to work, $25,253 in travel moneys advanced to prospective workers. If U.S. workers were available, the above facts do not show it.

Opponents of this legislation have failed to acknowledge that an employer who is certified for and hires temporary foreign agricultural workers is required by Department of Labor regulations to employ any qualified U.S. worker who presents himself for employment at any time during the first 50 percent of the employment period for the foreign workers even if it means keeping his foreign workers idle.

The Department of Labor is presently putting into the field in the eastern apple States 30 special monitors to make certain that this regulation is observed this year.

Opponents of this legislation would lead one to believe that employment of temporary foreign agricultural workers—H-2 workers—is much more widespread than it is. Last year such workers comprised only one-third of the total work force for the apple harvest in 10 east and northeast States.

Let us examine what might have happened to the lot of two-thirds of the workers who were U.S. citizens had there been no such program for temporary alien workers. Whether those who oppose this legislation realize it or not, growers would actually save money by hiring only U.S. workers, were they available.

Consider these facts:

One, employers who hire H-2 workers must pay transportation costs from the workers' departure site to the job site and return. For the apple growers, this figure can go as high as $304 per H-2 worker. For Florida sugar workers, it is approximately $146 per H-2 worker. These figures are for this year. The figures in my prepared statement were for last year.

Two, employers who hire H-2 workers must post a bond of $200 per H-2 worker to assure each such worker's return to his own country. There is no such requirement for U.S. workers.

Three, employers who use H-2 workers must furnish housing to all workers hired. Were a grower to hire only U.S. workers and not use the Employment Service, he would not have to furnish housing or could charge rent for housing.

Four, employers who hire H-2 workers must furnish all workers with meals for which they cannot charge more than $4 per day. This ceiling would not apply in other circumstances and growers would not be required to furnish meals.

Five, employers who hire H-2 workers must furnish all workers free transportation from the campsite to the worksite and return. This requirement would not apply in other circumstances.

Six, employers who hire H-2 workers are required to pay all workers at least the adverse effective wage rate, even if only one member of the work force is an H-2 worker. If growers did not request certification, the lower prevailing wage rate of the State or the Federal minimum wage would apply.

Seven, employers who hire H-2 workers must guarantee all workers employment for at least three-fourths of the workdays of the total period during which H-2 workers are scheduled to be employed. This requirement would not apply in other circumstances.

Much has been said about the fact that H-2 workers are cheap workers. I, too, have a copy of the letter which Secretary Marshall wrote to Congressman Stark. He sent the same letter to Congressman Bafalis and I have replied to Mr. Bafalis relative to the letter by Mr. Marshall and, with your permission, sir—although I do not have it here—I would like to introduce that into the record and will send it up.

Senator BOREN. That will be fine. That will be included in the record.

[The material to be furnished follows:]

NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS,
*Washington, D.C., July 20, 1979.*

Hon. L. A. (Skip) BAFALIS,
*Rayburn House Office Building,*
*Washington, D.C.*

I have read with interest, Congressman, a copy of Secretary Marshall's July 18, 1979 letter to you in response to your request that the U.S. Department of Labor provide statistics to prove its contention that temporary foreign workers are "cheaper" labor than are U.S. workers.

Whether the present exemption is inconsistent with the Immigration and Nationality Act is not pertinent to the question you asked. The exemption does not and cannot apply unless the U.S. Department of Labor, acting under its own regulation (20 CFR Part 655) and the Immigration and Nationality Act certifies to the Immigration and Naturalization Service that there are no available workers in this country who are able, willing and qualified to perform the jobs offered. If there are no workers available, how can the Unemployment Compensation tax exemption hurt such non-existant workers?

The third paragraph of Secretary Marshall's letter is not pertinent to the question you asked. It is interesting to note, however, that the Secretary wrote: "Aliens, if they are admitted, must also be employed under these same terms and conditions." This appears to be backwards. Under 20 CFR Part 655 employees seeking admission of temporary foreign workers must also employ U.S. workers under the same terms and conditions as those mandated for temporary foreign workers. You have my comparison in your files. The Secretary has apparently ignored those requirements which add to the cost of using temporary foreign workers, such as performance

bonds, required free housing, required advertising, the three-fourths work guarantee and a ceiling on daily meal charges.

The fourth paragraph of Mr. Marshall's letter presents the only attempt at furnishing solid statistics and he seems to be in error there. During the 1977-78 sugar cane cutting season, the most recent one for which solid final statistics are available, the British West Indies Central Labour Organization reports that Florida sugar cane workers worked 17 weeks for an average of $156 per week or $2,650 for the season. This figure is $550 less than than Mr. Marshall's figure of $3,200. Using the B.W.I.C.L.O. average salary figure, the U.C. tax "savings" is only $71.55 and the Social Security Tax "savings" is only $162.44. Mr. Marshall did, in passing, state that "In certain circumstances the cost of transportation for foreign workers may offset the payroll tax savings to employers of foreign workers." Transportation costs frequently, especially for workers in east coast apply harvest, far exceed any so-called U.C.—Social Security Tax "savings." For instance, for the 1977 New York apply harvest, temporary foreign workers were employed for 5 weeks and earned an average of $183 per week or $915 for the season. The alleged "savings" on U.C. taxes was $31.11. The alledged "savings" on Social Security taxes was $56.09. This total "savings" of $87.20 nowhere near offset the transportation cost of approximately $280 per worker. Furthermore, the states of Maine, Maryland and New York, where growers have used temporary foreign workers, do not have a specific exemption from state U.C. taxes on the wages of temporary foreign workers, so there are no "savings" there.

The alleged "savings" for Florida sugar cane cutters, based on actual average 1977-78 season earnings of $2,650 was $233.99. Transportation alone cost $130. The balance of $104 was easily offset by the cost of a performance bond (required by the INS) of $20, the three-fourths work guarantee required by 20 CFR Part 655 and the Adverse Effect Wage Rate, all of which do not apply to users of U.S. workers only.

Secretary Marshall, in the fifth paragraph of his letter, writes that "It has been suggested that foreign workers are more expensive than U.S. workers when the cost to growers not using the employment service is considered. *First, since these growers cannot legally use foreign workers the comparison is invalid.*" (Italic added.) The comparison *is* valid. Any grower in the country has the option, under the Immigration and Nationality Act and 20 CFR Part 655, to seek certification for use of temporary foreign workers. Furthermore, it is not difficult to estimate the cost of U.S. workers relative to what the cost would be for temporary foreign workers. The statistics exist in abundance.

Mr. Marshall's sixth paragraph is not pertinent to the question put to the Department of Labor, but just for the record, temporary foreign workers are *not* 100 percent docile, tractible persons. During the 1978-79 season, 365 British West Indian workers went AWOL from farms owned by members of the Florida Sugar Producers!

Secretary Marshall does not concede the claimed greater productivity of temporary foreign workers (paragraph 6). The records or employers are available for examination. Temporary foreign workers' productivity (man for man, not woman against man) far exceeds that of U.S. workers in both sugar cane and apple harvesting.

Although again not pertinent to the question put to the USDL, Secretary Marshall expresses great concern (in paragraph 7) over the growing interest of agricultural producers in the importation of foreign workers. This increased interest has come about not because of cost savings, but because growers, in their attempts to not hire illegal aliens, must seek temporary foreign workers. There are not enough able, willing and qualified U.S. workers to meet their needs. The attitude of the USDL places growers in a Catch 22 situation. They are damned if they hire illegal aliens and they are damned if they seek legal aliens in order to harvest their crops and earn a living.

Finally, in paragraph 9, Secretary Marshall states that the unemployment tax exemption tends to make foreign labor more attractive and reduces the incentive of employers to recruit and hire domestic labor. Let us again set the record straight. The choice is not up to an employer. The employer cannot recruit and hire temporary foreign labor unless the USDL approves certification. Historically, the USDL has found it impossible to find, recruit and refer enough qualified and willing U.S. workers to fill growers' needs. It is then, and only then, that employers can use the usually more expensive and certainly no less expensive temporary foreign worker.

Sincerely,

PERRY R. ELLSWORTH, *Executive Vice President.*

Mr. ELLSWORTH. For this particular amendment, however, Mr. Sorn, who is sitting to my left, has tabulated the cost for sugarcane

workers and if you would give him permission to do it, I would like him to give you a quick rundown of that.

Senator BOREN. Mr. Sorn?

Mr. SORN. Mr. Chairman, this would be the cost of this coming season, round trip air—this is per worker—round trip air and bus transportation to the worksite, $146; the employer is required to provide free rent and if we could use only American workers, we could charge rent—a minimum, I am saying at a very low figure of $1 per day, $7 per week. Our season is approximately 20 weeks, 140 days, $140 per worker, which we are providing in rent-free housing to the workers.

We take a loss on board, and our board figures are exact. They are presented to the U.S. Department of Labor because under the criteria regulations we cannot make a profit on board. We are taking a loss on board this year of at least 50 cents to $1 a day.

I put this down as 50 cents, or $70 per worker, for this coming season.

We provide transportation to the field, round trip transportation per day. The distances could be up to 25 to 30 miles a day in buses, the equivalent of schoolbuses, at a minimum of $1 a day, $140.

This transportation need not be provided if we are hiring only American workers.

We must post a bond. Our bond costs at the end of the year, calculated fairly exactly, are $20 amortized over the entire group; $20 per worker. We do make a contribution to a social security scheme for the West Indies workers that come in. It costs us approximately $30 per year and then our expenses in relation, our losses on the transportation of domestics as indicated by Mr. Ellsworth, our costs of advertising—and we do provide more than two advertisements. We advertise in more than two papers. We advertise throughout the State of Florida, wherever in the Southeast that it is necessary.

The cost of actual recruiters, that totals approximately $5 per worker. Our total is $551 per foreign worker that we will bring in this year.

If you want to compare that to the so-called savings of not having to pay the unemployment comp tax, based again on 20 weeks at an average of $160 per week—and this average is accurate, based on actual payroll record—the unemployment comp tax would be $156. The social security, if it were applicable, $183.90 for a total cost of unemployment comp and social security of $339.30.

If we could find American workers compared to the cost of an individual foreign worker of $551, we would hire them.

Senator BOREN. Additional costs are $551?

Mr. SORN. A total of $551 in costs. The additional expense would be the difference between the $551 that it will be costing to us and if we could find Americans, the $340.

The difference would be the overall.

Senator BOREN. How do you answer the statement that Miss Browning made in regards to the wage differential? In other words, in those areas that are using the H-2 workers that the wage is significantly lower than it is elsewhere?

I suppose I am here asking for information, not speaking on her behalf, but she would argue that the savings are not $339.90, but

also the difference between let's say what is being paid sugarcane workers in Louisiana and in Florida, so you would have to add that up in terms of a differential in weekly wage.

Mr. ELLSWORTH. I believe Mr. Godfrey can give you an answer to that question.

Mr. GODFREY. Senator, there are no H-2 workers in Louisiana. All the cane in Louisiana is harvested mechanically. About 75 percent of it in Florida is harvested by hand. We are moving to mechanical as rapidly as we can in Florida, which would eliminate the need.

I do not know how soon we can get there. The types of soil conditions and cane varieties, it will take some time before we can get there.

Senator BOREN. You said that the figure she gave for Louisiana was based upon a very small number of workers who are handling the equipment?

Mr. GODFREY. The minimum wage they pay is a fair labor standards wage, which last year was $2.90 an hour for all labor employed in cane harvest. Now, if it were a machine operator, they paid a 10 percent premium on top of that for machine operation, tractor or harvester, but the average wage paid in Louisiana last year in the harvest period including machine operators and any other labor that you might have, but there would be very little unless they were doing what you call scrapping cane which they would normally do after a hurricane, if it was down to where the machine did not cut it.

The average wage could be $3.30 per hour.

Mr. SORN. If I could address your question for Florida—this would only be for Florida—the $3.70 adverse effect wage is a minimum. It is not what the workers will earn on a piece-rate basis, and the cane is cut on a piece-rate basis. It will average much more than that.

And for the season last year, bear in mind the adverse effect wage rate last year was $3.48, with that minimum, the average cane cutter in Florida earned $4.50 an hour; and if you will compare that $5.50 per hour—these are piece-rate workers, then, with the piece-rate earnings for the state of all the workers, most of which are domestic workers, the Department of Agriculture statistics, from which Ms. Browning got some of her figures, will show that the piece rate cane cutters averaged more per hour in Florida than the Americans on a piece-rate basis.

As I say, I cannot speak for the others, but that is true in Florida.

Mr. ELLSWORTH. In many instances, in a State such as Kansas where field crops are grown, it is a mechanical operation entirely and this carries with it a higher hourly wage, although they are still referred to as field workers, to the best of my knowledge.

Senator BOREN. Still classified that way?

Mr. ELLSWORTH. I think so, sir.

Senator BOREN. Therefore they are getting a higher rate?

Mr. ELLSWORTH. Right, sir.

Now, just in closing, if I might, again, go back to the rebuttal for a moment, Ms. Browning put a paper in with her statement showing the difference in piece rates in the Hudson Valley versus two

other counties in New York State. I would introduce for the record, sir, that the State of New York requires its agricultural employers to pay unemployment compensation tax on the earnings of H-2 workers.

So the exemption in the Federal law would apply only to seven-tenths of 1 percent in that case, not to the balance of what the State levels, and there are two other States that I can think of—Maryland and Maine—that have that same requirement.

So when you have H-2's in some State, they are still using large numbers of H-2 workers and they are still paying unemployment compensation tax in those States, so the unemployment compensation tax is not the only factor that enters into this picture.

I suppose that it could be said, why not go ahead and agree to pay it in all States and this you have to understand becomes more a problem of a grower in many cases in the newer States where requests are being made for H-2 workers—and I could name one. The western slope of Colorado—apple growers have a motto out there, "Let's kick the habit."

They are kicking the habit of hiring illegal aliens to harvest their apple crops. They are looking for U.S. workers to harvest those crops.

They have applied for H-2 certification.

The Department of Labor has established a higher adverse effect wage rate for Colorado. They still have been—the Labor Department and the growers have still been—unsuccessful in getting the workers they need to harvest those apples among U.S. workers, therefore they have been certified partially for H-2 workers out there.

Growers are trying to get off the illegal alien kick. They are trying to find U.S. workers and we just think that, in many instances, the only alternative to it is the legal alien who will travel here and can be brought up here.

We have had trouble getting U.S. workers.

One last bit was brought up about the Puerto Rican situation last year. I sat in a meeting of a committee of my association, Sir, when Secretary of Labor Quiros from the Island of Puerto Rico told us in the presence of Mr. W. B. Lewis, the Administrator of the U.S. Employment Service, that last year the job orders from apple growers were sent down to Puerto Rico and he was instructed to fill those 2,000 job orders in 2 weeks or lose millions of dollars in Federal funding.

He filled those job orders, and he admitted that he filled them by hiring off the streets of San Juan or wherever else he could get a warm body.

The workers that did get up here last year, many of them did not even know what they were coming for. They received, some of them, an orientation film at the airport, prior to boarding the plane.

This was the Puerto Rican fiasco of last year. That can hardly be considered normal.

This year, Secretary Quiros has returned the job orders. He will not accept them. Their reasoning is somewhat different than the ill treatment of last year's workers.

One, Puerto Rico has a Public Law 87 which requires any U.S. employer in hiring workers in Puerto Rico to execute a contract with the Puerto Rican Department of Labor. There are a number of growers throughout the country, especially on the eastern shore, who have done this over the years.

This year the U.S. Department of Labor set up a special training program for Puerto Ricans to pick apples and was going to use CETA funds to pay for transportation for these workers to the mainland.

The net result was that the workers who had come up under contract and did not have their transportation in advance were leaving those employers who had worked with Puerto Rico for years and years and the Secretary of Labor of Puerto Rico came to the conclusion that he would be better off sticking with his regular employers who went the contract route with the Government of Puerto Rico.

Furthermore, the Department of Labor wanted each worker to have proof of U.S. citizenship and this, for some reason, was objectionable, although under the Farm Labor Contractor Registration Act, it is almost a necessity in this country.

Mr. Chairman, I think that concludes the statement.

Senator BOREN. Thank you very much, Mr. Ellsworth.

Let me say, both to you and Ms. Browning, if you have, either one of you, additional statistics that you want to submit for the record, that they would be accepted.

Mr. ELLSWORTH. On behalf of Ms. Browning and me, we appreciate that, sir.

Senator BOREN. We appreciate your testimony very much.

Let me again express appreciation to all those who have testified this morning and say that we will be, as I mentioned earlier, resuming hearings on some of these specific suggestions included at the beginning and then at page 28 at a future time, that will depend upon the schedule of the full committee.

As you are aware, the full committee is under time deadlines for action on the excise tax on oil and that will affect our ability to continue with hearings in this area, but we do hope that we will be able to do that in the very near future and if there are those present who wish to offer testimony on any of these specific items at a future date, we hope that you will contact us and let us know.

With that, the hearing will stand in recess.

[Thereupon, at 1:05 p.m. the subcommittee recessed, to reconvene at the call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
*Washington, D.C., September 5, 1979.*

Hon. DAVID BOREN,
*Chairman, Subcommittee on Unemployment and Related Problems, Committee on Finance, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I am writing to you to express AFL-CIO support of H.R. 3920, a bill now before the Senate Subcommittee on Unemployment Compensation and Related Problems that would extend for an additional year the National Commission on Unemployment Compensation.

The Commission, originally scheduled to begin work in early 1977, was unable for various reasons including delays in constituting its membership, to begin until

March, 1978. Thus, the extension provided by H.R. 3920 would restore to the Commission the time originally deemed necessary by Congress in P.L. 94-566 for thorough study of the unemployment insurance system—the first such study in the history of the over 40-year-old State-Federal program. It is, therefore extremely important that the Commission be enabled to continue its study of the adequacy of this income maintenance program for unemployed working people.

In addition, H.R. 3920 would provide an acceptable level of remuneration for the Commission members and exempt the Commission from Office of Management and Budget clearance requirements. We believe these proposals also to be necessary.

The AFL-CIO does, however, oppose Section 4 of H.R. 3920, a provision that would allow continued exemption of agricultural employers from payment of the unemployment compensation tax on wages paid to alien contract agricultural workers. This exemption, now scheduled to lapse at the end of this year, has been extended once again by Section 4 to January 1, 1982. This is far beyond the Commission's July 1, 1980, final reporting date as provided for in Section 2. The Commission proposes to study the employer exemption from unemployment tax on alien agricultural workers. Therefore we ask that the extension provided in Section 4 run only until July 1, 1980. This will enable Congress to act promptly on the Commission's recommendations.

Finally, recognizing that the Commission's mandate expires on September 30, 1979, the AFL-CIO urges that the Subcommittee move quickly, following the hearing on September 5, to send H.R. 3920 to the Senate Finance Committee. Prompt action by the Subcommittee should allow adequate time for the Finance Committee to report and the Senate to enact this crucial legislation.

Sincerely,

KENNETH YOUNG,
*Director, Department of Legislation.*

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STATE OF MICHIGAN,
*Lansing, September 4, 1979.*

Hon. DAVID L. BOREN,
*Chairman, Subcommittee on Unemployment and Related Problems,*
*Russell Senate Office Building, Washington, D.C.*

DEAR SENATOR BOREN: I am writing to urge your support for the favorable passage of H.R. 3920. H.R. 3920 extends the final report date of the National Commission on Unemployment Compensation from July 1, 1979, to July 1, 1980.

The National Commission on Unemployment Compensation has been charged with the critical risk of reviewing and making recommendations on all aspects of the unemployment insurance system. This is the first such comprehensive public review since the establishment of the program. A number of provisions of the program have become outdated, while others continue to operate effectively. The National Commission serves an important function in the ongoing development of the unemployment insurance system by focusing public debate on areas that warrant change and stimulating congressional considerations of needed legislative changes.

Due to the cyclical nature of our major industries, the unemployment insurance system plays an especially important role in our State's economy. We are, therefore, especially concerned that the National Commission be given adequate time to make its findings and develop its recommended options. For these reasons, I urge your support in securing favorable passage of H.R. 3920.

Thank you for your consideration in this matter.

Kind personal regards.

Sincerely,

WILLIAM G. MILLIKEN, *Governor.*

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WILLIAM U. NORWOOD, Jr.,
*Atlanta, Ga., August 22, 1979.*

Hon. DAVID L. BOREN,
*Chairman, Senate Finance Subcommittee on Unemployment and Related Problems,*
*Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR BOREN: I am writing as Chairman of the Federal Advisory Council on Unemployment Insurance to urge your prompt and favorable action on H.R. 3920 which would extend the National Commission on Unemployment Compensation for an additional year.

The Federal Advisory Council on Unemployment Insurance is a statutory body appointed by the Secretary of Labor in accordance with Section 908 of the Social Security Act "for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations to him for improvement in the system."

The Council has long recognized the need for a thorough and intensive review of the system by a high-level group such as the National Commission. As early as 1972, the Council passed a formal resolution stating: "That the U.S. Department of Labor recommend the establishment of a Presidential Commission to review the Unemployment Insurance system and its relationship to other income maintenance systems and make recommendations to the President and the Congress for its improvement."

The Department gave serious consideration and study to this Council recommendation. It refined the idea by proposing a legislatively authorized Commission composed of Congressionally designated members as well as Presidential appointees. In March, 1975, the Council endorsed draft legislative language which the Department had prepared for submission to the Congress. This was the genesis of the provision creating the Commission contained in P.L. 94-566 as enacted by Congress in October 1976.

It is regrettable that the Commission was not appointed and did not become operative until February 1978. However, it has certainly moved expeditiously since that time. It has assembled a staff, commissioned extensive studies and research, and held numberous meetings and hearings. It is difficult to see how its Chairman, Professor Wilbur J. Cohen, could have acted in a more energetic fashion.

The fact that both Houses of the 95th Congress took favorable action on an extension has caused the Commission to conduct its activities during the past several months on the assumption that it would have additional time to complete its mission. Whether or not such an assumption was warranted, it would be most regrettable and unfortunate if the Commission was now allowed to expire without having completed its work and discharged its mandate.

In fairness to the Congress itself, the Administration, the dedicated men and women composing the Commission, and to the 40-year-old Federal-State Unemployment Insurance system, the extension should be granted.

Sincerely,

WILLIAM U. NORWOOD, Jr., *Chairman.*

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STATEMENT BY FORREST H. BOLES, PRESIDENT, MONTANA CHAMBER OF COMMERCE, HELENA, MONT.

In reference to recommendations on the basic structure of the Federal-State Unemployment Insurance Programs as recorded by the National Commission on Unemployment Compensation in the Federal Register, Volume 14, No. 136, Friday, July 13, 1979, pages 40983 and 40984.

The Montana Chamber of Commerce is on record as being opposed to the imposition of Federal standards on the individual States in unemployment insurance programs to any greater extent than already exists.

Some of the recommendations recorded in the Federal Register of Friday, July 13, 1979 are similar to current programs existent in most of the States. Recommendations 1, 2, 3, 6C and 10A fall into that category.

Major changes in the current programs across the country would be required by the adoption of recommendations 8A, 8C, 9, 10B, 10C, 13A, 13B, 16, 17, 20, 21, 22 and 24. Recommendations 10B and 10C are especially glaring examples of imposition of Federal control over an element of the unemployment insurance program in any State which is highly valued by the employers, the experience rating plans. 11A appears to be a broad loophole for those seeking benefits after a voluntary quit. Family reasons should be carefully defined. 11E is a proposal that certainly could be supported by the Montana Chamber of Commerce since we have a long standing record of opposing payments of unemployment benefits to strikers.

Two recommendations especially opposed by the Montana Chamber of Commerce are number 7 and number 21. Number 7 is nothing more than a welfare program, since it recommends that assistance be paid to unemployed individuals who are not eligibile for unemployment insurance. No unemployment insurance program worthy of the name should contain such a provision. Number 21 puts the burden of paying triple benefits on the employer for any appeal which is delayed more than 60 days. Obviously, the employer has no control over the administrative activities of agencies considering such an appeal, and the recommendation does not take into consideration the fact that the claimant could cause delays extending beyond 60 days.

Time and space will not allow in depth discussion of all the recommendations included in this notice, but it is apparent that the overall objective of the recommendations is to provide higher benefits for longer periods of time to more individuals. Adoption of recommendations such as these would result in increased taxes, whether paid by employers from unemployment funds or from general revenue sources. The Montana Chamber of Commerce is opposed to actions which would have this result. Further, it is apparent that many of the recommendations are not complete and need further development before comprehensive comment can be made.

We sincerely urge the members of the Finance Sub-Committee to carefully consider the need for continuing the funding for the National Commission, since in our view the Committee itself has developed recommendations that are much more realistic and in tune with the mood of the States in relation to unemployment insurance.

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VIEWS AND COMMENTS OF THE NATIONAL CATTLEMEN'S ASSOCIATION

Since it was not possible for me to appear in person to testify on H.R. 3920 at hearings held September 5, 1979, I am submitting views and comments of the National Cattlemen's Association relative to the pending amendments and respectfully request their inclusion in the hearing record.

We understand that the Chairman contemplates future hearings on various additional issues of the unemployment compensation programs. Also, we further understand this record is confined to the extension for an additional year of the National Commission on Unemployment Compensation, to provide for payment of Commission members, to exempt the Commission from certain procedural requirements, and to extend a provision exempting certain alien contract farm labor from unemployment taxes. This statement is confined to comments on the latter issue only.

The National Cattlemen's Association supports the exclusion from Federal Unemployment taxes the agricultural services performed by aliens who are admitted to the United States pursuant to Sections 214(c) and 101(a)(15) and (H) of the Immigration and Nationality Act. The services of these aliens should be exempt since they are not abandoning their foreign residency, they are not eligible for unemployment compensation benefits, and they are admitted to the United States to work for a temporary period during peak or seasonal agricultural demand, and are admitted only after United States officials have determined there are not sufficient workers available in the United States to perform the specific jobs for which the non-resident workers are admitted.

While supporting the exclusion, though, the National Cattlemen's Association objects to the change included in H.R. 3920 which would require the counting of work performed by such alien workers to determine whether or not an employer is subject to Federal Unemployment taxes on other United States farm workers in his employ. Under present law, an agricultural employer engaging less than ten (10) agricultural workers, or having a quarterly payroll of less than $20,000, is exempt from Federal Unemployment Insurance payments. However, under the proposed changes, if an employer had seven (7) regular United States employees, and during a peak season or period engaged four (4) foreign workers, for example, thus temporarily pushing his total number over ten (10), that employer would be subject to Federal Unemployment taxes on his regular U.S. employees.

In our opinion, this change is clearly discriminatory and should not be made. We emphasize that the foreign residents can be hired only after certification that insufficient U.S. workers are available and the charge that the engagement of alien workers provides an incentive for farmers or ranchers to use these non-resident workers rather than U.S. workers, for whom Federal Unemployment taxes would be payable, is not well founded or valid.

We understand that the exclusion was allowed pending the completion of a study by a national commission to ascertain if such an exclusion did in fact provide any incentives to hire alien workers in lieu of U.S. workers. However, the commission has not yet reported to the Congress on the matter to be studied, and it is proposed to continue the exclusion until 1982 when expectedly an assessment of impact can be made. Such being the case, there would appear to be no justification for changing the exemption of farm employers by counting the alien farm workers to determine that a farm employer is subject to Federal Unemployment tax on U.S. workers in his employ.

We repeat our contention that this change is discriminatory.

While presenting the opinions of the National Cattlemen's Association with respect to these specific provisions of pending legislation, I feel it is also important to declare our overall policy position on Unemployment Compensation. The National

Cattlemen's Association opposes Federal legislation extending Unemployment Compensation to the agricultural industry in general. Agricultural employers in the U.S. do not have the power or opportunity to pass on the additional cost of mandatory compensation payments since the very nature of their business does not allow for establishing prices. It is our understanding that certain Federal action would impose additional requirements on agricultural employers since agricultural labor has certain exclusions under various State Unemployment Compensation programs. Mandated Unemployment Compensation taxes fail to recognize the unique aspects of the agricultural business as well as the often seasonal nature of agricultural labor.

We trust the Committee will give careful consideration to the opinions and comments of the National Cattlemen's Association as it deliberates on the pending legislation and the contemplated changes contained therein.