Calendar No. 1116

96TH CONGRESS 2d Session | SENATE | REPORT No. 96-998

# UNEMPLOYMENT COMPENSATION AMENDMENTS

SEPTEMBER 26 (legislative day, JUNE 12), 1980—Ordered to be printed

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

## REPORT

[To accompany H.R. 4007]

The Committee on Finance, to which was referred the bill (H.R. 4007) to amend the Internal Revenue Code of 1954 to provide that the provisions which increase the Federal unemployment tax in States which have outstanding loans will not apply if the State makes certain repayments, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

### I.—SUMMARY

*Repayment of State loans.*—When State unemployment compensation accounts (funded by State unemployment taxes) prove insufficient to meet benefit obligations, States are permitted to borrow on an interest-free basis from a Federal loan account. If a State fails to repay the loan, recoupment of the loan is achieved through automatic annual increases in the net Federal payroll tax applicable to employers in that State.

Under the provision approved by the committee today, this Federal recoupment would be limited in several respects starting with taxable years beginning after 1980 (i.e. starting with the recoupment which would otherwise take place at the beginning of 1982 for taxable year 1981.)

Under the committee provision, the increased Federal tax for recouping unrepaid State loans would not apply in any year in which the State repays by November 9 of the taxable year an amount equal to the sum of: (a) the amount of revenues that would otherwise be generated by the increased Federal tax and (b) any loans which had been received during the previous 12 months.

The committee amendment would also allow borrowing States to qualify for a limitation on the amount of any Federal tax increase to recoup outstanding loans. If specified requirements are met, the amount of increased Federal tax could not exceed an aggregate level of 0.6 percent (thus increasing the net effective Federal tax rate to a maximum of 1.3 percent) or, if higher, the percentage increase which had been reached in the year prior to the year in which the State qualifies (or requalifies) for the cap. The cap would limit both the general 0.3 percent annual increases and certain special increases which otherwise come into play after a State has failed to repay a loan for a period of years.

As a condition of eligibility for the cap, State taxes would be required to meet certain minimum criteria, and overall State program solvency could not be decreased. In order for a State to qualify for the cap for any year, its tax effort must not have been reduced. In addition, its tax effort must be sufficient to fully meet that year's benefit obligations, and no State legislation could have been enacted during the preceding year which would have the net result of lessening the solvency of the State unemployment program (i.e., no benefit liberalizations could be enacted unless funding to cover their costs fully was also enacted).

If by November 10 a State meeting these requirements had repaid an amount equal to the capped tax that would otherwise apply, no Federal tax increase would become effective. If such a State had not made such a payment, the increased Federal tax would go into effect at the capped rate. The capped rate would be the increased tax rate applicable to the State in the preceding year or 0.6 percent (over and above the generally applicable 0.7 percent), whichever is higher. The "capped" rate is applicable only after the increased tax rate (generally 0.3 percent in the first year, 0.6 percent in the second year, 0.9 percent in the third year, and so forth) would otherwise have increased to more than 0.6 percent.

*Special provisions for recession-impacted States.*—In the case of States experiencing unusually high rates of unemployment, the committee bill would allow the above provisions to apply as described except that the affected States would not be required to have repaid any new loans taken out during the preceding year. To qualify for this provision, a State would have to have either (a) an insured unemployment rate of 7 percent or more during a 26-week period in the Federal fiscal year preceding the November 10 date as of which the determination is made, or (b) an insured unemployment rate during a 26-week period of that fiscal year which was 4.8 percent or higher and was at least 20 percent higher than the average insured unemployment rate in the comparable 26-week period of the 2 preceding fiscal years. States qualifying for this provision would have to repay any new loans to which it applies no later than 12 months following the end of the first fiscal year in which they no longer qualify for it.

*Elimination of national trigger.*—Under present law, an extended benefit program providing up to 13 weeks of additional unemployment benefits becomes effective in times of high unemployment. The extended benefits program goes into effect on a State-by-State basis if the State insured unemployment rate reaches a level of 4 percent and is also 20 percent higher than the rate during the comparable period of the 2 previous years. At State option, the program can also become effective whenever the State insured unemployment rate is 5 percent or higher regardless of how it compares with the rate in the 2 prior years. In addition to these "State triggers," the program becomes effective in all States whenever the national insured unemployment rate reaches a level of 4.5 percent. (For both State and national triggers, the rate is measured over a moving period of 13 consecutive weeks.) The committee amendment would eliminate the national trigger so that the program would go into effect only in those States where one of the State triggers applied. Since the national trigger is now in effect, extended benefits would continue in all States until the minimum 13 week period had been completed. Thereafter, extended benefits would be payable only in those States which continue to meet the State trigger requirements.

*Optional State trigger.*—Under present law, States must implement the extended benefit program when the State insured unemployment rate is both 4 percent or higher and 20 percent above the level prevailing in the State in the 2 prior years. When the "20 percent higher" factor is not met, States may at their option provide for the program to become effective when the State insured unemployment rate is at least 5 percent. If States choose this option, the trigger point for the program must be set at 5 percent. In other words, States may not provide that the program will become effective only if the rate is at least 5½ percent or 6 percent. The committee amendment would modify the optional State trigger provision so that States could specify any rate of insured unemployment which is 5 percent or higher as the optional trigger point (that is, the point at which the extended benefit program would become effective in the absence of the "20 percent higher" factor).

*Unemployment benefits for Federal employees.*—Under present law, a Federal employee who suffers unemployment may qualify for unemployment compensation under the same rules as apply to employees of private businesses in the State in which he was last employed. The costs of benefit payments to former Federal employees are reimbursed to the State paying benefits by the Federal government. At present, all such costs are funded through a single appropriation account within the budget of the Department of Labor rather than being charged to the appropriations of the employing agencies. The committee amendment would establish a special account within the Federal unemployment trust fund from which States would be reimbursed for the costs of unemployment benefits based on Federal employment. Each agency would be required to reimburse that account from its appropriations for the costs attributable to its employees.

*Extended benefits not payable on the basis of less than 20 weeks of employment.*—Under existing law, most States pay regular unemployment benefits for a maximum of 26 weeks. In times of high unemployment, benefits are payable for an additional period of up to 13 weeks under the extended benefits program. Half the cost of this program is met from the Federal unemployment tax. Each State sets the amount of qualifying employment necessary to become eligible for regular benefits. While some States have established rules that allow benefits only for persons with a substantial earnings history, other States require much less previous work. This can result in extended benefits being paid to an individual who has qualified on the basis of a minimal period of employment. The amendment would require that benefits not be paid under the extended benefit program to any individual who has less than 20 weeks of qualifying employment in the base period. As an alternative to the 20 weeks of employment, State agencies would be permitted to establish a requirement that the individual's total base period wages be no less than an amount equal to 20 times the State average weekly wage in covered employment.

*Extended benefits not payable to persons who leave jobs voluntarily or for misconduct.*—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. The committee amendment would require that an individual who had been disqualified for one of these reasons could not be paid extended benefits (even though he may have been reinstated to regular State benefit status because his State provides for only a limited period of disqualification).

*Definition of insured unemployment rate.*—In regulations promulgated earlier this year, the Department of Labor attempted to modify the definition of the insured unemployment rate as that concept is applied for purposes of the extended benefits program. Under the former interpretation, insured unemployment was computed by dividing the number of persons receiving unemployment benefits (including persons getting extended benefits) by the number of persons working in jobs covered by the unemployment compensation program. The regulations issued by the Department of Labor would have eliminated extended benefits from the computation of the insured unemployment rate. These regulations, however, were recently abrogated by a Federal court on the basis that a change of this type would require legislative action. The committee amendment would reinstitute the change proposed by the Department, so that extended benefit recipients would not be counted in determining the insured unemployment rate.

## II.—General Discussion of the Bill

### LIMITATION ON RECOUPMENT OF STATE UNEMPLOYMENT COMPENSATION LOANS THROUGH INCREASED FUTA PAYMENTS

(Section 1 of the Bill)

*Financing of unemployment benefits.*—As a general rule, benefits payable under the unemployment compensation program are financed through payroll taxes imposed by State legislatures. These State taxes are deposited in State accounts in the Federal Unemployment Trust Fund with the result that the operations of State programs are reflected in the Federal budget. However, no Federal funds are used to finance regular State benefits (that is, benefits payable for the first 26 weeks of unemployment). In times of high unemployment, an additional 13 weeks of benefits are payable under the 1970 Federal-State Extended

Unemployment Compensation Act. These extended benefits are paid half from State unemployment taxes and half from the Federal unemployment tax.

In theory, the unemployment compensation program operates on a countercyclical basis. During periods of lower unemployment, surpluses are accumulated in both the Federal and State accounts in the trust fund. In times of recession, benefit liabilities increase and those accumulated surpluses are drawn down.

*Loan provisions.*—Because of the volatility of unemployment rates, the present law contains special loan provisions designed to tide unemployment compensation accounts over unforeseen circumstances in which surpluses prove inadequate to meet benefit demands. A portion of the Federal unemployment tax is deposited in a Federal loan account from which States may obtain interest free loans whenever State accounts are inadequate to meet benefit obligations. The Federal loan account, in turn, may receive interest-free loans from the General Fund of the Treasury if it cannot otherwise accommodate State requirements. (The Federal extended unemployment compensation account also borrows from the general fund when necessary to meet the Federal one-half share of extended benefits.)

During and since the last recession, several States had inadequate reserves to meet benefit costs and borrowed large sums from the Federal loan account, which in turn borrowed heavily from general revenues. The extended unemployment compensation account also had inadequate reserves to meet the Federal share of extended benefit costs and the costs of a new emergency unemployment program which, during the last recession, extended benefit duration up to one and one-quarter years. Consequently the extended unemployment compensation account also incurred substantial loans from the general fund of the Treasury. The outstanding loan balances as of June 30, 1980 are shown below:

[Dollar amounts in billions]

| Owed by— | Owed to— | Amount of debt |
|---|---|---|
| Federal extended benefit account | General fund | $7.627 |
| Federal loan account | do | 4.982 |
| State accounts | Federal loan account. | (4.334) |

*Repayment of Federal loans under present law.*—The outstanding Federal accounts debt to the general fund of the Treasury are to be repaid out of the proceeds of the Federal unemployment tax combined with repayments by the States of their outstanding loans. In the case of the $7.6 billion outstanding general fund loan to the extended unemployment compensation account, present law provides for a temporary increase in the effective Federal tax rate from its permanent level of 0.5 percent to a level of 0.7 percent until such time as that debt has been eliminated. The $5 billion loan account debt to the general fund will largely be met from repayment of State loans.

*Repayment of State loans under present law.*—Permanent law provides that a State must repay the totality of any outstanding loan by November 10 following the second consecutive January 1 on which it had such a balance. For example, if a State borrows $50 million in April of 1981 and $25 million in June of 1982, it must repay the entire $75 million by November 10 of 1983 since it had an outstanding loan balance as of January 1982 and January 1983. If a State fails to meet this requirement, recoupment of the loan begins through an automatic increase in the net Federal payroll tax applicable to employers in that State. In general, the tax rate escalates by 0.3 percent per year. In the above example, the net Federal tax rate would increase from its national level of 0.7 percent to a level of 1.0 percent in that State for 1983 (which employers pay at the beginning of 1984) and then to 1.3 percent for 1984, 1.6 percent for 1985 and so on until the debt is recouped (or the full 3.4 percent maximum Federal tax rate is reached).

Because of the heavy impact of the last recession, Congress enacted temporary provisions which effectively suspended any repayment requirements over the past 5 years if States met certain criteria established by the Labor Department. These temporary provisions have now expired with the result that several States with outstanding loans are faced with increased Federal tax rates to recoup the loans.

| State | Some outstanding debt since | Amount of debt (millions) | Potential 1980 [1] increase in net Federal tax rate (percent) |
|---|---|---|---|
| Arkansas | 1980 | $3.0 | ........ |
| Connecticut | 1972 | 370.9 | 0.7 |
| Delaware | 1975 | 43.8 | .6 |
| District of Columbia | 1975 | 65.5 | .6 |
| Illinois | 1975 | 946.5 | .3 |
| Maine | 1975 | 36.4 | .3 |
| Massachusetts | 1975 | 231.7 | .3 |
| Michigan | [2] 1979 | 410.0 | 0 |
| Minnesota | [2] 1979 | 1.9 | 0 |
| Montana | 1976 | 7.1 | .3 |
| New Jersey | 1975 | 651.9 | .3 |
| Pennsylvania | 1975 | 1,388.4 | .6 |
| Puerto Rico | 1975 | 88.7 | .3 |
| Rhode Island | 1975 | 121.2 | .6 |
| Vermont | 1974 | 40.7 | .6 |
| Virgin Islands | 1975 | 7.7 | .3 |

[1] Increased tax (over nationally applicable net rate of 0.7 percent) for tax year 1980 (payable at beginning of 1981).
[2] State repaid former loan prior to Nov. 10, 1979.

*Committee amendment.*—The committee recognizes that increasing unemployment rates in the near term will make it difficult for States with large outstanding loan balances to repay those loans and thus avoid the increases which will otherwise occur in the net effective Federal unemployment tax rate. These States have argued that allowing the full Federal tax increases to become effective will tend to lessen prospects for economic recovery. The committee recognizes the force of that argument but is also concerned that a simple extension of the suspension which has been in effect for the past 5 years could undermine the incentives for States to build adequate reserves in times of economic prosperity. The committee therefore recommends changes in the law which will give the affected States substantial relief from the present law recoupment provisions while at the same time requiring substantial action by those States to strengthen the solvency of their unemployment programs so as to achieve an orderly repayment of their outstanding indebtedness.

*Loan repayment in lieu of tax.*—Under the committee amendment, the increased Federal tax for recouping unrepaid State loans will not apply in any year in which the State repays by November 9 of the taxable year an amount equal to the sum of: (a) the amount of revenues that would be generated for the taxable year if the increased Federal tax had become effective and (b) any loans which had been received during the 1-year period ending with November 9 of the taxable year in question. The requirement in the House bill that the State trust fund be sufficiently solvent to assure no further borrowing for 6 months would be dropped. In addition, the amount to be repaid would be limited to the "capped" amount as described below provided that the State met the requirements for the cap. (If the State did not meet the requirements for the cap, it could use the repayment in lieu of tax provision but would then have to repay the full equivalent of the tax that would apply under present law.) This provision would be applicable in the case of taxable years beginning after 1980. In other words, the present law requirements would continue to apply in the case of 1980—States which do not repay their loans in full before November 10 will have the increased Federal tax rate shown in the above table apply to 1980 wages. This tax is paid at the beginning of 1981. The new provisions would apply starting with determinations made on November 10, 1981 for increased taxes payble at the beginning of 1982.

*Cap on increased Federal tax.*—The committee amendment would allow borrowing States to qualify for a limitation on the amount of any Federal tax increase to recoup outstanding loans. If specified requirements are met, the amount of increased Federal tax could not exceed an aggregate level of 0.6 percent (thus increasing the net effective Federal tax rate to a maximum of 1.3 percent) or, if higher, the percentage increase which had been reached in the year prior to the year in which the State qualifies (or requalifies) for the cap. The cap would limit both the general 0.3 percent annual increases and certain special increases which apply to States with relatively low tax effort.

As a condition of eligibility for the cap, State taxes would be required to meet certain minimum criteria, and overall State program solvency could not be decreased. In order for a State to qualify for the cap for any year, its tax effort must not have been reduced. In addition, its tax effort must be sufficient to fully meet that year's benefit obligations. For a State to meet this requirement, the Secretary of

Labor would have to determine as of November 10 of the year to which the cap would apply that:

(1) The outstanding loan balance of the State as of September 30 of the same year was no higher than it had been as of September 30 of the preceding year;

(2) No State action had been taken during the Federal fiscal year ending in that year to reduce the State's overall unemployment tax effort; and

(3) No State legislation had been enacted during that same Federal fiscal year which had the net result of lessening the solvency of the State unemployment program (i.e., no benefit liberalizations could be enacted unless funding to cover their costs fully was also enacted).

If by November 10 a State meeting these requirements had repaid an amount equal to the capped tax that would otherwise apply, no Federal tax increase would become effective. If such a State has not made such a payment, the increased Federal tax would go into effect at the capped rate. The capped rate would be the increased tax rate applicable to the State in the preceding year or 0.6 percent (over and above the generally applicable 0.7 percent) whichever is higher. The "capped" rate applies only after the present law provisions would have increased the increased tax level to a rate above 0.6 percent. Under present law, the increased rate is generally 0.3 percent for the first year in which an increased rate applies, 0.6 percent for the second year, 0.9 percent for the third year and so forth.

The cap provisions would first apply to taxable years after 1980 (i.e., to tax payments due at the beginning of 1982 and later years).

*Special provision for recession-impacted States.*—The provisions described above will substantially lessen the conditions States must meet to avoid bearing the full impact of automatic annual increases in the Federal unemployment tax designed to recoup unrepaid loans from the Federal trust fund account to the State accounts. The committee recognizes that States which are particularly hard hit by recessionary conditions may be temporarily unable to meet even these lesser requirements. For this reason, the committee amendment incorporates a special provision granting further relief to States with extraordinarily high levels of unemployment.

A condition common to both of the above provisions is that States must improve the solvency of their programs to the point that no new borrowing is required. In other words, although temporary borrowing to meet cash flow contingencies within a given year would be permissible, States would have to be in a position on a year-to-year basis to meet current benefit obligations plus any required loan repayments without increasing the net year-end balances of their outstanding loans. This requirement would be suspended under the committee amendment in the case of any taxable year if the State had extraordinary levels of unemployment during the Federal fiscal year which ends in that taxable year. For this purpose, a State would be considered to have an extraordinary level of unemployment if, over a period of 26 consecutive weeks, the insured unemployment rate was either:

(*a*) 7 percent or higher, or

(*b*) 4.8 percent or higher and at least 20 percent above the rate prevailing (on average) in the comparable 26 week period of the 2 prior years.

For purposes of determining insured unemployment, the rate to be used would be the same as the rate used for purposes of the extended benefit triggers. (Section 7 of the bill revises the definition of this rate. It is intended that the revised definition be applied consistently, that is, both for the taxable year in question and for the 2 preceding years.) By way of exception to this general rule of using the extended benefits trigger rate, the 7 percent criterion would be based on a seasonally adjusted insured unemployment rate.

The committee is aware that this provision in effect permits States with high rates of insured unemployment to defer any net repayment and to continue building up increased loan balances for so long as they qualify under the recession-impact criteria. However, the committee anticipates and expects that these States will recognize that those criteria are unlikely to be met for any protracted period of time. The reason for this is that the "20 percent higher" requirement cannot be met unless unemployment levels are not only high but are also continually increasing. Consequently, States will need to take prompt and substantial action as soon as their economic situation stabilizes to improve the solvency of their programs. Such action will be imperative if States are to continue to qualify for any of the relief provided by this bill. Under the amendment, as soon as a State completes a fiscal year in which it no longer meets the recession-impact criteria outlined above, it would have only 12 months in which to repay all new borrowing which it incurred since the beginning of the first fiscal year for which the recession-impact waiver first applied. If it fails to meet this requirement, it can no longer qualify for any of the relief provided under this section. That disqualification would continue until the taxable year which starts in the fiscal year in which the required repayment is in fact made.

*Example:*

State A has an outstanding loan balance of $300 million on September 30, 1980 and on November 10, 1980. Under existing law, the State faces an increase of 0.6 percent in the net Federal unemployment tax for taxable year 1980. (For purposes of this example, 0.6 percent is assumed to generate revenues of $40 million in each year. In practice, the yield from such a tax would vary from State to State depending on covered payroll and from year to year within a State.) Under present law the additional tax will increase to 0.9 percent ($60 million) for 1981, to 1.2 percent ($80 million) for 1982, and to 1.5 percent ($100 million) for 1983.

Since the relief provided by the bill is first effective for taxable years *after* 1980, the 0.6 percent increase for 1980 will be assessed. Thus, employers in the State will pay an additional $40 million in taxes at the start of 1982. This will reduce the State's balance to $260 million.

For taxable 1981, the additional tax will be held at 0.6 percent ($40 million, in this example) instead of rising to 0.9 percent if the State is found on November 10, 1981 to have met the qualifying requirements for the cap as described above. One of the requirements, in this example, would be that the State loan balance as of September 30, 1981 be no higher than $300 million—the amount it had reached on September 30, 1980. (This assumes that the State had not qualified during fiscal year 1981 for the special relief for recession-impacted States.) If the State meets the cap requirements, it would have the option of repaying the equivalent of 0.6 percent plus any borrowing that took place between November 10, 1980 and November 9, 1981. In other words, it would have to bring its loan balance down to $220 million by November 9. If it did so, no increased Federal tax would be payable by the State's employers at the beginning of 1982. (If it qualified for the cap but did not bring its loan balance down to $220 million by November 9, the State's employers would be assessed the "capped" tax increase of 0.6 percent ($40 million) at the beginning of 1982. If the State did not qualify for the cap, the Federal tax rate increase would rise to 0.9 percent for 1981 and continue to increase by 0.3 percent per year until the State requalifies or until the loan has been fully recaptured by the tax increases. If the State requalifies, the cap would be at the rate of Federal tax increase which had been reached in the year before the State requalified.)

If in the above example, the State had a 26-week period during fiscal 1981 in which it met the recession-impact criteria (an insured unemployment rate of at least 4.8 percent and 20 percent above the rate in the comparable period of fiscal years 1979 and 1980), it could qualify for the 0.6 percent ($40 million) cap on the 1981 tax increase even if it had required additional borrowing during fiscal 1981, thus increasing its loan balance to, say, $500 million by September 30, 1981. In addition, as long as the State made a $40 million repayment on or before November 9, there would be no increased Federal tax payable by the State's employers for taxable year 1981 at the start of 1982 even though the loan balance had not been reduced to its September 1980 level of $300 million (for example, if after the repayment it remained at $500 million). If the State then failed to meet the recession-impact criteria during fiscal year 1982, it would have to keep its loan balance down to no more than $500 million as of September 30, 1982 to continue to qualify for the 0.6 percent cap. The State would have to reduce that balance to $460 million ($500 million less than $40 million equivalent of the 0.6 percent tax) by November 9, 1982 to avoid the imposition of that 0.6 percent tax increase on the State's employers at the start of 1983. In addition, since the State no longer met the recession-impact criteria as of fiscal year 1982, it would have to repay all new borrowing since the start of 1981 by the end of fiscal year 1983. In other words, to qualify for the cap for taxable 1983, the State would have to reduce its loan balance by September 30, 1983 to $300 million (i.e., its loan total as of September 30, 1980—just prior to the first year for which it met the recession-impact criteria). If the State did not meet that requirement, it would cease to qualify for relief under the bill and its Federal tax rate increase would begin to rise by 0.3 percent per year. In this example, the additional Federal tax would be raised to 0.9 percent for 1983 and 1.2 percent for 1984. If the State subsequently reduced its loan balance to the September 1980 level, it could requalify for the cap; (however, the cap would be at the rate of tax which the State had reached in the prior year, that is—in this example—1.2 percent if the State requalified as of 1985).

## ELIMINATION OF NATIONAL TRIGGER UNDER THE EXTENDED BENEFITS PROGRAM

(Section 2 of the Bill)

*Present law.*—In most States, unemployment benefits are payable under the regular State program of unemployment compensation for a maximum of 26 weeks. The costs of these regular benefits are financed entirely from State unemployment taxes. In times of high unemployment, however, the Federal-State extended unemployment compensation program becomes operative. This program provides for an additional benefit duration for workers who have exhausted their entitlement to regular State benefits. Benefits are payable under the extended program for half as many weeks as benefits were payable under the regular program. In other words, when the extended program is in effect, unemployed persons can receive up to 13 additional weeks of benefits for an overall maximum of 39 weeks. Half of the cost of extended benefits is paid for from State unemployment taxes and half of the cost is borne by the Federal unemployment tax.

Present law provides for the extended benefit program to be operative in any State when the insured unemployment rate (the number of persons receiving unemployment benefits as a percentage of persons working in jobs covered by the program) is sufficiently high under any one of three tests or "triggers." Under the basic State trigger, the program is in operation when the insured unemployment rate for the State is at least 4 percent and that State's insured unemployment rate is at least 20 percent higher than the average insured unemployment rate in that State during the comparable period in the two prior yars. If the State insured unemployment rate is not at least 20 percent above the rate for the 2 prior years, a State may nevertheless elect to have the extended benefit program become effective whenever the State insured unemployment rate reaches a trigger level of 5 percent. In addition to the basic and optional State trigger provisions, present law also includes a national trigger. When the national insured unemployment rate is at a level of 4.5 percent or higher, the extended benefits program must be operated by all States.

*Committee amendment.*—The committee amendment would eliminate the national trigger for paying extended unemployment benefits. Unemployment benefits are provided in order to protect workers against the involuntary loss of income that occurs when they lose their jobs and for the period thereafter while they are trying to obtain new employment. In times of high unemployment, the availability of jobs is curtailed and the competition for them is increased. At such times, it is likely that an unemployed worker will need more time to find a new job. This relationship between the overall level of unemployment and the amount of time it takes to find a new job is the basic justification for a program of extended benefit duration. The committee believes, however, that that relationship is more properly reflected in the State triggers than in the national trigger. When a worker becomes unemployed, the question of how long he will have to search for new employment is dependent upon the availability of, and competition for, jobs in the area where he resides, not upon the national average unemployment situation.

When the extended unemployment compensation program was originally enacted in 1970, extended benefits could be triggered on for an individual State only if the State insured unemployment rate was both 4 percent and was at least 20 percent higher than in the 2 preceding years. In the case of a prolonged national recession, States would be unable to meet the "20 percent higher" requirement even though they might be experiencing a very high level of insured unemployment. For this reason, the national trigger did serve as an important safeguard under that original legislation. In the 1976 amendments, however, the law was changed to provide for an optional alternative State trigger based on an absolute State insured unemployment rate of 5 percent. The committee believes that that change in the law eliminated the need for a national trigger.

Since the national trigger is now in effect, extended benefits would continue in all States until the minimum 13 week period had been completed. Thereafter, extended benefits would be payable only in those States which continue to meet the State trigger requirements.

STATE OPTION AS TO CRITERIA FOR STATE "ON" AND "OFF" INDICATORS

(Section 3 of the Bill)

*Present law.*—As explained in the description of section 6 above, one of the three "trigger" situations in which extended benefits may be payable is the optional State insured unemployment rate of 5 percent. Prior to the 94th Congress, permanent law provided for extended benefits to be payable on a State-by-State basis only under the mandatory trigger of a State insured unemployment rate of 4 percent or more which was also at least 20 percent above the rate which the State had experienced during a comparable period in the 2 prior years. Because that requirement prevents benefits from being payable in States with high but persistent levels of unemployment, temporary legislation had been enacted on several occasions to waive the "20 percent higher" requirement. To meet this problem on a permanent basis, the law was amended to give each State the option of triggering into the program at a 5 percent insured unemployment rate without regard to how that level of unemployment compared with prior years.

*Committee amendment.*—Inasmuch as the 5 percent State trigger is optional with the States, the committee sees no reason why States should not be given the additional flexibility to set the trigger level at whatever level of insured unemployment which the State may find appropriate so long as it is at least 5 percent. At the time the optional 5 percent State trigger was under consideration by the Congress, there was disagreement as to the most appropriate level and the Senate version of that legislation provided for a trigger level of 6 percent. Since the question of whether to pay benefits at all under this trigger has been left to the States, it seems reasonable to give the States this additional flexibility to set the trigger at 5, 5½, 6 or whatever percent they find most appropriate.

## BENEFITS ON ACCOUNT OF FEDERAL SERVICE TO BE PAID BY EMPLOYING FEDERAL AGENCY

(Section 4 of the Bill)

*Present law.*—Under present law, individuals who are terminated from Federal employment (or partially terminated) may apply for benefits with the State agency of the State in which their Federal employment was located. Unemployment benefits are payable to such individuals under the same rules and procedures as apply to individuals in that State who lose jobs in private employment. To the extent that benefits are based on Federal employment, the State is reimbursed by the Federal Government (out of appropriated funds) for the benefit costs. The Federal costs of benefits for former employees are appropriated into a single account as a part of the annual Labor-HHS Appropriations Act.

*Committee amendment.*—An important element in 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 awards are not being made by the State agency to persons not entitled to benefits. Under existing law this same type of incentive does not exist for Federal agencies since they have no fiscal stake in the question of whether or how much unemployment compensation is paid to their employees. The costs of such compensation is borne by a government-wide account which is not reflected in individual agency budgets and therefore not subject to any effective review by the appropriations subcommittees responsible for monitoring these budgets.

The committee amendment would modify this arrangement by providing that the budget account from which States are reimbursed would receive its funding not from a single direct appropriation but rather from payments made by each agency out of that agency's appropriation. This should make each agency more aware of the need to monitor, and in appropriate cases contest, benefit claims of former employees in order to avoid excessive costs which would have to be absorbed from other parts of the agency's budget.

Under the committee amendment, a separate account for Federal employee benefits would be established. This account would be placed within the Unemployment Trust Fund but would be funded entirely from general revenues. It would operate on a revolving fund basis starting with a transfer to the account on September 30, 1980, of the amounts that have already been appropriated to pay for Federal employee unemployment benefits. Starting on that same date, States would be reimbursed out of this account for their benefit payments to Federal employees. The employing agencies would, in turn, be required to reimburse the account out of their individual appropriations. Additional appropriations could be made to the account to assure an adequate working balance and any exces amounts in the account would be transferred back to the general fund of the Treasury.

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Although the change becomes effective as of October 1, 1980, the committee recognizes that it will take some time and effort for the Labor Department to begin making determinations as to the amounts owed the account by each agency and for the readjustment of budgets to accommodate this change. For this reason, the amendment is intentionally drawn in a manner which does not mandate a particular time limit within which determinations and reimbursements must be made. The amendment provides that agencies will make transfers to the account on a quarterly basis reflecting what they owe the account on the basis of Labor Department determinations which have been completed as of the start of that quarter. While this does provide great leeway to the Department in implementing this provision, the committee intends that the Department should move as quickly as feasible to begin implementation and should assure that agencies are promptly made aware of the fact and purpose of this change in the law.

## LIMITATION ON PAYMENT OF EXTENDED UNEMPLOYMENT BENEFITS

### (Section 5 of the Bill)

*Present law.*—Under existing law, regular State unemployment benefits are payable out of State unemployment payroll taxes to workers who are involuntarily unemployed and who are willing and available to accept employment which is consistent with their abilities and prior work experience. Generally, States pay benefits for a maximum of 26 weeks. In times of high unemployment, an extended benefits program becomes effective. Under this program up to 13 additional weeks of benefits are payable. The benefits are funded half from State payroll taxes and half from the Federal unemployment tax. Under present law, each State establishes the qualifying requirements for regular benefits and individuals who meet those requirements are automatically eligible for Federal-State extended benefits if the extended benefits program is in effect.

All States establish certain prior employment requirements to establish eligibility for benefits. While some States have established rules that allow benefits only for persons with a substantial earnings history, other States require much less previous work. This can result in extended benefits being paid to an individual who has qualified on the basis of a minimal period of employment.

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.

Generally, a worker qualifies for 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 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.

*Committee amendment.*—The committee amendment would establish certain limitations on the payment of Federal-State extended benefits to unemployed workers. For the most part, Federal law has left to the States the discretion of establishing benefit qualification rules since regular unemployment benefits are entirely financed from taxes imposed by State legislatures. However, in recent years, very substantial costs have been incurred to pay extended benefits. Half the cost of these benefits is born from the Federal unemployment tax which is paid by all employers including those in States where the extended benefits program is not in operation. A very significant part of the cost of the extended benefits program has also been paid from interest-free loans from the Federal Treasury to a number of States that have not fully funded the heavy benefit costs of recent years. For these reasons and because benefits payable for a period in excess of six months have a somewhat different character from benefits payable during the first few weeks after unemployment occurs, the committee recommends an amendment designed to better target these long-term benefits to individuals who become involuntarily unemployed after substantial attachment to the work force.

The first part of the committee provision would require that benefits not be paid under the extended benefit program to any individual who has less than 20 weeks of qualifying employment in the base period. As an alternative, States may provide extended benefit eligibility on the basis of total base period wages of at least 20 times the State average weekly wage.

Under another part of this provision, extended benefits would not be payable to an individual who had been disqualified for refusing employment or because he quit voluntarily or lost his job by reason of his own misconduct (even though he may have been reinstated to regular State benefit status because his State provides for only a limited period of disqualification).

## RATE OF INSURED UNEMPLOYMENT

(Section 7 of the Bill)

In regulations promulgated earlier this year, the Department of Labor attempted to modify the definition of the insured unemployment rate as that concept is applied for purposes of the extended benefits program. Under the former interpretation, insured unemployment was computed by dividing the number of persons receiving unemployment benefits (including persons getting extended benefits) by the number of persons working in jobs covered by the unemployment compensation program.

The Department concluded that the inclusion of extended benefit recipients in the computation was illogical since the purpose of determining this rate is to decide whether unemployment generally has become (or remains) sufficiently severe to trigger the extended benefits program into operation. Thus, under the old definition, the effects of the program itself are used to determine whether or not the progam is warranted. This has no practical impact in determining if a State should trigger onto the program since, until the State has triggered on, it will have no extended beneficiaries to be counted. Once it does trigger on, however, the inclusion of extended beneficiaries will cause a jump in the rate. Because of that inflation of the rate, a State will not trigger off the program even though employment conditions improve to the point that the State would no longer qualify to trigger onto the program.

In addition to delaying the off trigger at a State level, the inclusion of extended benefits tends to accelerate the national on trigger and delay the national off trigger. The regulations of the Department of Labor to eliminate extended benefits from the computation of the insured unemployment rate were recently abrogated by a Federal court. The court took the position that a change of this type would require legislative action. The committee bill modifies the definition in the manner proposed by the Department's regulations.

## III.—Regulatory Impact of the Bill

In compliance with paragraph 11(b) of rule XXVI of the Standing rules of the Senate the following evaluation is made of the regulatory impact which would be incurred in carrying out the bill.

The provisions of this bill modify the Federal-State unemployment compensation program in a number of respects. Section 1 of the bill grants relief to States with outstanding loans from the Federal government which would otherwise face increases in the net Federal payroll tax rate on employers in the State. Except for the tax relief, these provisions will not directly affect nor have any regulatory impact on individuals or businesses. However, the conditions for obtaining the relief provided for by the section will involve some regulatory impact as between the Federal and State governments. Specifically, the Secretary of Labor will be required to make findings concerning the presence or absence of State action relating to the solvency of its unemployment compensation program and changes in State unemployment tax effort. It is intended and expected the overall impact of the section will be economically favorable to individuals and businesses in the affected States inasmuch as States would otherwise not opt to use the provision.

Sections 2 and 3, dealing with extended benefit trigger levels, should reduce the Federal regulatory impact on the States inasmuch as they increase State flexibility by removing an existing-law mandatory provision and increase the scope of flexibility under an existing-law optional provision. Ultimately the economic impact of these provisions is likely to be a reduction in the unemployment tax burden on employers reflecting a similar reduction in benefits to individuals. The level of this impact is indicated in the budgetary impact section of this report.

Section 4 relates essentially to the method of accounting within Federal agencies for an existing expenditure item and except for the impact within those agencies should have no regulatory effects.

Section 5 establishes certain new limits on the payment of extended unemployment compensation benefits. (Section 7 is simply a definitional change, but it will also affect the payment of extended benefits since the definition relates to the factor which triggers the extended benefits program on and off.) As such, the provision can be expected to (and are intended to) have an impact on individuals who would otherwise receive benefits under this program. However, those affected by section 5 would be a relatively small proportion of the total population of extended benefit recipients. The implementation of these provisions will involve some regulatory impact on applicants and on the State agencies that administer the program inasmuch as these provisions will require somewhat different eligibility rules for the extended benefit program than those that apply to the regular program (except to the extent that States choose to implement these rules in their regular programs). However, the regulatory impact is not expected to be excessive since States already receive information concerning non-resident beneficiaries and the prior wage history of applicants. The provision barring extended benefit payments to persons who have left jobs voluntarily or for misconduct is based on existing State findings and should therefore involve minimal new regulatory impact.

The committee believes that none of the provisions of this bill will have any substantial paperwork impact and that none of them can be expected to affect the personal privacy of individuals.

## IV.—Vote of the Committee in Reporting the Bill

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee to report the bill.

The bill was ordered reported by a voice vote.

## V.—Budgetary Impact of the Bill

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate and sections 308 and 403 of the Congressional Budget Act, the following statements are made relative to the costs and budgetary impact of the bill.

The Committee generally accepts the estimates of the Congressional Budget Office. It is noted, however, that the estimate concerning the impact of the optional State trigger could be incorrect if States avail themselves of this option promptly since the bill also would eliminate the national trigger. The Committee notes that the bill involves no revenue loss in fiscal year 1981 and will result in reduced expenditures in that year and in each following year. Consequently, the provisions of the bill will partially meet the savings required under the budget allocations applicable to programs under the jurisdiction of the Committee under the First Concurrent Resolution on the Budget for fiscal year 1981.

The estimate of the Congressional Budget Office concerning this bill is printed below:

U.S. Congress,
Congressional Budget Office,
*Washington, D.C., September 24, 1980.*

Hon. Russell B. Long,
*Chairman, Committee on Finance,*
*U.S. Senate, Washington, D.C.*

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 4007.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ROBERT D. REISCHAUER
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*September 24, 1980.*

1. Bill number: H.R. 4007.

2. Bill title: To amend the Internal Revenue Code of 1954 to provide that the provisions which increase the federal unemployment tax in states which have outstanding loans will not apply if the state makes certain repayments.

3. Bill status: As ordered reported by the Senate Finance Committee on September 24, 1980.

4. Bill purpose: Under current law, states with loans outstanding over a specified time period experience an automatic increase in the federal unemployment tax of 0.3 percent per year. Beginning at the start of 1982, this bill would limit the tax increase if certain conditions were met.

In addition, the bill contains several provisions designed to reduce unemployment insurance payments, particularly in the extended unemployment insurance program.

5. Cost estimate:

[By fiscal years, in millions of dollars]

| | 1981 | 1982 | 1983 | 1984 | 1985 |
|---|---|---|---|---|---|
| Repayment of State loans revenue and budget authority | | −100 | −400 | −650 | −900 |
| Elimination of National trigger estimated outlays | −1,200 | −1,200 | −600 | | |
| Optional State trigger estimated outlays | 0 | 0 | −15 | −30 | −30 |
| Unemployment benefits for Federal employees: | | | | | |
| Required budget authority | −11 | −12 | −13 | −14 | −15 |
| Estimated outlays | −11 | −12 | −13 | −14 | −15 |
| Extended benefits not payable on the basis of less than 20 weeks of employment: Estimated outlays | −200 | −270 | −203 | −50 | −20 |
| Extended benefits not payable to persons who leave jobs voluntarily or for misconduct: Estimated outlays | −50 | −73 | −54 | −15 | −6 |
| Definition of insured unemployment rate: Estimated outlays [1] | −200 | −1,100 | −1,500 | −450 | −40 |
| Total: | | | | | |
| Revenue and budget authority | | −100 | −400 | −650 | −900 |
| Required budget authority | −11 | −12 | −13 | −14 | −15 |
| Estimated outlays | −1,661 | −2,655 | −2,385 | −559 | −111 |

[1] Assumes elimination of the national trigger.

6. Basis of estimate: These estimates were done on the basis of press releases. Final legislative language could change the estimates.

The estimates assume CBO's July 1980 economic assumptions. The fiscal year 1981 unemployment rate is assumed at 9 percent.

REPAYMENT OF STATE LOANS

The estimate assumes that the 0.6 percent cap on the increased Federal tax is in place in 1982–1985. It is anticipated that states will meet the cap requirements in 1982 based upon the rising unemployment rate forecast in 1981. In 1982 through 1985, states will meet the loan repayment and other criteria necessary to assure the 0.6 percent cap.

*Elimination of national trigger*

| | *Millions* |
|---|---|
| Estimated outlays: | |
| Fiscal year: | |
| 1981 | —$1,200 |
| 1982 | —1,200 |
| 1983 | —600 |
| 1984 | 0 |
| 1985 | 0 |

Under current CBO economic assumptions, the unemployment rate is expected to trigger a national extended benefit program during all of fiscal years 1981 and 1982. Elimination of this national trigger is estimated to save $1,200 million in fiscal year 1981.

*Optional State trigger*

| | *Millions* |
|---|---|
| Estimated outlays: | |
| Fiscal year: | |
| 1981 | 0 |
| 1982 | 0 |
| 1983 | —$15 |
| 1984 | —30 |
| 1985 | —30 |

Under current law, States are required to participate in the extended benefit program (1) when the national trigger is "on" because the national insured unemployment rate is 4.5 percent or higher or (2) when the State insured unemployment rate is both at least 4 percent and 20 percent above the comparable State insured unemployment rate for the last two years. States which are not required to participate under the above criterion may participate, if the insured unemployment rate is at least 5 percent. This bill would permit States to select a higher unemployment rate to initiate the extended benefit program. Under current economic assumptions, a national extended benefit program is expected in 1981 and 1982. No savings are therefore expected in these years.

*Unemployment benefits for Federal employees*

| | *Millions* |
|---|---|
| Required budget authority: | |
| Fiscal year: | |
| 1981 | —$11 |
| 1982 | —12 |
| 1983 | —13 |
| 1984 | —14 |
| 1985 | —15 |
| Estimated outlays: | |
| Fiscal year: | |
| 1981 | —11 |
| 1982 | —12 |
| 1983 | —13 |
| 1984 | —14 |
| 1985 | —15 |

Under current law, unemployed former federal employees receive unemployment insurance payments financed from a general appropriation. This provision would require each agency to reimburse claims for former employees out of the agency appropriation. The provision is expected to save 5 percent of total benefit payments to former federal employees in the outyears.

*Extended benefits not payable on the basis of less than 20 weeks of unemployment*

| Estimated outlays: Fiscal year: | Millions |
|---|---|
| 1981 | −$200 |
| 1982 | −270 |
| 1983 | −203 |
| 1984 | −50 |
| 1985 | −20 |

Eighteen states and the District of Columbia do not make extended benefit payments to persons with less than 20 weeks of employment. In the remaining states, Department of Labor data shows a saving of between 5 and 10 percent. This estimate assumes a savings of 7½ percent of extended benefit payments in the remaining states. The estimate assumes that three-fourths of the full year savings will be realized in fiscal year 1981.

*Extended benefits not payable to persons who leave jobs voluntarily or for misconduct*

| Estimated outlays: Fiscal year: | Millions |
|---|---|
| 1981 | −$50 |
| 1982 | −73 |
| 1983 | −54 |
| 1984 | −15 |
| 1985 | −6 |

The 1981 estimate was provided by the Department of Labor. The outyear estimates assume the savings are a constant ratio of total estimated extended benefit payments.

DEFINITION OF INSURED UNEMPLOYMENT RATE

The savings resulting from eliminating extended benefit recipients from the numerator of the insured unemployment depends critically on whether or not a national extended benefit program is in place. The estimates shown assume that the national trigger has been eliminated. If this were not the case, no savings would exist in fiscal years 1982 or 1983.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO provided a cost estimate of H.R. 4007 as ordered reported by the House Committee on Ways and Means on June 4, 1979. The House bill was very different from this bill. Many of the provisions designed to reduce unemployment benefit payments were contained in S. 2885. CBO provided a cost estimate on S. 2885 on September 9, 1980.

9. Estimate prepared by: Charles Seagrave (225–7766).
10. Estimate approved by:

JAMES L. BLUM,
*Assistant Director for Budget Analysis.*

## VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic type, existing law in which no change is proposed is printed in roman type):

SECTION 3302 OF THE INTERNAL REVENUE CODE OF 1954

### Subtitle C—Employment Taxes

* * * * * * *

### CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

* * * * * * *

**SEC. 3302. CREDITS AGAINST TAX**

(a) CONTRIBUTIONS TO STATE UNEMPLOYMENT FUNDS.—

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be

deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(b) ADDITIONAL CREDIT.—In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31, of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower.

(c) LIMIT ON TOTAL CREDITS.—

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 10 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974.

(3) If the Secretary of Labor determines that a State, or State agency, has not—

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 15 percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

(d) Definitions and Special Rules Relating to Subsection (c).—

(1) Rate of tax deemed to be 3 percent.—In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of the rate provided by such section.

(2) Wages attributable to a particular State.—For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary) to be attributable to such State.

(3) Additional taxes inapplicable where advances are repaid before November 10 of taxable year.—Paragraph (2) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) Average employer contribution rate.—For purposes of subparagraphs (B) and (C) of subsection (c)(2), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(2), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-YEAR BENEFIT COST RATE.—For purposes of subparagraph (C) of subsection (c)(2), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) ROUNDING.—If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(2) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) DETERMINATION AND CERTIFICATION OF PERCENTAGES.—The percentage referred to in subsection (c)(2) (B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(e) SUCCESSOR EMPLOYER.—Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

* * * * * * *

*(f) Credit Reduction Not To Apply When State Makes Certain Repayments.—*

*(1) In general.—In the case of any State which meets the requirements of paragraph (2) with respect to any taxable year, subsection (c)(2) shall not apply to such taxable year; except that such taxable year (and January 1 of such taxable year) shall be taken into account for purposes of applying subsection (c)(2) to succeeding taxable years.*

*(2) Requirements.—The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary af Labor determines that the repayments during the 1-year period ending on November 9 of such taxable year made by such State of advances under title XII of the Social Security Act are not less than the sum of—*

*(A) the potential additional taxes for such taxable year, and*

*(B) any advances made to such State during such 1-year period under such title XII.*

*(3) Definitions.—For purposes of paragraph (2)*

*(A) Potential additional taxes.—The term "potential additional taxes" means, with respect to any State for any taxable year, the aggregate amount of the additional tax which would be payable under this chapter (subject to the cap provisions of subsection (g)) for such taxable year by all taxpayers subject to the unemployment compensation law of such State for such taxable year if paragraph (2) of subsection (c) had applied to such taxable year and any preceding taxable year without regard to this subsection.*

*(B) Treatment of certain reductions.—Any reduction in the State's balance under section 901(d)(1) of the Social Security Act shall not be treated as a repayment made by such State.*

*(4) Reports.—The Secretary of Labor may, by regulations, require a State to furnish such information at such time and in such manner as may be necessary for purposes of paragraph (2).*

*(g) Cap on Credit Reduction.—*

*(1) In general.—In the case of any State which meets the requirements of paragraph (2) with respect to any taxable year, the reduction in credits otherwise applicable to taxpayers subject to the unemployment compensation law of such State under subsection (c)(2) shall not exceed the greater of—*

*(A) 20 percent of the tax imposed under section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; or*

*(B) the percentage reduction of such credits which was in effect with respect to such State under subsection (c)(2) for the preceding taxable year.*

*(2) Solvency requirements.—The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines on November 10 of such taxable year that—*

*(A) the outstanding balance for such State of advances under title XII of the Social Security Act on the preceding September 30 was not greater than the outstanding balance for such State of such advances on the second preceding September 30;*

*(B) no State action was taken during the 12-month period endng on the preceding September 30 (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a reduction in such State's unemployment tax effort (as defined by the Secretary of Labor in regulations); and*

*(C) no State action was taken during the 12-month period ending on the preceding September 30 (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a net decrease in the solvency of the State unemployment compensation system (as defined by the Secretary of Labor in regulations).*

*(3) Secretarial authority to alter determination.—Any determination by the Secretary of Labor under subparagraph (B), (C), or (D) of paragraph (2) may be altered or reversed by the Secretary of Labor if he determines that such action is warranted on the basis of the failure by such State to make available timely information with respect to State actions.*

*(4) Credit reduction for subsequent years.—In making determinations under subsection (c)(2) with respect to taxable years for which a State is not subject to the cap under this subsection, any taxable year, and January 1 of such taxable year, for which a State was subject to such cap shall not be taken into account in determining consecutive taxable years (or January 1 thereof).*

*(5) Definitions and special rules.—The definitions and special rules set forth in subsection (d) shall apply to this subsection in the same manner as they apply to subsection (c).*

*(h) Waiver of New Borrowing Provisions in Periods of Recession.—*

*(1) Repayments in lieu of credit reduction.—Notwithstanding subsection (f)(2)(B), advances made to a State during a 1-year period under title XII of the Social Security Act shall not be counted in determining eligibility for the State payment in lieu of credit reduction under subsection (f)(2) if such State, during the Federal fiscal year ending on the September 30 falling within such 1-year period, meets the requirements of paragraph (3) of this subsection.*

*(2) Cap on credit reduction.—The requirement of subsection (a)(2)(A) shall not be applicable to a State for a taxable year if such State, during the Federal fiscal year ending on the preceding September 30 referred to in such subsection, meets the requirements of paragraph (3) of this subsection.*

*(3) Requirements.—The requirements of this paragraph are met by a State during any Federal fiscal year if, during any period of 26 consecutive weeks within such fiscal year, the rate of insured unemployment for such State (as defined in section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970) is—*

*(A) equal to or greater than 120 percent of such State's average of such rates for the corresponding 26-week period ending in each of the 2 preceding fiscal years (but not less than 4.8 percent); or*

*(B) equal to or greater than 7 percent (seasonally adjusted).*

*(4) Repayment requirements.—*

*(A) Any State which avails itself of a waiver allowed by paragraph (1) must, within 24 months after the beginning of any subsequent Federal fiscal year during which such State did not meet the requirements of paragraph (3), repay so much of its outstanding balance of advances under title XII of the Social Security Act as exceeds its balance of such advances as of November 9 of the taxable year preceding the first taxable year in the most recent period of consecutive taxable years with respect to which such State availed itself of such waiver.*

*(B) Any State which avails itself of a waiver allowed by paragraph (2) must, within 24 months after the beginning of any subsequent Federal fiscal year during which such State did not meet the requirements of paragraph (3), repay so much of its outstanding balance of advances under title XII of the Social Security Act as exceeds its balance of such advances as of the September 30 second preceding the November 10 of the first taxable year in the most recent period of consecutive taxable years with respect to which such State availed itself of such waiver.*

*(C) Any State which fails to meet the requirements of subparagraph (A) or (B) shall cease to be eligible under subsections (f) and (g) for taxable years beginning with the taxable year in which such 24-month period ends, and shall remain ineligible under such subsections until the taxable year which begins in the Federal fiscal year in which the repayments required under this paragraph have been made.*

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## SOCIAL SECURITY ACT

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## TITLE IX—MISCELLANEOUS PROVISIONS RELATING TO EMPLOYMENT SECURITY

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### *Federal Employees Compensation Account*

***Sec. 909.*** *There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5, United States Code.*

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EXCERPTS FROM

# TITLE 5 U.S.C.—GOVERNMENT ORGANIZATION AND EMPLOYEES

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## CHAPTER 85.—UNEMPLOYMENT COMPENSATION

### SUBCHAPTER I—EMPLOYEES GENERALLY

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***§ 8509. FEDERAL EMPLOYEES COMPENSATION ACCOUNT.***

*(a) The Federal Employees Compensation Account (as established by section 909 of the Social Security Act, and hereafter in this section referred to as the "Account") in the Unemployment Trust Fund (as established by section 904 of such Act) shall consist of—*

*(1) funds appropriated to or transferred thereto, and*

*(2) amounts deposited therein pursuant to subsection (c).*

*(b) Moneys in the Account shall be available only for the purpose of making payments to States pursuant to agreements entered into under this chapter and making payments of compensation under this chapter in States which do not have in effect such an agreement.*

*(c)(1) Each employing agency shall deposit into the Account amounts equal to the expenditures incurred under this chapter on account of Federal service performed by employees and former employees of that agency.*

*(2) Deposits required by paragraph (1) shall be made during each calendar quarter and the amount of the deposit to be made by any employing agency during any quarter shall be based on a determination by the Secretary of Labor as to the amounts of payments, made prior to such quarter from the account based on Federal service performed by employees of such agency after September 30, 1980, with respect to which deposit has not previously been made. The amount to be deposited by any employing agency during any calendar quarter shall be adjusted to take account of any overpayment or underpayment of deposit during any previous quarter for which adjustment has not already been made.*

*(d) The Secretary of Labor shall certify to the Secretary of the Treasury the amount of the deposit which each employing agency is required to make to the Account during any calendar quarter, and the Secretary of the Treasury shall notify the Secretary of Labor as to the date and amount of any deposit made to such Account by any such agency.*

*(e) Prior to the beginning of each fiscal year (commencing with the fiscal year which begins October 1, 1980) the Secretary of Labor shall estimate—*

*(1) the amount of expenditures which will be made from the Account during such year, and*

*(2) the amount of funds which will be available during such year for the making of such expenditures,*

*and if, on the basis of such estimate, he determines that the amount described in clause (2) is in excess of the amount necessary—*

*(A) to meet the expenditures described in paragraph (1), and*
*(B) to provide a reasonable contingency fund so as to assure that there will, during all times in such year, be sufficient sums available in the Account to meet the expenditures described in paragraph (1),*

*he shall certify the amount of such excess to the Secretary of the Treasury and the Secretary of the Treasury shall transfer, from the Account to the general fund of the Treasury, an amount equal to such excess.*

*(f) The Secretary of Labor is authorized to establish such rules and regulations as may be necessary or appropriate to carry out the provisions of this section.*

*(g) Any funds appropriated after the establishment of the Account, for the making of payments for which expenditures are authorized to be made from moneys in the Account, shall be made to the Account; and there are hereby authorized to be appropriated to the Account, from time to time, such sums as may be necessary to assure that there will, at all times, be sufficient sums available in the Account to meet the expenditures authorized to be made from moneys therein.*

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## Federal-State Extended Unemployment Compensation Act, As Amended

### Excerpt From Public Law 91–373, August 10, 1970

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## Title II—Federal-State Extended Unemployment Compensation Program

### Short Title

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

### Payment of Extended Compensation

### State Law Requirements

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

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

*(3) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period unless such individual meets one of the following requirements (as selected by the State)—*

*(A) such individual had at least 20 weeks of covered employment during his base period, or*

*(B) such individual had earnings in covered employment during his base period equal to or greater than the average weekly wage for covered employment in such State (based upon the most recent data available to the State).*

*A State may select which of such requirements shall apply to individuals in such State, or the State may provide that individuals may meet the provisions of this paragraph by meeting either of such requirements.*

*(4) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period if such individual is unemployed because he voluntarily left employment, was discharged for misconduct, or refused suitable employment as determined under State law.*

## Individuals' Compensation Accounts

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

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

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

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

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

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

## Extended Benefit Period

### Beginning and Ending

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

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

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

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

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

*(1) shall begin with the third week after the week for which there is a State "on" indicator; and*

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

### Special Rules

(b) (1) In the case of any State—

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

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

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

### Eligibility Period

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

### [National "On" and "Off" Indicators

[(d) For purposes of this section—

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

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

### State "On" and "Off" Indicators

(e) For purposes of this section—

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

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

(B) equaled or exceeded 4 per centum.

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

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

### Rate of Insured Unemployment; Covered Employment

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

(A) the average weekly number of individuals filing claims, *other than claims filed for benefits under this Act*, for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by [all State agencies (or, in the case of subsection (e), by] the State agency) to the Secretary, by

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

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

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

## Payments to States

### Amount Payable

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

(A) the sharable extended compensation, and

(B) the sharable regular compensation,

paid to individuals under the State law.

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

[(3) In the case of compensation which is sharable extended compensation or shareable regular compensation by reason of the provision contained in the last sentence of section 203(d), the first paragraph of this subsection shall be applied as if the words "one-half of" read "100 per centum of" but only with respect to compensation that would not have been payable if the State law's provisions as to the State "on" and "off" indicators omitted the 120 percent factor as provided for by Public Law 93–368 and by section 106 of this Act.]

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

### Sharable Extended Compensation

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

### Sharable Regular Compensation

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

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

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

## Payment on Calendar Month Basis

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

## Certification

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

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