

EMPLOYMENT SECURITY
AMENDMENTS OF 1970

REPORT
OF THE
COMMITTEE ON FINANCE
U.S. SENATE

TO ACCOMPANY

H.R. 14705

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



MARCH 26, 1970.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1970

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UNEMPLOYMENT COMPENSATION

MARCH 26, 1970.—Ordered to be printed

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

REPORT

[To accompany H.R. 14705]

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

I. SCOPE OF THE BILL

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

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

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

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

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

II. SUMMARY OF COMMITTEE AMENDMENTS

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

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

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

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

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

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

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

III. SUMMARY OF THE PRINCIPAL FEATURES OF THE BILL

A. Changes in Coverage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Provisions Required To Be Included in State Laws

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

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

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

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

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

C. Judicial Review

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

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

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

D. Clarification of Section 3304(c)

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

E. Federal-State Extended Unemployment Compensation Program

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

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

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

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

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

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

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

F. Financing Provisions

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

G. Other Provisions

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

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

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

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

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

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

IV. GENERAL DISCUSSION

A. Coverage

The bill would extend coverage under the Federal-State unemployment compensation system to up to 4.4 million of the 16.6 million wage and salary workers who are not now covered. This extension would bring the total number of workers covered by unemployment insurance (including those covered by Federal programs for Federal civilian employees, members of the Armed Forces, and railroad workers) to over 62 million, about five-sixths of the current 74.6 million wage and salary workers.

Coverage would be extended by changing the definitions of "employee" and of "agricultural labor," by including, as employment, services by U.S. citizens working for American employers outside the United States, by requiring States to provide coverage for employees of nonprofit organizations and of State hospitals and institutions of higher education, and by requiring States to permit employees of a county or municipal hospital or institution of higher education to be covered at the option of the governmental unit.

TABLE 1.—*Estimate of number of employers and employees added to coverage by H.R. 14705, as passed by the House and as amended by the Finance Committee*

[In thousands]

Coverage	Federal Unemployment Tax Act				State unemployment insurance laws			
	House bill		Committee bill		House bill		Committee bill	
	Employers	Jobs	Employers	Jobs	Employers	Jobs	Employers	Jobs
Mandatory coverage:								
Small firms (employers of 1 or more workers in 20 weeks, or with quarterly payroll of \$800 or more)-----	1, 258	2, 554	0	0	627	1, 266	0	0
Definition of employee-----	(¹)	360	(¹)	360	(¹)	210	(¹)	210
Agricultural processing workers-----	(²)	205	(²)	205	(²)	190	(²)	190
Large farms (employing 8 or more workers in 26 weeks)-----	0	0	22	258	0	0	21	233
Nonprofit organizations-----					18	1, 949	20	2, 221
State hospitals and institutions of higher education-----					1	725	1	940
Employment outside the United States--	(¹)	160	(¹)	160	(¹)	160	(¹)	160
Subtotal-----	1, 258	3, 279	22	983	646	4, 500	42	3, 954
Optional coverage:								
County and municipal hospitals and institutions of higher education-----					0	0	2	436
Total extension of coverage-----	1, 258	3, 279	22	983	646	4, 500	44	4, 390

¹ Nearly all the employers involved are already covered because of other employees.

² Not available.

1. *Effective dates*

The provisions extending coverage would be made effective for services performed after December 31, 1971, in order to allow States time to amend their laws to apply the State tax to all employers who would be subject to the Federal tax. Legislatures in several States, however, do not meet in regular session in 1971. Since extension of coverage to nonprofit institutes and State hospitals and institutions of higher education would require a change in State law, States whose legislatures do not meet in regular session in 1971 would have until July 1, 1972, to modify State law to comply with Federal law.

The provisions of the bill excluding from coverage certain students, spouses of students, and hospital patients would be effective January 1, 1970.

2. *Small firms*

Present law.—The definition of “employer” in the Federal Unemployment Tax Act (sec. 3306(a) of the Internal Revenue Code of 1954) excludes employers who do not have at least four or more individuals in their employ in each of 20 different calendar weeks in the current or preceding calendar year.

House Bill.—The House bill would broaden the definition of “employer” in the Federal Unemployment Tax Act to include all employers who, in the current or preceding calendar year, paid wages of at least \$800 in any calendar quarter, or who employed at least one employee in each of 20 different calendar weeks.

Finance committee amendment.—The Committee on Finance deleted this provision of the House bill. The effect of this action is to retain the existing law under which the Federal unemployment tax will apply only with respect to employers who have four or more employees in each of 20 different weeks in the year. Under the Finance Committee amendment the States will remain free to extend coverage of their unemployment compensation systems to employees of small firms in whatever manner local conditions warrant. At present 28 States already cover smaller firms, providing coverage to 1.4 million workers out of the 3.1 million employed in these firms in all States.

The most apparent practical effect of extending coverage to employers of one or more persons would be to add a substantial burden of additional tax expense and bookkeeping costs to small retailers. Extending coverage to employers of one or more persons, it should also be noted, would greatly increase administrative costs per employee.

The committee is particularly concerned that the provision of the House bill would harm small retail merchants. Aside from the additional tax expense and administrative burden, many employees of small firms are part-time workers who would not be able to qualify for unemployment benefits.

For these reasons the committee concluded that coverage of these small firms and their employees was a matter best left to the judgment of State legislatures. The committee is confident that where coverage in this area is warranted the States will recognize their responsibility and provide it.

3. *Agricultural labor*

Present law.—All services performed on a farm (defined as including plantations, ranches, nurseries, greenhouses, and orchards), all services performed in connection with cultivating the soil or harvesting any agricultural or horticultural commodity, and all services performed in connection with the operation and maintenance of a farm and its equipment are excluded under present Federal law. Also excluded are many borderline agricultural activities such as the production of maple syrup, maple sugar, and naval stores; mushroom growing; poultry hatching; cotton ginning; the operation of irrigation systems used exclusively for farming purposes; post-harvesting services performed in the employ of a farmer; services performed in the employ of a farmers' cooperative; and services performed in the employ of a commercial handler processing fruits and vegetables.

House bill.—The House-passed bill would extend coverage to some of the presently excluded borderline agricultural employment, other than the production of naval stores and the ginning of cotton. Services performed off the farm in the hatching of poultry would be included, as would services performed in connection with the operation or maintenance of an irrigation system for profit. However, the House bill did not cover farmworkers per se.

Finance Committee amendment.—The committee accepted the provision of the House bill, but added an amendment to extend Federal coverage to large farms. Specifically, the committee amendment extends coverage to employees of farm employers who have eight or more farm employees in each of 26 different weeks during the year. Agricultural crew leaders and their employees would be excluded from this extension of coverage.

The committee amendment is intended to extend coverage to those large farms which most nearly present a stable year-round employment experience comparable to that of business and industry. The committee felt that extension of coverage to farms employing eight employees for at least 26 weeks would limit coverage to this kind of large farm business. The provision would thus not affect the typical family farm or a farm employing more than eight workers for only a brief harvesting season.

One reason individual States have not extended coverage to agricultural labor to any extent is that they face the same problems of interstate competition that originally blocked individual State action to cover industrial workers before the Federal unemployment law was enacted. The committee feels that if employees of agricultural businesses are to be covered, Federal legislation is necessary. By limiting coverage to agricultural businesses, the committee believes that the cost of extension of coverage will be reasonable and comparable to cost rates of some currently covered industries. Agricultural business is already covered under the old-age, survivors, disability and hospital insurance program; employment security offices already have experience dealing with coverage presenting administrative problems similar to those of covering large farms.

The committee bill would exclude the employees of a crew leader from coverage under Federal law, even if the crew leader had eight or more employees in at least 26 weeks. The committee feels that

administrative and cost experience should be gained from the coverage of agricultural business before coverage of additional agricultural employees is considered. Coverage of migratory labor might present administrative and cost problems which it would be preferable to avoid in this initial extension of coverage to agricultural employment.

Under the committee amendment, a crew leader would be defined (as under social security law) as "an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them, and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person."

The committee expects that the relationship between a crew leader and farm owner will be carefully evaluated to insure that the extension of coverage is not avoided through mere formalistic designation of a foreman or other employee as a "crew leader." Whether the individual in question is to be considered a crew leader, and who is considered the employer of the agricultural workers furnished by him, will be determined by application of the common-law rules.

Under current Social Security regulations (20 CFR 4004.1004(c)(2)) a common-law relationship is deemed to exist:

when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished; that is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor.

Number of jobs included.—The House bill would subject about 205,000 agricultural processing jobs to the Federal Unemployment Tax Act. Because about 15,000 of these jobs are now covered by State law, the net increase in agricultural processing jobs protected by unemployment insurance would be about 190,000.

The committee bill would extend Federal coverage to a further 22,000 employers and 258,000 agricultural employees, and State coverage to 21,000 employers and 233,000 employees. Though this represents only 2 percent of farm employers in the nation, almost one-fifth of agricultural employees would receive protection.

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

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

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

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

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

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

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

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

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

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

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

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

EXCLUSIONS FROM COVERAGE

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

EXCLUSIONS FROM COVERAGE—Continued

HOUSE BILL

FINANCE COMMITTEE BILL

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

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

There is, however, one distinctive characteristic of the contractual employment relationship between the instructor, researcher or administrative employee and the institution which led the committee to include a special provision in the bill. It is common for faculty and other professional employees of a college or university to be employed pursuant to an annual contract at an annual salary, but for a work period of less than 12 months. The annual salaries are intended to cover the entire year, including the summer periods, a semester break, a sabbatical period or similar nonwork periods during which the employment relationship continues.

The House bill permitted the States to prescribe the extent to which compensation would be paid during the summer vacation period. The committee felt that Federal law should preclude payment in such situations. The committee bill would, therefore, provide a mandatory limitation on the payment of compensation based on service in an instructional, research or principal administrative capacity for an institution of higher education. The committee bill would specifically prohibit the payment of compensation based on service in any such capacity during the summer semester break, sabbatical period, or a similar nonwork period during which the employment relationship continues.

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

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

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

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

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

5. Coverage of certain services performed outside the United States

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

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

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

than the full Federal tax, States have been prompt to extend State coverage to employment subject to the Federal tax and employers have been quick to seek State law coverage when they become subject to the Federal tax.

Proposed change.—The committee bill, like the House bill, proposes to extend the tax imposed by the Federal Unemployment Tax Act to services performed outside the United States by U.S. citizens working for American employers. This would be done by adopting, in the Federal Unemployment Tax Act, the definition of employment applicable to such services which is used for old-age, survivors, disability, and health insurance purposes, with an exception. The exception concerns work performed by a U.S. citizen for an American employer in the Virgin Islands or Canada. The exception is made to prevent employers from having to be taxed twice on the same wages.

The bill would apply the Federal tax to the wages earned by individuals in overseas employment for American employers without specifying coverage in any State. It is anticipated that States will act to cover this type of employment, as they have in the past when other employers became subject to the Federal tax without being subject to the basic coverage provisions of any State law. Existing provisions of State laws dealing with coverage of services performed for a single employer in more than one State can be adapted to effect coverage. These provisions include both tests for localizing employment and arrangements under which employers can elect the State of coverage of such services.

No worker, of course, could file a claim for or receive benefits while he is outside the United States. In order to receive benefits, it is necessary that he return to the United States, register at a local public employment office of a State, and report in person to claim unemployment benefits.

6. *Exclusions from coverage*

(a) *Exclusion of spouses of students in certain programs*

Present law excludes coverage of a student employed by a higher educational institution in which he is a full-time student. Colleges and universities sometimes have programs of financial assistance to students under which employment is given to the student's spouse as a part of such financial aid. If unemployment compensation coverage were to be provided for this type of employment, it could create an unwarranted financial burden for the institution which has such a program, and might adversely affect the continuation of such a program. Such programs represent, in effect, an extension of the kind of student employment which is excluded under present law.

Both the House-passed, and the Committee versions of the bill would, therefore, amend present law to apply the exclusion to the spouse of a student also, if at the time of accepting employment, the spouse is informed that the job is furnished by the institution as part of a program of financial aid to the student, and that the service is not covered under any unemployment insurance program.

(b) *Exclusion of students in work-study programs*

Many schools and colleges combine outside work experience with formal classroom study. In some of these programs, students enrolled at an institution alternate between full-time classroom study and

full-time employment in outside industrial or commercial establishments on a quarter or semester basis. In other programs, the students spend a portion of each day or divide their time on a weekly basis between classroom attendance and outside work. The work parts of these programs are integrated into the regular school curriculum and form a part of a formalized full-time educational program.

Students enrolled in these work-study programs usually engage in employment of the type which is covered under the unemployment compensation system. The wages paid to these students are, therefore, subject to the Federal unemployment tax under present law. The committee does not believe that work which is part of an integrated work-study curriculum involves the kind of employer-employee relationship that should be covered by the unemployment insurance system. In some cases the employer may employ these students as his contribution toward the operation of an educational program. The committee believes that the schools might have more success in persuading employers to participate in cooperative educational plans if the wages paid to the students were not taxable under the unemployment tax laws.

For these reasons, the House-passed bill and the Committee bill would provide a new exclusion from the definition of employment in the Federal Unemployment Tax Act applicable to a full-time student's services in a program which combines academic instruction with work experience if the institution certifies to the employer that such service is an integral part of the work-study program. The exclusion would be limited to individuals under the age of 22. Certifying institutions would be limited to nonprofit or public institutions, and would not include schools or programs established for or on behalf of an employer or group of employers.

(c) *Exclusion of hospital patients*

Present law.—Current law excludes service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university. Although very similar in nature, service performed in a hospital by a patient of the hospital is not excluded.

Proposed change.—The bill proposes to add a new provision which, for purposes of the Federal unemployment tax laws, would exclude service in the employ of a hospital, if such service is performed by a patient of such hospital. This provision is also contained in the House bill.

7. *Accrued leave of ex-servicemen*

Present law.—Section 8524 of title 5 of the United States Code now provides that payments for the unused accrued leave of former members of the armed services, paid to them at the termination of their Federal service, is deemed to continue their Federal service during the period with respect to which they received the payment and is deemed to be Federal wages to be allocated over the period after termination. There is no similar provision with respect to the payments for unused accrued leave of civilian employees of the Federal Government. The applicable State law determines how payments for unused accrued leave shall affect the Federal civilian worker's right to benefits.

Under many State laws, payments for accrued leave are deemed to be current wage payments which bar the receipt of benefits; under other State laws, the payments are deemed to be for past, rather than current services, and do not render an individual ineligible for unemployment benefits.

It has been the general policy of the Congress, with respect to the eligibility conditions governing both former Federal civilian employees and ex-servicemen, to require the provisions of State law to apply. This insures that Federal civilian employees and ex-servicemen are treated as are all other claimants for unemployment compensation in the State. The only exception is the requirement that States pay no benefits to ex-servicemen during periods to which payments for accrued leave have been allocated.

Proposed change.—The committee agrees with the House that the general policy of the Congress—that civilian employees of the Federal Government and ex-servicemen be treated, for unemployment compensation purposes, the same as all other claimants for unemployment compensation under State law—is sound. Consequently, the committee bill would repeal section 8524 of title 5 of the United States Code, effective with respect to benefit years which begin more than 30 days after enactment.

8. *County and municipal hospitals and higher educational institutions*

Present law.—Present Federal law contains no requirement related to coverage of employees of county and municipal hospitals and higher educational institutions. In a few States, such coverage is precluded by the State Constitution or State law; in others, coverage is mandatory; in most States, an individual institution may elect coverage if the State administering agency approves.

House bill.—The House bill contains no provision relating to this employment.

Finance Committee amendment.—As discussed above, the Committee bill (like the House bill) extends unemployment insurance coverage to State and non-profit hospitals and institutions of higher education. The Committee amendment involves comparable coverage for municipal and county hospitals and institutions of higher education. Specifically, the Committee bill would require States to extend to each political subdivision of the State the right to cover employees of its hospitals and institutions of higher education. A governmental unit wishing to extend coverage would enter into an agreement with the State to make payments in lieu of taxes.

Consistent with the Committee amendment extending coverage to individuals employed by a State or non-profit institution of higher education in an instructional, research, or principal administrative capacity, individuals in such positions in a municipal or county institution of higher education would similarly be covered if the governmental unit elected coverage for the institutions in its jurisdiction.

Number of Jobs Included.—A total of 436,000 county and municipal jobs could become eligible for coverage under this provision, 357,000 in hospitals and 79,000 in institutions of higher education.

B. Provisions Required To Be Included in State Laws

Under present law, employers are subject to a 3.1 percent Federal unemployment tax; they are eligible for a 2.7 percent tax credit, however, if their State has a suitable State unemployment compensation law. In order for a State law to be considered suitable, it must meet certain requirements of Federal law. The bill, both as passed by the House and as approved by the Committee, would add new requirements which a State law must meet to qualify under Federal law. State laws would have to be changed by January 1, 1972; except that States whose legislatures do not meet in regular session in 1971 would have until July 1, 1972 to meet the new requirements.

1. *Requalifying requirement*

The bill would require that State unemployment compensation laws provide that an individual who has received benefits during 1 benefit year must have worked after the beginning of that benefit year in order to be eligible to receive benefits in the succeeding benefit year.

Payment of benefits in 2 successive benefit years following a single separation from work (the so-called "double dip") is a much criticized and illogical aspect of some State benefit formulas. It is made possible by provisions which, for administrative reasons, provide a lag between the end of the period used to measure a worker's past attachment to the labor force and wage credits for monetary entitlement—called the "base period"—and the period during which rights based on such wage credits may be used—called the "benefit year." If the lag is long or the qualifying wages needed for monetary entitlement are low, the wages or employment in the lag period may be enough to establish monetary entitlement in a new benefit year and a new period of benefits without the individual's having had any intervening employment. In such cases, the absence of a provision requiring employment subsequent to the beginning of a worker's first benefit year allows two periods of benefit payments based upon a single separation from employment.

The requirement proposed by the committee is now met by all but 15 State unemployment insurance laws; the desired result being achieved either by a special provision requiring intervening work or because little or no lag exists between the base period and benefit year.

The bill does not specify how much work would be required or whether it need be in covered employment. The committee believes that these matters should be left to the judgment of the individual States. The amount of requalifying work specified in the present requalifying provisions of State laws is sometimes expressed in dollar terms and sometimes as a multiple of the weekly benefit amount. It is not always limited to covered employment, inasmuch as the requalifying requirement serves a different purpose from the basic monetary qualifying requirement.

2. *Training requirement*

In our complex industrial society, training in occupational skills has become so important to the employability of the individual that the committee believes that it is necessary to act to remove the

impediments to training which remain in our unemployment insurance system. Twenty-eight States now make some provision for allowing an individual to continue to draw unemployment benefits while he is in approved training, but 24 States make no such provision, even though training is frequently necessary for obtaining new employment. Even among the 28 States making some provision for continuing benefits during periods of training, only 14 would meet the requirements proposed by the bill. The committee believes that the application of the provisions of the State laws regarding availability for work, active search for work, or refusal of suitable work should not be used to discourage benefit claimants from entering training which has been approved by the State agencies. Therefore, the bill would prohibit the approval of State laws which deny an otherwise qualified individual benefits for any week because the individual is in training with the approval of the State agency, or because of the application to an individual, during a period of training, of State law provisions relating to availability for work, active search for work, or refusal to accept work.

3. Interstate and combined wage requirements

Unemployment insurance for people who work in more than one State or for workers who move from one State to another, has been handled through voluntary agreements among the States, which cover the servicing of claims and, in some instances, the combining of wage credits. Except for those instances in which a diversity of base periods and benefit years has operated to create inequities for some workers—notably in construction and entertainment occupations—the system has worked reasonably well and has enabled the Federal Government to avoid the necessity of entering the extremely complex field of unemployment insurance for interstate workers.

State law provisions which reduce the benefits, or otherwise penalize workers who reside elsewhere than in the State in which they worked and earned their right to benefits, are not only inequitable to the individual claimant and injurious to the proper functioning of the unemployment insurance system but inhibit among workers a very desirable mobility which is important to our economy. Similarly, the refusal of even a small number of States to adhere to reasonable arrangements and agreements, or the refusal of a small number of States to honor agreements with certain other participants in the agreement, jeopardizes the integrity and effectiveness of the system.

A serious defect in the present system of voluntary interstate benefit agreements, containing undesirable implications for the Federal-State system, is the method of dealing with the problems of workers whose wages are subject to the provisions of more than one State law. States have tried to deal with this problem through voluntary arrangements for combining wage credits in more than one State. However, several States do not subscribe to such arrangements, and even those States which subscribe to the agreements provide that the individual's wages can be combined only if they are in the applicable base period of the paying State or in that part of the base period of a transferring State that overlaps the base period in the paying State. The multiplicity of State base periods and benefit years is so great, and their variances so wide, that many individual workers either get no benefits at all or very much lower benefits than they

should. The worst effects and the most frequent incidence of loss of protection occur among the highly skilled, highly motivated, and highly mobile workers who, following employment opportunity, work for several employers in several States in the course of a year. However, loss of protection also occurs among many workers who work in several States for the same employer.

The committee agrees with the House that Federal action to correct these problems is desirable at this time. The bill would require that States not deny or reduce the compensation of an individual solely because he files a claim in another State (or in a contiguous country with which the United States has a reciprocal agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation. The bill would also require that States participate in wage combining arrangements, approved by the Secretary of Labor in consultation with the State unemployment compensation agencies, which combine an individual's wages and employment in more than one State and base an individual's eligibility for compensation on such wages or employment which occur in the base period of a single State, while avoiding the duplicate use of wages and employment by reason of such combining. It is expected that such arrangements would utilize, for wage combining purposes, the base period of the paying State.

4. Limitation on cancellation or total reduction of benefit rights

Nothing in the committee bill would affect a State's right to disqualify an individual from receiving benefits if he voluntarily quit his job. However, the bill would prevent a State from wiping out his wage credits, which he might use at some later time if he qualified for benefits.

The bill would, except in cases of misconduct, fraud or receipt of disqualifying income, such as pension payments, prohibit the practice under some State law provisions which completely cancel the "wage credits," or base period earnings, on which the monetary entitlement of an individual is based, or which cancel, or totally reduce, the monetary entitlement so derived.

This proposal is directed solely to the preservation, in all but the excepted cases, of some portion of an individual's monetary entitlement for his benefit year, the "bank account" of benefits against which, if otherwise eligible, he can draw. The requirement would affect only those few State laws which cancel wage credits or totally reduce benefits.

The provision would not restrict State authority to prescribe the conditions under which a claimant would be "otherwise eligible." For example, benefits are not now—and would not under the proposal be—paid for a week of unemployment unless the claimant were available for work. It would not prevent a State from specifying the conditions for disqualification such as, for refusing suitable work, for voluntary quitting, for unemployment due to a labor dispute in the worker's plant, etc. It would not preclude "duration of unemployment" disqualifications in which a disqualified claimant is prevented from drawing compensation unless and until he is reemployed for some specified period or earns some specified amount of wages, and is again unemployed for reasons which are not disqualifying. It would not

preclude disqualifications which only postpone the receipt of benefits for a specified or flexible number of weeks or which, in addition to the postponement, reduce monetary entitlement by the number of weeks of the postponement or by a specified amount. Such reductions for any single disqualifying act, however, could not be the equivalent of a total elimination of the original monetary entitlement.

It is recognized that many instances would remain in which the application of a State disqualification could result in the nonreceipt of benefits by claimants. A claimant's failure to obtain new employment to discharge a "duration of unemployment" type of disqualification could have the same end result as a total reduction of benefit rights even though his "bank account" remained to his credit, and was not reduced. Similarly, the application of a disqualification after a benefit payment series had begun, even if it involved a less than total reduction of initial monetary entitlement, could nevertheless involve a total reduction of the remaining monetary entitlement. Also, a number of disqualifications for different disqualifying acts could result in a total denial of benefit rights.

The committee believes that the disqualification provisions of State unemployment compensation laws should be devised so as to prevent benefit payments to those responsible for their own unemployment, without undermining the basic objective of the unemployment insurance system—to provide an income floor to those whose unemployment is beyond their control. Severe disqualifications, particularly those which cancel earned monetary entitlement, are not in harmony with the basic purposes of an unemployment insurance system. Most disqualifications under State law provisions are applied for voluntary terminations without good cause (frequently cause must be attributable to an employer), or for refusals of suitable work. Such a situation may represent an error in judgment on the part of the worker, or be the result of circumstances over which he had no control. The penalty for a disqualifying act should not be out of proportion to the disqualifying act.

Excepted from the new requirement are disqualifications because of an individual's misconduct connected with his work or because of fraud in connection with a claim for benefits, and reductions in benefits by reason of an individual's receipt of certain types of disqualifying income. The kinds of income which are deducted from an individual's weekly benefit consist of employer pensions, social security benefits and workmen's compensation—payments which can be considered as wage loss replacement. The exception of fraud or work-connected misconduct does not reflect an expression on the part of the committee as to the desirability of canceling of wage credits for these causes. Rather, the committee believes this is an area in which the States should retain discretion.

C. Additional Credit Based on Reduced Rate for New Employers

State experience-rating provisions have developed on the basis of the additional credit provisions of the Federal Unemployment Tax Act. The Federal law up to 1954 allowed employers additional credit for reduced rates of contribution only if the rates were based on not less than 3 years of "experience with respect to unemployment or

other factors bearing a direct relation to unemployment risk." This requirement was modified in 1954 by an amendment which authorized the States to extend experience-rating tax reductions to employers who had not been subject to the State law long enough to have their rates computed on the normal basis, provided it was based on the experience they had had, but in no event less than 1 year. Because of the ways in which "experience" is measured under State laws, an employer may have been paying taxes for much longer than a year before he has the required year of experience. Further, not all States permit reduced rates based on less than 3 years' experience, and 3 years "experience" may require nearly 5 years of coverage. Consequently, the employers to whom coverage would be extended under the bill, as well as newly formed businesses, would have to pay a State tax rate of at least 2.7 percent (the standard rate is higher than 2.7 percent in some States) on their taxable payroll during the first year or more of coverage under the program. At the same time, the average employer with enough experience to be rated will be paying a substantially lower tax.

In order to lessen the financial impact of unemployment taxes on new and newly covered employers, both the House and the Senate versions of the bill would provide that States may assign reduced rates—but not less than 1 percent—to such employers before they become eligible for an experience rate. The bill would not specify how such rates are to be determined for such employers, but would leave this decision to the State legislature. It is not necessary to assign the same rate to all new employers. For example, the State could decide to assign new employers the average rate applicable to the industry in which they are engaged, if such rate is not less than 1 percent.

D. Credits Allowable to Certain Employers

The Federal Unemployment Tax Act specifically grants States permission to extend coverage to certain kinds of employment (including employment on American vessels) over which the Federal Government has particular jurisdiction. The permission is granted only if the State meets certain conditions which are intended to assure that there is no discrimination against these employers in terms of contributions nor against their workers in terms of benefits. The present Federal law, however, contains no enforcement provision for failure to comply with these conditions.

There have been State law provisions discriminating against maritime workers by treating certain seamen in seasonal occupations differently, for benefit purposes, than other seasonal workers, or by requiring a longer waiting period for benefits than is required of claimants generally. The absence of any enforcement provision in the Federal law complicated efforts to remove the discriminatory provisions.

The bill as passed by the House and as approved by the Committee would provide that if the Secretary of Labor finds that a State law does not meet any of the conditions of Federal law for a category of employers, or that in the application of the State law there has been a substantial failure to comply with any of such conditions, the Federal unemployment tax liability of employers in that category is to be determined without allowance of any tax credit for taxes

paid by such employers under the law of such State. The committee believes that such a provision is more appropriate than one that would involve all the taxpaying employers in a State.

The section would make clear that a Secretary's finding under the new subsection is a finding which the State could appeal to the court under the judicial review procedure which would be established by the bill.

E. Judicial Review

Neither title III of the Social Security Act, relating to grants to the States for costs of administering their unemployment compensation programs, nor the Federal Unemployment Tax Act, relating to normal and additional tax credit to employers in a State, contains a provision for judicial review of findings by the Secretary of Labor adverse to a State. The committee proposes to provide judicial review of determinations by the Secretary of Labor that would result in a denial of certifications with respect to grants for administering the State's unemployment insurance law or tax credit to employers in the State, or both.

Under the bill, both as passed by the House and as approved by the committee, a State could seek judicial review of a "finding" of the Secretary of Labor (including findings of fact and conclusions of law) by petitioning for such review in the U.S. Court of Appeals for the District of Columbia or for the circuit in which the State is located within 60 days after the Governor of the State has been notified of the Secretary's adverse finding. The judgment of the Court of Appeals would be subject to review by the Supreme Court of the United States.

The Secretary's action under any adverse determination would be stayed during the 60-day appeal period or until the State files its petition, if earlier. If the Secretary's decision is appealed to the court, any action by the Secretary would be stayed for an additional 30 days. Thereafter, the court could decide whether interim relief is warranted, what such relief should be, and the conditions under which it should be granted.

Findings of fact by the Secretary, if supported by substantial evidence on the whole record, would be conclusive. Under the substantial evidence rule the reviewing court examines all of the evidence in the record to ascertain for itself whether it is sufficient to support the findings of fact made by the Secretary. If, after such examination, taking into account the body of evidence opposed to the Secretary's view, the court finds that the evidence, including inferences to be drawn therefrom, is such that a reasonable man acting reasonably might have made such a finding, the Secretary's finding of fact would be sustained.

The substantial evidence rule proposed by the committee is the rule provided for in the Administrative Procedure Act of 1946 (5 U.S.C. 706) and in other statutes providing specifically for court review of actions by administrative agencies affecting grants to the States, such as section 1116 of the Social Security Act and section 603 of the Civil Rights Act of 1964 (by applying section 10 of the Administrative Procedure Act). Under the substantial evidence rule, the reviewing court serves as a check upon erroneous action by administrative agencies without being unduly burdened as a trier of fact in highly technical areas.

The rules of procedure followed at the hearings given to State agencies—before the Secretary may make an adverse determination—afford the State agency adequate opportunity to introduce into the record all evidence which it considers to be relevant. The committee understands that the Department of Labor follows these procedures at such hearings:

“(1) A hearing examiner is designated to preside over the hearing.

“(2) The parties of record are the State agency and the United States Department of Labor.

“(3) Participation by any person other than the parties of record is limited to oral argument as provided in paragraph 10 below and to the submittal of a brief as provided in paragraph 11 below, or to either as he chooses.

“(4) The hearing will be conducted in an informal but orderly and expeditious manner. The hearing examiner will regulate all matters relating to the course and conduct of the hearing.

“(5) The representative of the Department of Labor will make an opening statement as to the nature of the hearing and the matters in issue. This will be followed by an opportunity for the representative of the State agency to do likewise.

“(6) Parties of record thereupon have the right to present oral and documentary evidence and cross examine witnesses. Technical rules of evidence shall not apply. The hearing examiner will rule upon offers of proof and the admissibility of evidence, and receive relevant evidence. He may exclude irrelevant, immaterial, or unduly repetitious evidence, and may examine witnesses. All written statements, charts, tabulations, and similar data offered in evidence at the hearing, upon a showing satisfactory to the hearing examiner of their authenticity, relevancy, and materiality, are received in evidence.

“(7) At any stage of the hearing the hearing examiner may call for further evidence upon any matter. After the record has been closed no further evidence is taken except at request of the Secretary of Labor, unless provision has been made at the hearing for the later receipt of such evidence. In the event that the Secretary shall cause the hearing to be reopened for the purposes of receiving further evidence, due and reasonable notice of the time and place fixed for any taking of testimony shall be given to all parties of record.

“(8) The hearing shall be stenographically recorded. The transcript will be available to any person, at prescribed rates.

“(9) Any material offered in evidence and any proposals submitted pursuant to paragraph 12 shall be tendered in triplicate.

“(10) After all testimony has been taken and all evidence has been received, the hearing examiner may, upon request, permit any party of record or any other interested person to present oral argument upon the matters in issue. Any interested person other than a party of record who wishes to present oral argument shall file in the Office of the Chief Hearing Examiner, U.S. Department of Labor, a written or telegraphic request setting forth his name and the persons or groups, if any, whom he represents; the argument of any such person shall be limited to 30 minutes. To the extent that there is oral argument, it shall be in the following order: opening argument for the U.S. Department of Labor, opening argument for the State agency, arguments for interested persons other than parties of record, closing argument for the State

agency and closing argument for the U.S. Department of Labor. All oral arguments shall be transcribed and made a part of the record.

“(11) Any party of record or any other interested person may file a brief on the issues herein. Such brief shall be filed in quadruplicate in the Office of the Chief Hearing Examiner no later than twenty-one (21) days after the transcript of the hearing is available. The Office of the Chief Hearing Examiner will forward to the parties of record a copy of each brief filed.

“(12) Proposed findings of fact and conclusions of law together with supporting reasons therefor may be submitted to the Office of the Chief Hearing Examiner by any party of record within twenty-one (21) days after the transcript of the hearing is available.

“(13) After the time for the filing of briefs, proposed findings of fact and conclusions of law, the hearing examiner shall prepare a recommended decision containing findings of fact and conclusions of law. This recommended decision shall be served upon the parties of record who may, within fifteen (15) days from the date of its receipt, file in the Office of the Chief Hearing Examiner a statement in writing setting forth any exceptions they may have to such decision together with supporting reasons therefor.

“(14) After the time for filing exceptions to the hearing examiner’s recommended decision, the hearing examiner shall certify to the Secretary of Labor the entire record of the proceedings together with his recommended decision. The Secretary shall then render his decision in the matter.”

F. Clarification of Last Sentence of Section 3304(c)

The labor standards provision of present law (section 3304 (a) (5) of the Internal Revenue Code) does not permit a State to deny unemployment compensation to a claimant who refuses to accept a position:

1. Which is vacant due directly to a strike, lockout, or other labor dispute;
2. If the wages, hours, or other conditions of the work offered are substantially less favorable than those for similar work in the locality; or
3. If, as a condition of being employed, he would be required to join a company union or resign from or refrain from joining a bona fide labor organization.

The last sentence of subsection (c) (known as the “Knowland Amendment”) provides that no finding of a failure to comply substantially with the labor standards requirement shall be based on an application or interpretation of State law with respect to which further administrative or judicial review is provided under the laws of the State. Consistent with the new provisions concerning judicial review, the bill would modify and clarify this provision by providing that no finding of a failure to comply would be based on an application or interpretation of State law until all administrative review afforded by the State law has been exhausted, or the time allowed by State law for appeal to a State court has expired, or judicial review pending in a State court has been completed. This provision of the House bill was approved by the committee. It would preclude action by the Secretary unless and until the application or interpretation of State

law had been acted upon and decided by the highest administrative tribunal of the State, but would permit such action thereafter when the application or interpretation of State law had become final.

G. Administration

The committee agrees with the House as to the desirability of several changes in the existing provisions for administration of the unemployment insurance program. Title IX of the Social Security Act would be amended by adding three new sections providing for a Federal unemployment compensation research program, a Federal program for training both Federal and State unemployment compensation personnel, and the establishment of a Federal Advisory Council.

1. *Unemployment compensation research program*

Present law contains no specific directive for program research. The reporting program developed under title III of the Social Security Act provides much significant data about unemployment insurance, but there are a number of areas in which there has been inadequate data, and inadequate exploration of the program's successes or defects.

The committee bill would add to title IX of the Social Security Act a new section 906, "Unemployment Compensation Research Program." The new section would direct the Secretary of Labor to establish a continuing and comprehensive research program to evaluate the unemployment compensation system, and a program of research to develop information as to the effect and impact of coverage extension. The bill lists a number of areas in which factual studies of the present program could be made, including such items as the role of unemployment in seasonal industries, the effects of eligibility and disqualification provisions, and the characteristics of claimants. The bill specifies that the results of the research would be made public. It would authorize appropriations for the research in such amounts as may be necessary, not to exceed \$8 million in any fiscal year. The amounts authorized would be appropriated from taxes derived under the Federal Unemployment Tax Act.

Since unemployment insurance is a State-administered program, unemployment insurance research has primarily proceeded on an individual State basis. Such State research has been and will continue to be necessary, in addition to the program of overall research on a national basis.

2. *Training for unemployment compensation personnel*

The committee bill's provision for training unemployment compensation personnel is designed to meet the need for adequately trained staff in State employment security agencies. The present need has resulted in part from the number of programs administered by unemployment compensation personnel and in part from the complexity of the disqualification and eligibility provisions of the various State unemployment insurance laws. The problem is twofold. On the one hand, skills must be developed or expanded in the specific procedure to cope with the regular flow of day-to-day work. At the same time, training in the basic concepts of unemployment compensation must be undertaken or augmented to assure proper and consistent

administration and enforcement of the State and Federal laws. Trained staff is needed, for example, to make the difficult decisions involved in applying the requirement of availability for work.

The committee bill would authorize appropriations from Federal unemployment tax revenues (not to exceed \$5 million in any fiscal year) principally to provide the training necessary to make an individual more efficient in his current job or to enable him to perform a higher level job in the administration of the unemployment compensation program, including claims determinations and adjudications. The committee does not intend that these funds be used to provide courses to persons not now employed in the unemployment compensation program so that they can pass civil service entrance examinations.

The Department of Labor could make arrangements with various public or private institutions to set up appropriate training programs and courses. The Department could grant fellowships and traineeships for individuals currently employed in an employment security agency to undertake training programs to improve their qualifications. The bill contains a safeguard provision for repayment of the amounts received as a fellowship or traineeship if the individual concerned fails to serve in the Federal-State employment security program for the period prescribed by the Secretary.

3. Federal advisory council

The committee bill would establish a Federal Advisory Council on Unemployment Compensation, consisting of not more than 16 men and women, including a Chairman. There would be equal representation on the Council of employers and employees, and representation of the public.

The Council would review the unemployment compensation program and make recommendations to the Secretary of Labor for improving it.

The members would receive compensation of not more than \$100 per day and travel expenses while on Council business.

An executive secretary, secretarial staff, and pertinent data would be furnished to the Council by the Department of Labor.

Appropriations from Federal Unemployment Tax Act revenues would be authorized for the support of the Federal Advisory Council on Unemployment Insurance; the amount authorized to be appropriated would be limited to \$100,000 for any fiscal year.

This section of the bill would also direct the Secretary to encourage the organization of similar State advisory councils.

H. Change in Certification Date

Under present law, an employer subject to the Federal unemployment tax is allowed to take normal credit against such tax if the State is certified pursuant to section 3304(c) of the Internal Revenue Code of 1954, and he is allowed to take additional credit against his Federal tax if the State law experience-rating provisions are certified pursuant to section 3303(b) of the code. Such certifications are made as of December 31 each year by the Secretary of Labor to the Secretary of the Treasury. If the Secretary of Labor fails to certify a State law, employers who pay contributions to the State are not entitled to the normal or the additional credit, or both, as the case may be.

Because of the short period between the date of certification of State laws (December 31) and the date the Federal unemployment tax return is due (the January 31 immediately following), it would be most difficult for the Treasury Department, in the event of the denial of certification of any State law, to take the steps necessary to give effect to the denial without seriously burdening taxpayers and the Internal Revenue Service. Under our self-assessment system of tax collection, tax credits are claimed by eligible taxpayers on their tax returns. The return form and the instructions should show the credits that are allowable. Approximately 2 months have been needed for the printing and distribution of the unemployment tax return. Accordingly, the date for the certification of State laws would be moved forward (under both the House bill and the Committee bill) from December 31 to October 31 of each year, beginning in calendar year 1972.

Certifications made as of October 31 would attest that the State had met Federal requirements during the period from November 1 of the preceding calendar year to October 31 of the current year (10 months in the case of 1972); the certifications would authorize the allowance of the appropriate tax credits for the full 12 months of the calendar year in which the certification is made. For example, if the law of a State is certified on October 31, 1973, for the period November 1, 1972, through October 31, 1973, employers who paid contributions to such State during calendar year 1973 would be authorized to take appropriate credit against their Federal tax for the calendar year 1973. State actions in November and December 1973 would be considered in connection with the certifications made as of October 31, 1974.

I. Federal-State Extended Unemployment Compensation Program

The House-passed bill contained provisions (title II) which would create a new system of extended benefits payable when unemployment is high to people who have received all of the benefits to which they are entitled under the existing State programs. The committee is aware that when this subject was considered in 1966, the committee and the full Senate adopted a somewhat similar program (H.R. 15119, 89th Cong.).

The House-passed provisions would require the States to provide the new extended benefits by January 1, 1972. However, some State legislatures may not meet before that date. The committee, therefore, has added a provision to permit those States to meet the requirements of the Federal law not later than July 1, 1972.

1. Need for the program

For the most part, our Federal-State unemployment insurance system is designed to take care of short-term unemployment. In periods of economic recession, when substantial numbers of workers in a State or in the Nation experience unemployment which extends beyond the periods for which they are protected under current State laws, the resulting uncompensated unemployment may have a serious impact not only upon the workers and their families, but on the purchasing power and economic health of the entire Nation.

Twice within the last dozen years, in 1958 and 1961, Congress has enacted laws that provided for the extension of unemployment compensation on a temporary basis during the then existing recessions. While those programs were beneficial, and helped to offset the effects of extended unemployment on unemployed workers and on the Nation's economy, the committee, like the House committee, is concerned with the defects inherent in this ad hoc approach to a problem which experience has shown recurs from time to time. A carefully devised program which would go into operation when economic conditions warrant and which would be suspended when the need for it has passed, would be a better solution to a longstanding problem. Accordingly, the bill would establish a permanent program of extended benefits in periods of high unemployment for workers who exhaust their entitlement to regular unemployment compensation. This new program would be part of the existing Federal-State system. As a condition for any tax offset under the Federal Unemployment Tax Act, a State unemployment compensation law must provide after December 31, 1971, and may provide between the 61st day after enactment and December 31, 1971, extended unemployment compensation during periods of high unemployment (as defined in the bill) to people who because they have exhausted their rights to regular compensation, have no rights to cash unemployment benefits under any other provision of State or Federal laws. (States whose legislatures do not meet in regular session in 1971 would have until July 1, 1972, to meet this requirement of Federal law.) Under the bill, the Federal Government would pay one-half of all unemployment compensation—including compensation provided under regular State programs—in excess of 26 weeks of benefits when such benefits are paid during defined high-unemployment periods.

The periods of high unemployment during which extended compensation would be paid would be defined in terms of the unemployment situation in an individual State, or nationally. Prior to January 1, 1972, however, extended benefit periods can occur through the operation of a State trigger only.

2. Substance of the extended unemployment compensation program

Title II of the bill—the Federal-State Extended Unemployment Compensation Act of 1970—would require each State to provide specific, additional unemployment compensation benefits during specified periods of high unemployment.

The committee's bill, like the House bill, assures that the Federal-State extended unemployment compensation program is incorporated into State unemployment insurance laws, and that extended compensation will be payable in each of the States in periods of both State and National recessions by requiring States to adopt the new program if employers in the State are to continue to receive the existing credit against the Federal unemployment tax.

The new extended unemployment compensation program is designed to protect workers still unemployed and unable to find jobs when their compensation under the regular unemployment compensation program is exhausted. The new extended unemployment compensation, however, would not replace payments under other wage-loss programs such as the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and the Railroad Unemployment Insurance Act.

In general, the bill is intended to provide additional unemployment compensation to people who are unemployed when unemployment is high and it is reasonable to expect that significant numbers of regularly employed people will be out of work for longer than normal periods. Thus, the new benefits would be payable to people who no longer have rights to benefits or allowances under the appropriate State or Federal law.

An individual is considered to have exhausted his rights to benefits under State law when he has received all the compensation allowable to him in the benefit year, or when his benefit year expires and he does not have the necessary earnings or employment to establish another benefit year immediately. For this purpose, an individual is considered to have exhausted his rights if he has received all the compensation payable on his monetary determination even though an appeal is pending with respect to other wages. In States which have special seasonal benefit restrictions, a worker with both seasonal and nonseasonal employment is considered to have exhausted his benefit rights based on nonseasonal employment when he can draw no further compensation during the off-season even though he may be entitled to compensation when the new work season begins. Since extended compensation is generally payable under the same terms and conditions as regular compensation, extended compensation based on seasonal wage credits would not be payable to seasonal workers during the off-season. If, however, the worker also had nonseasonal wage credits on which he could draw compensation during the off-season, he could—if he had exhausted such compensation—be paid the appropriate proportion of his extended benefit rights based on his nonseasonal wage credits.

3. Individual's compensation account

The amount of extended compensation a State would be required to pay to an eligible individual would be 50 percent of the total regular compensation, including dependents' allowances, payable to him during his benefit year, but would not exceed either 13 times his average weekly benefit amount or 39 times his average weekly benefit amount reduced by the regular compensation paid (or deemed paid) during his benefit year, whichever is less. These limitations, of course, would relate only to what a State would be required to provide. They would not limit in any way a State's freedom to provide more compensation financed exclusively by the State.

A State which provides for the payment of additional compensation in periods of high unemployment which is not required under the provisions proposed in this title could reduce the extended compensation payable to an individual under this title by the amount of such additional compensation paid to him under the State program. The State would not be required, however, to reduce the required extended compensation by the additional amount paid under the State provisions, and if it did not, the Federal Government would share in the cost of the extended compensation paid, up to the limits described above.

The weekly benefit amount paid under the new extended compensation program would be equal to the weekly benefit received for a week of total unemployment by the worker (including allowances for dependents) before he exhausted his benefits under the regular program.

If he received more than one such amount in his benefit year, his weekly extended benefit amount would be the average of such amounts.

In computing an individual's total extended compensation amount, the amount of regular compensation payable would be determined before any reduction of benefit rights by reason of a disqualification, but such reductions would be deemed to be regular compensation paid. For example, if a worker was entitled to 26 weeks of regular compensation but was given a 6-week disqualification and an equivalent reduction in benefit rights and then exhausted his remaining 20 weeks, he would have potential extended compensation of 13 rather than 10 times his regular weekly benefit amount; he would be considered to have exhausted 26 weeks of regular compensation at the end of the 20-week period of compensation payments following the 6-week disqualification.

4. *Extended benefit period*

The periods of high unemployment during which extended unemployment compensation would be payable are called extended benefit periods. An extended benefit period would begin with the third week after the week with respect to which the prescribed level of unemployment—described as National or State “on” indicators—is reached.

Once an extended benefit period begins, it would last at least 13 weeks, and no extended benefit period could be started by a State indicator until 14 weeks after the close of a prior extended benefit period in such State. Determinations as to the beginning and ending of extended benefit periods—both State and Federal—would be published by the Secretary of Labor in the Federal Register.

Eligibility period.—Any individual's period of eligibility for extended unemployment compensation would consist of the weeks in his benefit year which begin in an extended benefit period; if his benefit year ends within an extended benefit period, and he does not have the necessary wages or employment to start a new benefit year, the eligibility period would also include all weeks thereafter which begin in such extended benefit period. Extended unemployment compensation would not be payable to anyone for a week of unemployment which begins after the end of an extended benefit period.

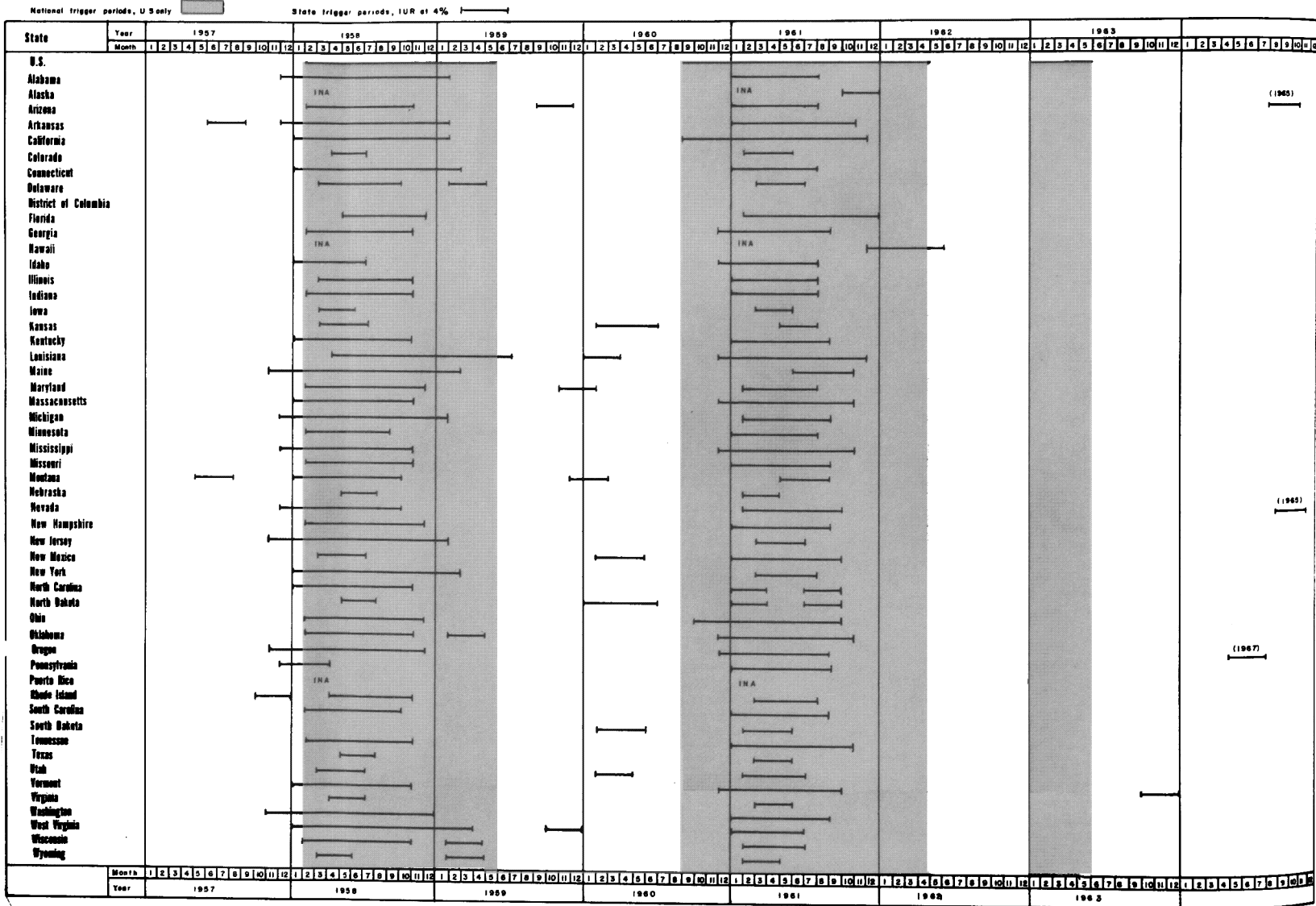
“On” and “off” indicators.—An extended benefit period would begin in all States when insured unemployment for the Nation as a whole rises to the prescribed national “on” indicator. In the absence of a national “on” indicator, an extended benefit period would begin in an individual State when insured unemployment in that State rises to the prescribed State “on” indicator.

A national extended benefit period would end when insured unemployment for the Nation as a whole remained below the prescribed national “off” indicator while the termination of a State extended benefit period would be governed by a State “off” indicator.

Nationally, there would be an “on” indicator when the rate of insured unemployment, seasonally adjusted, equaled or exceeded 4.5 percent for each of the 3 most recent calendar months. There would be a national “off” indicator when for each of 3 consecutive months the seasonally adjusted rate of insured unemployment remains below 4.5 percent.

These provisions, had they been in effect, would have provided extended compensation on a national basis from February 1958 to

State Extended Benefit Periods, 1957-68 under Proposed Trigger Indicators



June 1959 and from September 1960 to May 1962. In both instances, these extended payments would have begun earlier than the payments which actually became available under the two prior, temporary programs. The committee believes that the earlier availability of the payments during a period of high unemployment would be advantageous.

The State indicator would be "on" for any individual State when, for any period consisting of 13 consecutive weeks, the insured unemployment rate in the State is 20 percent or more higher than the average for the corresponding period of the 2 preceding calendar years, provided that the current rate equaled or exceeded 4 percent of covered employment. A State extended benefit period would end when either of these conditions were not met. Because the State extended benefit period would be based on a comparison of unemployment rates in the corresponding 13-week periods in 3 successive years, seasonal adjustment of the rates is unnecessary. The 4-percent rate would be required to prevent paying extended benefits when the insured unemployment rate, while 20 percent or more higher than the average for the same periods in the preceding 2 years, is nevertheless relatively low and not representative of recession conditions. (See chart I.)

5. Payments to States

The Federal Government would pay one-half the cost of the extended unemployment compensation required under this title. So that the States would not be discouraged from providing regular compensation for longer than 26 weeks, the Federal Government would also pay one-half of regular compensation in excess of 26 weeks in a benefit year to the extent such regular compensation is paid during any extended benefit period.

For example, if a claimant was entitled to 36 weeks of regular compensation and had received compensation for 26 of those weeks when the extended benefit period began, he would be entitled to 10 more weeks of regular compensation, and, if the extended benefit period continued, to 3 weeks of extended unemployment compensation. The Federal Government would share in the cost of the last 10 weeks of regular compensation as well as in the 3 weeks of extended compensation. If, in the course of the period prior to the extended benefit period, this claimant had been disqualified for 10 weeks, with his benefit rights reduced accordingly, the Federal Government would still share in paying for a total of 13 weeks of payments to this worker.

In addition, if a State provides additional compensation in periods of high unemployment which are not required under this title but does not correspondingly reduce the extended compensation otherwise payable under this title, the Federal Government would pay one-half of the entire amount of extended compensation, within the overall 39-week limitation. For example, if a State had been paying additional compensation under its own program for 6 weeks when an extended benefit period, as defined in this title, began, and a worker had exhausted 20 weeks of regular compensation and had received 6 weeks of State additional compensation before the extended benefit period began, the State would be required to pay him for only 4 more weeks. In this instance, the Federal Government would reimburse the State one-half of the cost for the 4 weeks. If, however, the State chose

to disregard the weeks of additional compensation not required under this title and to pay him 10 weeks of extended unemployment compensation, the Federal Government would share the cost for the entire 10 weeks of benefit payments.

6. *Provision for interim program*

Although the extended benefit program provided by title II of the bill would not be required until January 1, 1972 (July 1, 1972, if the State legislature does not meet in 1971), any State could adopt a program with an earlier effective date. If a State provides for the payment of extended compensation during periods of high unemployment which may occur in the State prior to January 1, 1972, 50 percent of the amount of such extended compensation would be reimbursed by the Federal Government. To qualify for the interim financing, a State's extended compensation program would be required to meet all the conditions provided in the bill. Under these interim provisions, however, an extended benefit period prior to January 1, 1972, could begin in the State only by reason of a State "on" indicator and could end prior to that date only by reason of a State "off" indicator; an extended benefit period which began before January 1, 1972, could end subsequent to that date only if the requirements of both National and State "off" indicators were satisfied.

7. *Extended unemployment compensation account*

The bill would delete the current section 905 of the Social Security Act (which dealt with the financing of the TEUC program in 1961) and replace it with a new section 905 which would establish a new account in the unemployment trust fund—the extended unemployment compensation account. One-fifth of the net Federal unemployment tax collections would be deposited in this account at the end of each month after June 1970 until March 1972, and one-tenth of the net Federal tax collections would be deposited for each month thereafter. If, at the end of any month, the balance in this account exceeds the greater of \$750 million or an amount equal to one-eighth of 1 percent of all wages in employment covered by State unemployment insurance laws, no further addition to the account would be made. In such case, the moneys collected would be credited to other accounts in the Unemployment Trust Fund. The provisions of the bill with respect to the balance to be maintained in the account are based on the experience of previous recession periods. Since the liabilities of the program are related to wage levels and past employment levels, flexibility would be achieved by setting the balance at a percentage of total wages paid in employment covered by State unemployment insurance laws with \$750 million being considered as the minimum safe amount.

The bill would also authorize repayable noninterest bearing advances to the extended unemployment compensation account, if necessary. This authorization would provide contingency financing should a recession occur before the account has been built up to the desired level or extend for a period long enough to exhaust the account.

The bill would also change the existing provision with respect to the disposition of Federal unemployment tax collections, by providing that whenever any excess is available from the administration account, computed at the end of each fiscal year, any of the excess not needed

to build the administration account to its authorized ceiling should be first transferred to the new extended unemployment compensation account (rather than to the Federal unemployment account), to the extent needed to bring the new account to its authorized maximum balance.

8. *Effective dates*

The revenue to finance the Federal share of this new program would become available beginning in July 1970. The new requirement that the States adopt the program authorized by this title would apply to taxable year 1972 and thereafter. (States whose legislatures do not meet in regular session would have until July 1, 1972, before they would have to have an extended benefit program.) An extended benefit period may begin with a week beginning on or after January 1, 1972, except that a State which adopts the program prior to that date and with an earlier effective date may pay extended compensation (as the result of a State "on" indicator only) for weeks beginning prior to January 1, 1972.

J. Financing

1. *Increase in rate of tax and taxable wage base*

The bill would provide revenue for the extended unemployment compensation program and additional funds needed for administration of the present employment security program by increasing both the Federal unemployment tax rate and the employer's taxable wages.

The tax base would rise from \$3,000 to \$4,200 a year, effective January 1, 1972.

The Federal unemployment tax rate is now 3.1 percent of the first \$3,000 of wages paid in a calendar year to any individual by a single employer. This rate would increase to 3.2 percent of the first \$3,000 of wages paid to an individual by one employer in the calendar years 1970 and 1971. Against this tax, employers would receive tax credits up to 2.7 percent, as under the present law. The result would be an increase from 0.4 percent to 0.5 percent in the net Federal tax on the first \$3,000 of wages paid to an individual by an employer in 1970 and 1971.

Inasmuch as the new Federal tax rates become effective January 1, 1970, and since the unemployment tax is now collected on a quarterly basis, the committee has added a technical amendment to the House-passed provisions to assure that because of the passage of time employers who made timely tax payments under the provisions of existing law would not incur any penalties for failure to pay the additional taxes due as the result of the increase in the tax rates.

There has been a recurring problem in recent years of providing adequate funds for administration of the employment security system. The problem exists because salaries of State agency personnel, and other administrative costs, have increased faster than revenue under the present taxable wage base and tax rate.

Previous considerations of this problem by the Congress resulted in an increase in the tax rate from 3.0 percent to 3.1 percent (an increase in the net Federal tax rate from 0.3 to 0.4 percent) beginning in 1961. Subsequently, this Congress, in 1969, provided additional temporary relief by enacting provisions for quarterly instead of annual collection of the Federal tax. Although quarterly collections are

in themselves desirable, the legislation (Public Law 91-53) was intended primarily to afford the Congress an opportunity to study longer-range solutions to the problem. Because Public Law 91-53 provides no additional revenue, but merely a speed-up in collections, its effect will be short lived.

The longer-range problem should not be dealt with solely through an increase in the tax rate. Consequently, the bill would increase the tax base to \$4,200 beginning with calendar year 1972. The increase is deferred until 1972 to provide adequate time for State legislatures to take appropriate action to increase the tax base under the State laws and make other needed changes in the financing provisions of State laws.

The increase in the tax base will make it possible for the States to improve their benefit financing. The broadened base upon which State taxes will be levied should permit a wider range of rates under State experience-rating provisions.

2. Changes in account ceilings; administrative expenditures; flow of funds

The addition of a new account—the Federal extended unemployment compensation account—to the existing accounts in the Unemployment Trust Fund requires revisions in the procedures for crediting funds to the several accounts. The committee bill, like the House bill, also revises and modernizes the ceilings on the amounts which may be credited to each of the several accounts in the light of present conditions, revises the flow of moneys among the accounts, and changes the provisions relating to administrative expenditures.

Under present law, all revenue received from the Federal unemployment tax, including interest and penalties, is credited to the employment security administration account, and is available for appropriation for both State and Federal employment security administration. The authorization for State grants for a fiscal year is, normally, limited to 95 percent of the budget estimate of Federal unemployment tax collections for that fiscal year (Public Law 91-53 modified this limit for fiscal years 1970, 1971, and 1972). At the end of each fiscal year, excess funds in the employment security administration account are transferred to the Federal unemployment account until the amount in that account reaches the statutory ceiling. After that, excess funds are retained in the employment security administration account until the amount in the account reaches the statutory ceiling. Funds in excess of these statutory ceilings are then credited to individual State accounts, where they may be used to pay benefits or, under certain conditions, to pay State administrative costs.

Under the bill, all Federal unemployment taxes would continue to be set aside for use by the employment security program, but the allocations between the funds would be changed.

Federal extended unemployment compensation account.—As under present law, Federal unemployment tax collections would be credited monthly to the employment security administration account. The bill provides that a portion of the total net amount credited to the employment security administration account each month would, at the close of each month beginning with July 1970, be transferred to the new Federal extended unemployment compensation account.

For the months of July 1970 through March 1972—months during which taxes are due on wages paid in 1970 and 1971—the Federal extended unemployment compensation account would be credited with one-fifth of net tax collections, representing the revenue added by the tax rate increase for those years. For collections at the \$4,200 wage base—for the month of April 1972 and all subsequent months—the Federal extended unemployment compensation account would be credited with one-tenth of the total net amount. This transfer would be made each month unless at the time for the transfer, the amount in the Federal extended unemployment compensation account was at the statutory ceiling.

Further, at the end of each fiscal year after 1972, any funds in the employment security administration account in excess of that account's ceiling would be transferred to the Federal extended unemployment compensation account unless the amount in that account was at the statutory ceiling.

These provisions are expected to result in a rapid buildup of the Federal extended unemployment compensation account, in line with the committee's intention to provide advance funding for extended benefits. The bill would set a statutory ceiling on the amounts to be credited to the Federal extended unemployment compensation account of \$750 million or, if greater, one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to taxation under all State laws in the calendar year ending during the fiscal year for which the ceiling is being determined. The \$750 million, which would be the effective ceiling now, represents an estimate of the cost of Federal payments under the Federal-State extended unemployment compensation program if the program should be triggered into operation in its early years of existence.

As the workforce grows and as wages increase, any fixed figure becomes outdated. For that reason the bill provides alternate ceilings for each of the accounts. Moreover, to avoid artificial changes in ceilings related to wages as a result of changes in the amount of wages taxable under State laws, such ceilings are related to total wages subject to contributions under all State unemployment compensation laws determined without any limitation on the amount of an individual's wages which is taxable.

Federal unemployment account.—The Federal unemployment account (loan fund) was established for the purpose of making repayable advances to States which require additional funds for benefit payment purposes; advances to a State can be repaid either by direct transfer from the State account in the Unemployment Trust Fund or by reduced credit against the Federal tax of the State's employers.

As indicated, present law gives the Federal unemployment account first right to any excess of tax collections over expenditures for administration, until the Federal unemployment account reaches its statutory ceiling of \$550 million or four-tenths of 1 percent of taxable wages under all State unemployment compensation laws.

At the present time, the balance in the Federal unemployment account is about \$550 million, but since this represents less than 0.4 percent of taxable wages, the effective ceiling is 0.4 percent of State taxable wages. In view of the balances in most State accounts, and of

the conditions under which a State may be eligible for an advance, the present ceiling provisions keep more funds tied up in the Federal unemployment account than seems necessary at this time.

The bill would, therefore, make changes both in the ceiling of the Federal unemployment account and in the order in which excess tax collections would be credited to the account. The employment security administration and Federal extended unemployment compensation accounts would be built to their statutory limits before any additional transfers to the Federal unemployment account would be made.

The committee's bill would retain the \$550 million limitation on the Federal unemployment account, but would change the alternative limitation in line with potential future wage levels and resulting potential future benefit costs. The new statutory limitation would be the greater of \$550 million or one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the ceiling is being determined. When the balance in the Federal unemployment account is at its prescribed limit, no transfer of excess is made to it from the employment security administration account.

Employment security administration account.—Under the terms of Public Law 91-53, any excess funds resulting from Federal unemployment tax collections in fiscal years 1970, 1971, and 1972 is retained in the employment security administration account. For subsequent years, as for prior years, present law provides that the excess in the employment security administration account¹ is used first to build the Federal unemployment account to its statutory ceiling, and next, is retained in the employment security administration account until it reaches a ceiling of \$250 million.

The committee's bill would, as noted above, provide for immediate transfer, beginning in July 1970, to the Federal extended unemployment compensation account of one-fifth of monthly collections through March 1972 and one-tenth of monthly collections thereafter. The remainder would be retained in the employment security administration account for appropriation for administrative expenses. The normal appropriation authorization for State grants for a fiscal year after 1970 would be limited to 95 percent of the amount estimated in the budget as the excess of net Federal unemployment tax receipts for that fiscal year over transfers to the Federal extended unemployment compensation account.

For fiscal years after 1972, the committee bill would substitute for the \$250 million ceiling on the employment security administration account an amount equal to 40 percent of the total appropriation by the Congress out of the account for the fiscal year at the end of which the excess is determined. When the employment security administration account is built to this ceiling at the beginning of a fiscal year, the account should have enough money to meet administrative expenses until collections for that fiscal year became available, and thus

¹ The excess in the employment security administration account which is computed as of the close of each fiscal year, is defined in section 901(f)(2)(A) of the Social Security Act as:

"... the amount by which the net balance in such account as of such time (after the application of section 902(b)) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of any other such fiscal year."

eliminate (or greatly reduce) the necessity for interest-bearing advances from the Treasury to the employment security administration account.

The committee's bill would also provide funds to meet unanticipated administrative costs resulting from the larger claim loads which would be created by increased unemployment due to a sudden, sharp economic decline. For any fiscal year after 1972 in which insured unemployment in a calendar quarter is at least 15 percent above the rate for the corresponding quarter of the preceding fiscal year, the committee bill would authorize appropriations for State grants to exceed 95 percent of estimated collections by an amount up to \$150 million, or three-eighths of the amount in the employment security administration account as of the beginning of the fiscal year, whichever is the lesser.

Allocating administrative costs.—A special limitation would be placed on those costs of administration which arise from the operation of the Federal-State system of public employment offices. Under present law, authorizations for appropriations from the employment security administration account include the entire cost of administering the system of public employment offices (although the act establishing those offices retains authority for appropriations from general revenue), because a complete system of public employment offices is deemed necessary to the administration of the State unemployment compensation laws. The committee is aware that the responsibilities of the public employment offices have been expanded into new areas under legislation enacted in recent years. The committee believes that these new activities of the employment service are desirable, but that the costs of many of them are not properly attributable to the administration of unemployment insurance. Accordingly, the committee believes that the costs of administering these new activities should not be paid out of Federal unemployment payroll taxes.

The committee's bill, therefore, would provide that the amounts authorized to be made available for appropriation out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices (both State and Federal costs) that the President determines (in his annual budget) to be an appropriate charge to the employment security administration account. The President's determination, after consultation with the Secretary of Labor, would take into account such factors as the relationship between employment subject to State unemployment compensation laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as the President finds relevant.

Distribution of excess to State accounts.—Under existing law, when the funds in the Federal unemployment account and the employment security administration account are both at their statutory limits, any excess funds remaining at the end of a fiscal year shall be distributed, as of the beginning of the next fiscal year, to the accounts of the States (with approved State laws) in the unemployment trust fund in the same ratio as the amount of wages subject to contributions under each State law bears to the total of wages subject to contributions under all State laws. The amounts so distributed become available to the States

for benefit payment purposes or (with certain limitations) for costs of administration.

The committee's bill modifies the House-passed bill so as to make clear that excess amounts will not be distributed to the States while there is any outstanding loan from the Treasury.

In addition the bill retains the House-passed provision which would provide that when the Secretary of Labor has reason to believe that in the next fiscal year the balance in the employment security administration account, the Federal extended unemployment compensation account and the Federal unemployment account will reach their statutory limits, he shall, after consultation with the Secretary of the Treasury, so report to Congress with a recommendation for appropriate action by the Congress.

TABLE 3.—*Distribution of Federal unemployment tax revenues under H.R. 14705 if there is no extended benefit period before 1976*

[In millions of dollars]

	1970	1971	1972	1973	1974	1975
Tax collections.....	\$725	\$985	\$1, 035	\$1, 290	\$1, 345	\$1, 395
Interest earnings.....	27	33	40	60	74	81
Total revenues.....	752	1, 018	1, 075	1, 350	1, 419	1, 476
Administrative costs.....	700	765	897	895	988	1, 096
Balance.....	52	253	188	455	421	380
Distribution of balance:						
(a) Administration account.....	52	36	—5	304	39	36
(b) Extended benefit account.....		217	193	151	189
(c) Loan fund.....					32	42
(d) State accounts.....					161	302
Balance in accounts on July 1:						
(a) Administration account.....	52	88	83	387	426	462
(b) Extended benefit account.....		217	410	561	750	750
(c) Loan fund.....	550	550	550	550	582	614
(d) Total.....	602	855	1, 043	1, 498	1, 758	1, 826

V. SECTION-BY-SECTION EXPLANATION OF THE BILL

The first section contains a short title of the bill—the “Employment Security Amendments of 1970.” The remainder of the bill is divided into three titles, title I being divided into several parts, as follows:

Title I—Unemployment Compensation Amendments.

Part A—Coverage.

Part B—Provisions of State Laws.

Part C—Judicial Review.

Part D—Administration.

Title II—Federal-State Extended Unemployment Compensation Program.

Title III—Financing Provisions.

TITLE I—UNEMPLOYMENT COMPENSATION AMENDMENTS

PART A—COVERAGE

SECTION 101. CONFORMING AMENDMENT

Subsection (a) of section 101 of the bill amends section 6157(b) of the Internal Revenue Code, relating to the payment of the Federal unemployment tax, to conform to the increase in the Federal tax rate. Section 101(b) provides that the amendment made by subsection (a) shall apply with respect to calendar years beginning after December 31, 1969.

SECTION 102. DEFINITION OF EMPLOYEE

Subsection (a) of section 102 of the bill amends section 3306(i) of the Internal Revenue Code of 1954 (relating to the definition of employee). Under existing law the term "employee" includes an officer of a corporation but does not include an individual (exclusive of any such officer) who, under the usual common law rules relating to the employer-employee relationship, has the status of an independent contractor or is not an employee under such common law rules.

New section 3306(i) provides that for purposes of the Federal Unemployment Tax Act the term "employee" has the meaning assigned to such term by section 3121(d) of the Federal Insurance Contributions Act except that subparagraph (B) (relating to full-time life insurance salesmen) and subparagraph (C) (relating to certain homeworkers) of section 3121(d)(3) are not to apply. Thus, except in the case of full-time life insurance salesmen and homeworkers who are included as employees for purposes of the Federal Insurance Contributions Act solely by reason of section 3121(d)(3) (B) or (C) of the code, the same individuals will be employees for purposes of both the Federal Insurance Contributions Act and the Federal Unemployment Tax Act.

Section 3121(d), in paragraphs (1), (2), and (3) thereof, provides three separate and independent tests for determining who are employees. If an individual is an employee under any one of the tests, he is considered an employee whether or not he is an employee under any of the other tests.

Paragraph (1) of section 3121(d) provides that any officer of a corporation is an employee. Under paragraph (2) of such section, the term "employee" includes any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

Under paragraph (3) of section 3121(d), individuals in four specified groups who are not employees under the usual common law rules are employees for purposes of the Federal Insurance Contributions Act if the conditions described below are met. The four groups involved are—

(A) Agent-drivers or commission-drivers who are engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for their principals.

- (B) Full-time life insurance salesmen.
- (C) Certain homeworkers.
- (D) Certain traveling and city salesmen.

New section 3306(i) expressly provides that in determining who are employees for purposes of the Federal Unemployment Tax Act, subparagraphs (B) and (C) of section 3121(d)(3) shall not apply. Accordingly, new section 3306(i) makes no change, for purposes of the Federal Unemployment Tax Act, in the status of full-time life insurance salesmen and homeworkers. Such individuals are employees under new section 3306(i) (as under present sec. 3306(i)) only if under the usual common law rules applicable in determining the employer-employee relationship they have the status of employees. However, under section 3306(c)(14), service performed by an insurance agent or solicitor is excluded from employment if all the service is performed for remuneration solely by way of commission.

An individual is included in the category of a traveling or city salesman only if he is engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

The mere fact that an individual is an agent-driver or commission-driver or a traveling or city salesman does not in itself make such person an employee under new section 3306(i) of the code. In order for an individual to be an employee under paragraph (3) of section 3121(d) the following prescribed conditions must also be met:

(1) The contract of service must contemplate that substantially all of the services are to be performed personally by such individual.

(2) The individual must not have a substantial investment in facilities used in connection with the performance of the services (other than the investment in facilities for transportation).

(3) The services must be part of a continuing relationship with the person for whom the services are performed and not be in the nature of a single transaction.

Subsection (b) of section 102 of the bill makes a technical amendment to section 1563(f)(1) of the code (relating to surtax exemption in case of certain controlled corporations) by changing the section reference in the definition of the term "employee" from section 3306(i) to paragraphs (1) and (2) of section 3121(d). Thus, the term "employee" for purposes of section 1563 continues to mean any officer of a corporation or any individual having the status of employee under the usual common law rules applicable in determining the employer-employee relationship.

Subsection (c) of section 102 of the bill provides that the amendment made by subsection (a) of section 102 is to apply with respect to remuneration paid after December 31, 1971, for services performed after such date.

SECTION 103. AGRICULTURAL LABOR

Subsection (a) of section 103 of the bill amends section 3306(k) of the Internal Revenue Code of 1954 (relating to the definition of agricultural labor).

New section 3306(k) provides that for purposes of the Federal Unemployment Tax Act the term "agricultural labor" has the meaning assigned to such term by section 3121(g) of the Federal Insurance Contributions Act with an exception discussed below.

Section 3306(k) of existing law contains four numbered paragraphs. Paragraph (1) relates to service performed on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife. Paragraph (2) relates to service performed in the employ of the owner, tenant, or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major portion of the service is performed on a farm. Paragraphs (1) and (2) of section 3121(g) of the code (to which new section 3306(k) refers) are the same as paragraphs (1) and (2) of existing section 3306(k). Therefore, new section 3306(k), by reference to section 3121(g), continues without change the provisions of law contained in paragraphs (1) and (2) of existing 3306(k).

Paragraph (3) of existing section 3306(k) includes as agricultural labor the following services even though not performed on a farm: Services performed in connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

Paragraph (3) of existing section 3306(k), although comparable in many respects to paragraph (3) of section 3121(g), includes as agricultural labor certain services which do not constitute agricultural labor under section 3121(g)(3). Paragraph (3) of section 3121(g) includes as agricultural labor only services performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes. Thus, new section 3306(k) will exclude from the definition of agricultural labor services performed in connection with the production or harvesting of maple sirup or maple sugar, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, unless such services are performed on a farm (as defined in sec. 3121(g)). Accordingly, services performed in connection with the operation of a hatchery, if not operated as part of a poultry or other farm, will be covered employment.

Paragraph (4) of existing section 3306(k) includes as agricultural labor service performed in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to

storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity, provided such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits and vegetables for market. Thus, under existing section 3306(k), service of the prescribed character performed with respect to fruits or vegetables in the employ of any person constitutes agricultural labor, provided such service is performed as an incident to the preparation of such fruits or vegetables for market; and such service with respect to all other agricultural or horticultural commodities constitutes agricultural labor, if the service is performed as an incident to ordinary farming operations.

Paragraph (4) of section 3121(g) relates to the same type of services as are referred to in paragraph (4) of existing section 3306(k) but applies different tests for determining whether services of the prescribed character constitute agricultural labor. Under paragraph (4) (A) of section 3121(g), the term "agricultural labor" includes service performed in the employ of the owner-operator, tenant-operator, or other operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity in its unmanufactured state, provided such operator produced more than one-half of the commodity with respect to which such service is performed. Such paragraph (4) (A) contains three tests for determining whether certain services constitute agricultural labor; namely, the status of the person for whom the service is performed, the state of the commodity with respect to which the service is performed, and the extent to which such commodity was produced by the operator in whose employ the service is performed. To constitute agricultural labor under such paragraph (4)(A) the service must be performed in the employ of the operator of the farm. Further, service of the prescribed character with respect to an agricultural or horticultural commodity constitutes agricultural labor only if the service is performed with respect to such commodity in its unmanufactured state. In addition, where service of the prescribed character is performed in the employ of the operator of a farm, such service does not constitute agricultural labor unless such operator produced more than one-half of the commodity with respect to which the service is performed.

Paragraph (4)(B) of section 3121(g) relates to services described in paragraph (4)(A) of such section which are performed in the employ of a group of operators of farms (other than a cooperative organization). Under new section 3306(k), paragraph (4)(B) of section 3121(g) is inapplicable in determining whether services constitute agricultural labor for purposes of the Federal Unemployment Tax Act. However, under new section 3306(k) services described in paragraph (4)(A) of section 3121(g) which are performed in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) constitute agricultural labor for purposes of the Federal Unemployment Tax Act if the service is performed with respect to an agricultural or horticultural commodity in its unmanufactured state and the group of operators (or, in the case of a cooperative organization, the operators who are members) produced more

than one-half of the commodity with respect to which the service is performed. For this purpose a cooperative organization is to be treated as such whether or not it is incorporated and whether or not it is a farmers' cooperative exempt from income taxation under section 521 of the code.

Subparagraph (C) of paragraph (4) of section 3121(g) provides in effect that service of the prescribed character performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption does not constitute agricultural labor under subparagraph (A) or (B) of such paragraph (4). Existing section 3306(k)(4) contains a similar provision.

Paragraph (5) of section 3121(g) includes as agricultural labor service not in the course of the employer's trade or business or domestic service in a private home of the employer, if such service is performed on a farm operated for profit.

As used in existing section 3306(k), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. The term "farm" is similarly defined in section 3121(g).

Section 103(b) of the bill amends section 3306(c)(1) of the Internal Revenue Code of 1954 (relating to the definition of agricultural labor).

Subsection (b)(1) would extend the Federal Unemployment Tax Act to employers of agricultural labor who employ during a calendar year, or the preceding calendar year, eight or more individuals in each of 26 calendar weeks. The provision would continue to exclude all agricultural labor performed for a crew leader, as defined in section 3121(o) of such code.

Subsections (b)(2) and (c) make necessary conforming amendments in sections 3306(b) and 3121(c) of the Internal Revenue Code of 1954.

Subsection (d) provides that the provision of subsection (a) and (b)(2) shall be effective for services performed and wages paid after 1971, and that the provisions of subsections (b)(1) and (c) shall be effective for services performed after 1971. Under existing law, agricultural labor is excluded from coverage under the Federal Unemployment Tax Act.

SECTION 104. STATE LAW COVERAGE OF CERTAIN EMPLOYEES OF NON-PROFIT ORGANIZATIONS AND OF STATE HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATION

Section 104 of the bill amends section 3304(a) of the Internal Revenue Code of 1954 by inserting a new paragraph (6) providing that to be approved (for purposes of the credits against the Federal unemployment tax) a State law must cover employees of nonprofit organizations and State hospitals and institutions of higher education.

Subparagraph (A) of the new paragraph (6) requires the State law to provide for payment of unemployment compensation on the basis of service to which new section 3309(a)(1) of the code (added by section 104(b)(1) of the bill) applies in the same amount, and on the same terms and conditions as other service covered by such law with the following exception: with respect to service in an instructional, research, or principal administrative capacity for an institution of

higher education, unemployment compensation shall not be payable based on such service for any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such period) to any individual who has a contract to perform services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms. Subparagraph (B) requires the State to permit benefit-reimbursement payments (in lieu of "contributions") into the State unemployment fund with respect to the service covered by this provision. No Federal tax is imposed on the employment covered under this section of the bill.

Subsection (b)(1) of section 104 of the bill adds a new section 3309 to chapter 23 of the code to define State law coverage requirements for purposes of section 3304(a)(6).

Section 3309(a)(1) describes the required coverage as (A) service excluded from the term "employment" for purposes of the Federal tax solely by reason of paragraph (8) of section 3306(c)—i.e., solely because it is performed in the employ of a religious, charitable, educational, or other nonprofit organization described in section 501(c)(3) of the code which is exempt from income tax under section 501(a) of the code; and (B) service performed in the employ of a State or any instrumentality of the State or of the State and one or more other States for a hospital or institution of higher education if such service is excluded solely by reason of paragraph (7) of section 3306(c) of the code. Coverage under subparagraph (B) does not extend to employees of political subdivisions of a State (or to instrumentalities of such subdivisions).

Section 3309(a)(2) requires State law to permit the nonprofit organizations, or groups of such organizations, to elect (for such minimum period and at such time as may be prescribed by State law) to make payments in lieu of contributions into the State unemployment fund equal to the amount of unemployment compensation attributable to service covered by new section 3309(a)(1)(A). It authorizes a State to provide safeguards to insure that such payments will be made. For example, a State may require that a bond be furnished by a nonprofit organization (or group of such organizations) or the State may refuse to permit such an organization (or group) which is delinquent in making reimbursement payments to continue to elect this method of payment.

Subsection (b) excludes the following services from coverage under section 3309:

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

This paragraph excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor

for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.

(2) Service performed by ministers of churches in the exercise of their ministry and members of a religious order in performing the duties required by such order.

(3) Service performed in the employ of a school other than an institution of higher education, as defined in subsection (d).

(4) Service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury. The exclusion applies only to the services performed by an individual receiving the rehabilitation under the program.

(5) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or any agency of a State or political subdivision thereof. The exclusion applies only to services performed by an individual receiving the work relief or work training.

(6) Service performed for the hospital of a State penal institution, by an inmate of such institution.

Subsection (c) excludes from the new section 3309 service performed in the employ of nonprofit organizations which during the calendar year (or the preceding calendar year) do not employ on each of 20 days, each day in a different calendar week, four or more individuals.

Section 3309 relates to requirements which the State law must meet. Federal law does not prohibit any State from extending coverage on a broader basis.

Section 3309(d) defines an institution of higher education as a public or nonprofit educational institution which admits as regular students only individuals having a high school education or the equivalent, which provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation.

Section 104(c) of the bill amends section 3303 of the code by adding new subsections (e) and (f). Subsection (e) permits a State to allow nonprofit organizations described in section 501(c)(3) of the code, both those required to be covered and those which the State may cover if it wishes, to elect (in lieu of paying contributions) to pay into the State fund amounts equal to the unemployment compensation attributable under the State law to service performed in the employ of such organizations. The State law may provide that a group of the described organizations may elect the reimbursement method with respect to service in the employ of the members of the group.

Subsection (f) is a transition provision applying to nonprofit organizations (or groups of such organizations) which were covered on a contributory basis before January 1, 1969, and which elect the reimbursable basis at the first opportunity. A State may provide that such

an organization (or group) need not make a reimbursement payment on account of unemployment compensation paid after its election of reimbursement until the total of such compensation equals the amount by which past contributions exceed past unemployment compensation charged to its experience-rating account, or paid under the State law on the basis of wages paid by it or service performed in its employ, whichever is appropriate.

Section 104(d) of the bill provides effective dates. Subsections (a) and (b), which relate to State law requirements, apply with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after December 31, 1971 (if the legislature of a State does not meet in a regular session which closes during the calendar year 1971, subsection (a) would not be a requirement of State law until July 1, 1972). Subsection (c), which relates to the permissive reimbursement method of payment, takes effect January 1, 1970. Thus, it will apply to 1970 and subsequent years.

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

Section 105(a) amends that portion of the definition of employment in section 3306(c) of the code which precedes paragraph (1), to include as employment subject to the Federal Unemployment Tax Act service performed outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation or in the Virgin Islands) by a citizen of the United States as an employee of an American employer.

Section 105(b) amends section 3306(j) of the code to add a definition of American employer. "American employer" means a person who is an individual who is a resident of the United States, a partnership if two-thirds or more of the partners are residents of the United States, a trust if all the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any State.

Section 105(c) provides that the amendments made by subsections (a) and (b) shall apply with respect to service performed after December 31, 1971.

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

Subsection (a) of section 106 of the bill amends paragraph (10) of section 3306(c) of the Internal Revenue Code of 1954 (relating to the definition of employment) by adding some new exclusions. Present section 3306(c)(10)(B) excludes service for a school, college, or university if the service is performed by a student who is enrolled and regularly attending classes at such institution. Paragraph (B) would be amended to exclude also service for such institution performed by the spouse of a student, if at the time the spouse commences such service, the spouse is advised that the employment is afforded to him under a program to provide financial assistance to such students by such institution and that the employment will not be covered by any program of unemployment insurance.

Subsection (a) of section 106 of the bill also adds new paragraphs (C) and (D) to the exclusions in section 3306(c)(10). New subparagraph (C) excepts from the term "employment" service performed by

an individual under the age of 22 who is enrolled at a nonprofit or public educational institution (which normally maintains a regular faculty and curriculum and normally has a regular organized body of students in attendance at the place where its educational activities are carried on) as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such institution has certified to the employer, as defined in section 3306(a) of the code, that such service is an integral part of such program.

Although such service need not relate directly to the academic instruction portion of the program, it must constitute part or all of the required work experience portion of the program and the institution must certify to the employer that the service is an integral part of that program. This new exclusion does not apply to employee educational or training programs run by or for an employer or group of employers.

New subparagraph (D), to be added to section 3306(c)(10), excludes service in the employ of a hospital if such service is performed by a patient of such hospital.

Subsection (b) of section 106 of the bill provides that the amendments made by subsection (a) are to apply with respect to remuneration paid after December 31, 1969.

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

New section 107 repeals section 8524 of title 5 of the United States Code, effective with respect to benefit years which begin more than 30 days after the date of the enactment of the Employment Security Amendments of 1969. Accordingly, the accrued leave of ex-servicemen would be treated in the same manner as accrued leave of State-covered workers and Federal civilian workers is treated under the State law.

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

Section 108 of the bill amends section 3304(a) of the Internal Revenue Code of 1954 by adding a new paragraph (12) providing that to be approved (for purposes of the credits against the Federal unemployment tax) a State law must provide an opportunity for coverage for employees of hospitals and institutions of higher education operated by political subdivisions of the States.

The new subparagraph (12) provides that the State law shall provide each political subdivision of a State the option of electing whether employees of hospitals and institutions of higher education operated by the subdivision shall be covered under the State unemployment compensation program. A subdivision which elects coverage shall make payments (in lieu of contributions) into the State unemployment fund.

Employees of subdivisions electing coverage shall be entitled to receive compensation under the terms and conditions applicable to all other individuals covered under the State law, except that employees

in an instructional, research, or principal administrative capacity shall be subject to the limitations provided in the new paragraph 6 (A) added by section 104 of the bill.

Subsection (b) provides that the amendments made by subsection (a) will be effective with respect to certifications of State laws for 1972 and years thereafter, except where such requirement would necessitate a change in the Constitution of such State. In the latter event the amendment shall be effective with respect to State laws after January 1, 1975.

PART B—PROVISIONS OF STATE LAWS

SECTION 121. PROVISIONS REQUIRED TO BE INCLUDED IN STATE LAWS

Section 121(a) of the bill amends section 3304(a) of the Internal Revenue Code of 1954 to add new paragraphs (7), (8), (9), and (10) which contain new requirements to be met by State laws if they are to be certifiable under section 3304(c).

Under new paragraph (7), the State law must provide that an individual who has received compensation during his benefit year must have had work since the beginning of such year in order to qualify for unemployment compensation in his next benefit year. The State law is to specify how much work he must have had and whether or not it had to be in covered employment.

Under paragraph (8), the State law must provide that compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency, or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work. Denial of compensation for causes other than those specified is not prohibited by this provision.

Under paragraph (9)(A), the State law must provide that compensation shall not be denied or reduced to an individual solely because he files a claim in another State or in a contiguous country with which the United States has an agreement with respect to unemployment insurance or because he resides in another State or such contiguous country at the time he files a claim for unemployment compensation.

Under paragraph (9)(B), the State law must provide that the State shall participate in arrangements for the payment of compensation on the basis of combining an individual's wages and employment under the State law with wages and employment under other State laws which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure prompt and full payment in such cases. The arrangements shall include provisions for basing the individual's benefit rights under such arrangements on his employment and wages in the base period of a single State, expected to be that of the paying State. They shall also avoid duplicate use of wages or employment by reason of such combining.

Under paragraph (10), the State law must provide that compensation shall not be denied to any individual by reason of cancellation of his wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for unemployment compensation or receipt of

disqualifying income (such as receipt of a pension). This provision would not prevent a State from postponing or reducing an individual's rights for such causes as voluntary quit or refusal of suitable work so long as the disqualification did not cancel his wage credits or totally reduce his benefit rights. Thus, a State could postpone benefits for a fixed period (e.g., 6 weeks), for a flexible period (e.g., 4 to 10 weeks), or for the duration of the worker's unemployment and until he had returned to work and earned a specified amount of money. Similarly, a State law may provide for a reduction of the worker's benefit rights but not for a total reduction of such rights. This paragraph does not affect other requirements, such as the requirement that to receive compensation for a week of unemployment the individual must be available for work.

Under section 121(b) of the bill, these new requirements of State law take effect January 1, 1972, and apply to the taxable year 1972 and subsequent taxable years (if the legislature of a State does not meet in a regular session which closes during the calendar year 1971, the new requirements need not be met until July 1, 1972).

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

Section 122(a) of the bill amends section 3303(a) of the Internal Revenue Code of 1954 to permit a State law to assign reduced rates (not less than 1 percent) to new employers (or newly covered employers) on any reasonable basis until such employers have been subject to the State law for a period of time sufficient to have a rate computed on the basis of their experience with unemployment or a factor having a direct relation to unemployment risk as permitted by section 3303(a).

Section 122(b) provides that this amendment applies with respect to taxable years beginning after 1971.

SECTION 123. CREDITS ALLOWABLE TO CERTAIN EMPLOYERS

Section 123 of the bill adds a new subsection (j) to section 3305 of the Internal Revenue Code of 1954. New subsection (j) provides that any person required (pursuant to permission granted by section 3305) to make contributions to an unemployment fund under an approved State law is not to be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year after 1971, if, on October 31 of such taxable year the Secretary of Labor certifies to the Secretary of the Treasury his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310 of the code (judicial review), a finding of the Secretary of Labor under new section 3305(j) is to be treated as a finding under section 3304(c) of the code.

PART C—JUDICIAL REVIEW

SECTION 131. JUDICIAL REVIEW

Section 131(a) of the bill amends title III of the Social Security Act by adding a new section (section 304) which provides for judicial review of findings by the Secretary of Labor under section 303 of such act which would result in his failure to certify a State for payments with respect to the administration of the State law under section 302 of the Social Security Act. The State may, within 60 days after notice to the Governor of the State of the Secretary's action, file a petition for review of such action in either the U.S. court of appeals for the circuit in which such State is located or the U.S. Court of Appeals for the District of Columbia. The clerk of the court is directed to transmit a copy of the petition to the Secretary of Labor. Thereupon the Secretary of Labor is to file in the court the record of proceedings on which he based his action as provided in section 2112 of title 28, United States Code.

Subsection (b) of the new section 304 provides that the findings of fact by the Secretary of Labor, if supported by substantial evidence, are to be conclusive, but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence. The Secretary thereupon may make new or modified findings of fact and may modify his previous action. He is to certify to the court the record of the further proceedings. Such new or modified findings of fact are likewise to be conclusive if supported by substantial evidence.

Subsection (c) of the new section 304 provides that the court is to have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. Judgment of the court is to be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

Subsection (d) of the new section 304 provides that the Secretary of Labor is not to withhold any certification for payment to any State under section 302 until the expiration of the 60-day period within which the State may petition for review or until the State has filed such a petition, whichever is earlier. The commencement of judicial proceedings stays the Secretary's action for 30 days and the court may thereafter grant interim relief if warranted, including an additional stay of the Secretary's action and such other relief as may be necessary to preserve status or rights.

Subsection (e) of the new section 304 provides that any judicial proceedings under the section shall be entitled to, and, upon request of the Secretary of Labor, or the State, shall receive a preference and shall be heard and determined as expeditiously as possible.

Section 131(b)(1) of the bill amends chapter 23 of the Internal Revenue Code of 1954 by adding at the end thereof a new section 3310 providing for judicial review of findings by the Secretary of Labor under section 3303(b) or section 3304(c) pursuant to which he is required to withhold a certification under either of such sections. Except that the provisions relate to certifications under section 3303(b) and section 3304(c), the provisions as to judicial review are the same as those provided in the amendment made by section 131(a) of the bill.

Section 131(b)(2) of the bill amends subsection (c) of section 3304 of the code to modify and clarify the last sentence thereof governing

the procedure to be followed with respect to a finding of the Secretary of Labor that a State has failed to comply substantially with any of the provisions of paragraph (5) of section 3304(a) of the code. As amended, the last sentence of section 3304(c) provides that no finding of a failure to comply substantially with the provisions of section 3304(a)(5) shall be based on an application or interpretation of State law (1) until all administrative review provided by State law has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending.

PART D—ADMINISTRATION

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

Section 141 of the bill amends title IX of the Social Security Act by adding new sections 906, 907, and 908.

Unemployment compensation research program

Section 906(a)(1) directs the Secretary of Labor to establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research is to include (but not be limited to) a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment, including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, and the personal characteristics, family status, employment background, and experience of claimants. The results of such studies are to be made public. Section 906(a)(2) directs the Secretary of Labor to establish also a program of research to develop information as to the effect and impact of extending coverage to excluded groups. Such information is to be made public.

Section 906(b) authorizes the appropriation for the fiscal year ending June 30, 1971, and for each fiscal year thereafter of such sums, not to exceed \$8 million in any fiscal year, as may be necessary to carry out the purposes of section 906. From the sums appropriated the Secretary may provide for the conduct of such research through grants or contracts.

Personnel training

Section 907 relates to training for unemployment compensation personnel. Section 907(a) directs the Secretary (1) to provide directly, through State agencies or through contracts with institutions of higher education or other qualified agencies, organizations or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under his regulations, (2) to develop training materials for and provide technical assistance to the State agencies in the operation of their training programs, and (3) under such regulations as he may prescribe, award fellowships and traineeships to individuals in the

Federal-State employment security agencies to prepare them or improve their qualifications for service in the administration of the unemployment compensation program.

Section 907(b) authorizes the Secretary of Labor, to the extent he finds such action necessary, to prescribe requirements to assure that any individual will repay the amounts of his fellowship or traineeship to the extent such individual fails to serve, for the period prescribed by the Secretary, with a State agency or with the Federal Government, in connection with administration of any State employment security program. The Secretary is authorized, however, to relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the programs established by this section 907.

Section 907(c) authorizes a program of temporary exchange of personnel between the U.S. Department of Labor and State employment security agencies. The provisions of section 507 of the Elementary and Secondary Education Act of 1965, or of any more general programs of interchange enacted by a law amending, supplementing or replacing such section 507, are to apply to such assignment. The provisions of section 507 deal with such issues as rates of pay, leave and retirement, and other benefit protections for employees involved in personnel exchanges.

Section 907(d) authorizes the appropriation for the fiscal year ending June 30, 1971, and for each fiscal year thereafter of such sums, not to exceed \$5 million in any fiscal year, as may be necessary to carry out the purposes of section 907.

Federal Advisory Council

Section 908 directs the Secretary of Labor to establish a Federal Advisory Council to review the Federal-State unemployment compensation program and to recommend to him improvements in the program. Section 908(a) provides for the Council's establishment and responsibilities, and limits it to not more than 16 members including the Chairman. Section 908(b) provides that the Council shall be appointed by the Secretary without regard to the civil service laws, and that it shall consist of men and women who shall be representatives of employers and employees in equal numbers, and the public. Section 908(c) authorizes the Secretary to provide the Council with an executive secretary, secretarial, clerical, and other assistance, and such pertinent data prepared by the Department as the Council may require to carry out its functions. Section 908(d) authorizes compensation to Council members, at rates fixed by the Secretary but not to exceed \$100 a day, and the reimbursement of travel expenses. Section 908(e) directs the Secretary to encourage the organization of similar State advisory councils. Section 908(f) authorizes the appropriation, for fiscal years beginning with 1971, of such sums, not to exceed \$100,000 in any fiscal year, as may be necessary to carry out the provisions of this section 908.

SECTION 142. CHANGE IN CERTIFICATION DATE

Section 3302 of the Internal Revenue Code of 1954 provides credits against the Federal unemployment tax for contributions paid into State unemployment funds under the law of a State which has been certified under section 3304 of the code for the taxable year and for

amounts that would have been paid but for the allowance of a reduced rate under provisions of the State law which have been certified for the taxable year under section 3303. Under existing law these certifications are made on December 31 of each year.

The effect of the amendments made by subsections (a) through (g) of section 142 of the bill is to change the certification date from December 31 to October 31, beginning with October 31, 1972, and, in general, to provide that a certification is to be based on the 12-month period ending on such October 31 (10-month period for October 31, 1972) rather than on the period ending on December 31.

Subsection (h) of section 142 of the bill adds a new subsection (e) at the end of section 3304 of the code. Under the new subsection (e), whenever any provision of section 3302, 3303, or 3304 of the code refers to a 12-month period ending on October 31 of a year and the law applicable to one portion of such period differs from the law applicable to another portion of such period, such provision is to be applied by taking into account for each such portion the law applicable to such portion.

Under subsection (i) of section 142 of the bill, the amendments made by this section are to apply to the taxable year 1972 and taxable years thereafter.

TITLE II—FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM

SECTION 201. SHORT TITLE

Section 201 provides that title II of the bill may be cited as the Federal-State Extended Unemployment Compensation Act of 1970.

SECTION 202. PAYMENT OF EXTENDED COMPENSATION

Section 202 of the bill adds a new paragraph (11) to section 3304(a) of the Internal Revenue Code of 1954. Effective for the taxable year 1972 and subsequent taxable years, the new paragraph (11) in effect provides that a State law will be certified as meeting the requirements for employers to receive credits against the Federal unemployment tax only if the State law provides that extended compensation will be payable as provided in title II of the bill. Section 202 contains the basic provisions required to be included in the State laws.

(a) *State law requirements.*—The first sentence of paragraph (1) of section 202(a) states that the 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 (for a discussion of an individual's eligibility period, see the explanation of section 203(c) of the bill), to individuals who—

(A) have exhausted all rights to regular compensation under the State law, and

(B) with respect to such week, have no rights to regular compensation under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85) and no rights to compensation under any other Federal law (such as the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, or the Automotive Products Trade Act of 1965), and who are not receiving compensation from the Virgin Islands or Canada.

The second sentence of paragraph (1) explains when an individual is deemed to have exhausted his rights to regular compensation under a State law for purposes of the first sentence of that paragraph. An individual has exhausted such rights when either (1) no payments of regular compensation can be made under the State law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (2) his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

An exhaustion by reason of the expiration of a benefit year will, in effect, apply only where the benefit year ends within an extended benefit period and only with respect to any weeks thereafter which begin in such extended benefit period (see section 203(c)).

In such a case, the amount established in the individual's compensation account under section 202(b) and the amount of the sharable extended compensation under section 204(b) will be determined with respect to such benefit year.

Subsection (a)(2) provides that, except where inconsistent with the provisions of title II of the bill, the terms and conditions of the State law which apply to claims for (and payment of) regular compensation shall apply to claims for (and payment of) extended compensation.

(b) *Individuals' compensation accounts.*—Subsection (b)(1) of section 202 of the bill requires the State to establish, for each eligible individual who files an application for extended compensation, an extended compensation account with respect to the individual's benefit year. The amount established in such account is to be not less than the least of the following: (A) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to him during the benefit year, (B) 13 times his average weekly benefit amount, or (C) 39 times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year. The State law may provide, however, that the amount so determined shall be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under the law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period. Subsection (b)(2) provides, for purposes of subsection (b)(1), that an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) for total unemployment payable to such individual for such week. If under State law he was not entitled to the same amount for all weeks of total unemployment in a benefit year, because of a change in his dependency status, for example, his weekly benefit amount for the purposes of subsection (b)(1) (B) and (C) would be the average of the different amounts.

SECTION 203. EXTENDED BENEFIT PERIOD

(a) *Beginning and ending.*—Subsection (a)(1) of section 203 of the bill provides that an extended benefit period is to 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.

Subsection (a)(2) provides that such period shall end with the third week after the first week for which there is both a national "off" indicator and a State "off" indicator. National "on" and "off" indicators are described in subsection (d). State "on" and "off" indicators are described in subsection (e).

(b) *Special rules.*—Subsection (b)(1) provides that no extended benefit period in a State shall last for a period of less than 13 consecutive weeks. It provides also that no extended benefit period may begin by reason of a State "on" indicator before the 14th week after the close of a prior extended benefit period with respect to such State (whether such prior period began by reason of a State "on" indicator or a National "on" indicator).

The relationship of subsection (b)(1) to subsection (a) of section 203 may be illustrated by the following example. Assume that, in the case of State X, there is a State "on" indicator for week 1. Assume further that there is a national "on" indicator for week 2, a State X "off" indicator for week 10 and subsequent weeks, and a national "off" indicator for week 13 and subsequent weeks. In this case, the extended benefit period for State X begins with week 4 (subsection (a)(1)) and ends with week 16 by reason of there being a national "off" indicator and a State "off" indicator for week 13 (subsection (a)(2) as modified by subsection (b)(1)(A)).

In the above case, no new extended benefit period for State X may begin, by reason of a State X "on" indicator, before week 30 (subsection (b)(1)(B)). If, however, the national "on" indicator occurred for week 22 instead of week 2, for example, a second extended benefit period for State X would begin with week 25.

Subsection (b)(2) provides that 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 of Labor is to cause notice of such determination to be published in the Federal Register.

(c) *Eligibility period.*—Subsection (c) provides that an individual's eligibility period for extended compensation under the State law is to 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.

The operation of section 203(c) may be illustrated by the following examples:

Example 1: Assume that an extended benefit period begins with week 30 and ends with week 50 of individual X's benefit year under the unemployment compensation law of a State. With respect to extended compensation payable under the law of that State, X's eligibility period will be weeks 30 through 50, inclusive, of his benefit year.

Example 2: Assume that an extended benefit period begins with week 41 of individual Y's benefit year under the unemployment compensation law of a State and lasts for 39 weeks. With respect to extended compensation payable under the law of that State, Y's eligibility period will be weeks 41 through 52 of his benefit year and the immediately following 27 weeks, unless with that time Y could establish a new benefit year.

Of course, the mere fact that a week of unemployment begins in an individual's eligibility period does not entitle that individual to extended compensation; he must meet the other requirements (such as those of section 202(a)) as well. For instance, in example 2 above, Y would not be entitled to extended compensation for a week of unemployment occurring in any of the 27 weeks immediately following his benefit year if he had benefit rights for that week under the law of another State.

(d) *National "on" and "off" indicators.*—Subsection (d)(1) provides that there is a national "on" indicator for a week if for each of the three most recent calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all States equaled or exceeded 4.5 percent (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the month in question).

Subsection (d)(2) provides that there is a national "off" indicator for a week if for each of the three most recent calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all States was less than 4.5 percent (determined in the same manner as for the "on" indicator).

For purposes of the "on" and "off" indicators, the insured unemployment rate is to be calculated to at least two decimal places and remain unrounded.

(e) *State "on" and "off" indicators.*—Subsection (e)(1) provides that there is a State "on" indicator for a week if the rate of insured unemployment under the State law for the 13-week period consisting of such week and the immediately preceding 12 weeks (A) equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and (B) equaled or exceeded 4 percent.

Subsection (e)(2) provides that there is a State "off" indicator for a week if, for the 13-week period consisting of such week and the immediately preceding 12 weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) was not satisfied. For purposes of subsection (e), the rate of insured unemployment for any 13-week period is to 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 13-week period.

(f) *Rate of insured unemployment; covered employment.*—Subsection (f)(1) defines the term "rate of insured unemployment" for purposes of subsections (d) and (e). It means the percentage arrived at by dividing (A) a numerator consisting of the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, by (B) a denominator consisting of the average monthly covered employment for the specified period.

In each fraction used in establishing the rate of insured unemployment, the "specified period" used in the numerator will differ from the "specified period" used in the denominator and must be ascertained by reading the applicable provisions of subsection (d) or (e) (as the case may be) of section 203. For example, assume that a question has arisen as to whether or not the rate of insured unemployment is such that there is a national "on" indicator for a week beginning in March of year 3. The requirement of section 203(d)(1) will be met if the

rate of insured unemployment (seasonally adjusted) for December of year 2, for January of year 3, and for February of year 3, equalled or exceeded 4.5 percent. The "specified period" for each numerator is the month in question (December, January, or February, as the case may be). The "specified period" for denominator purposes in (1) with respect to December, the period beginning April 1 of year 1 and ending March 31 of year 2, and (2) with respect to January and February, the period beginning July 1 of year 1 and ending June 30 of year 2.

The basis for reports by State agencies necessary for the operation of subsections (d), (e), and (f) of section 203 shall be uniform for all States.

Subsection (f)(2) provides that determinations under subsection (d) (national "on" and "off" indicators) are to be made by the Secretary of Labor in accordance with regulations prescribed by him.

Subsection (f)(3) provides that determinations under subsection (e) (State "on" and "off" indicators) are to be made by the State agency in accordance with regulations prescribed by the Secretary of Labor.

SECTION 204. PAYMENTS TO STATES

(a) *Amount payable.*—Subsection (a)(1) of section 204 of the bill requires the Federal Government to pay 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 (that is, the unemployment compensation law of the State approved by the Secretary of Labor under section 3304 of the code). Subsection (a)(2) provides, however, that no payment is to be made to any State under section 204 in respect of compensation to the extent that the State is entitled to reimbursement therefor under the provisions of any Federal law other than the bill. Thus, for example, payment would not be made in respect of compensation to the extent the State is entitled to reimbursement under 5 United States Code chapter 85, the Manpower Development and Training Act of 1962, the Trade Expansion Act of 1962, or the Automotive Products Trade Act of 1965.

(b) *Sharable extended compensation.*—Subsection (b) describes sharable extended compensation. It is extended compensation paid to an individual for weeks of unemployment in his eligibility period to the extent that the aggregate extended compensation paid to him with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A) (50 percent of regular compensation), (B) (13 times average benefit amount), and (C) (39 times average weekly benefit amount, reduced by regular compensation) of section 202(b)(1).

(c) *Sharable regular compensation.*—Subsection (c) describes sharable regular compensation. It is regular compensation paid to an individual for a week of unemployment (1) if such week is in the individual's eligibility period, 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 26 times (and does not exceed 39 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. Compensation is "deemed paid" to an individual when, for example, he was disqualified for a specified number of weeks and his total compensation was reduced by his weekly benefit amount times the number of weeks for which he was disqualified.

(d) *Payment on calendar month basis.*—Subsection (d) provides that there shall be paid to each State (either in advance or by way of reimbursement as may be determined by the Secretary of Labor) such sum as the Secretary estimates the States will be entitled to receive under title II of the bill 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. The Secretary's 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.

(e) *Certification.*—Subsection (e) directs the Secretary of Labor to certify from time to time, to the Secretary of the Treasury for payment to each State the sums payable to such State under section 204 of the bill. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, is directed to make payment to the State in accordance with such certification by transfers from the extended unemployment compensation account to the account of the State in the Unemployment Trust Fund (see sec. 305(c)).

SECTION 205. DEFINITIONS

Section 205 contains definitions for the purposes of title II of the bill.

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

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

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

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

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

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

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

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

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

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

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

SECTION 206. APPROVAL OF STATE LAWS

Section 206 of the bill amends section 3304(a) of the Internal Revenue Code of 1954 by inserting a new paragraph (11) so as to require a State law to provide, in order that employers in the State may receive credits against the Federal unemployment tax, that extended compensation is to be payable as provided by title II of the bill (the Federal-State Extended Unemployment Compensation Act of 1969).

SECTION 207. EFFECTIVE DATES

Subsection (a) of section 207 of the bill provides that except as provided in subsection (b)(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972, and (2) section 204 (relating to payments to States of Federal share of cost of extended unemployment compensation program) is to apply only with respect to weeks of unemployment beginning after December 31, 1971.

Subsection (b) of section 207 of the bill permits a State legislature to make the extended unemployment compensation program operative earlier than January 1, 1972, and to receive Federal payment for 50 percent of the sharable extended and regular compensation paid before January 1, 1972, under the conditions set forth in the subsection. Paragraph (1) of subsection (b) provides that, in the case of a State law approved under the new section 3304(a)(11) of the Federal Unemployment Tax Act, such State law may also provide that an extended benefit period may begin with a week established pursuant to such law which begins earlier than January 1, 1972, but not earlier than 60 days after the date of enactment of this Act. Paragraph (2) provides that with respect to weeks beginning before January 1, 1972, the extended benefit period shall be determined solely by reference to the State "on" and "off" indicators. Paragraph (3) makes section 204 (payments to States) applicable to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

Under these provisions, the Federal Government would share in payments of extended compensation made before January 1, 1972, only if the State law made such payments under all the conditions required by the Federal-State Extended Unemployment Compensation Act of 1970 except that before January 1, 1972, only the State "on" and "off" indicators would be used. If, however, an extended benefit period were in existence in a State on January 1, 1972, it could be terminated only by reference to both State and National "off" indicators.

Subsection (c) of section 207 provides that section 3304(a)(11), as added by section 206, is not a requirement for State laws with respect to any week of unemployment beginning before January 1, 1972 (if the legislature of a State does not meet in a regular session which closes during the calendar year 1971, the new requirement would not have to be effective until July 1, 1972).

TITLE III—FINANCING PROVISIONS

SECTION 301. RATE OF TAX

Section 301 of the bill amends section 3301 of the Internal Revenue Code of 1954 (relating to the rate of tax under the Federal Unemployment Tax Act) to increase the excise tax imposed on each employer (as defined in section 3306(a) of the Code). The rate is increased from 3.1 percent of total wages (as defined in section 3306(b) of such code) to 3.2 percent, effective with respect to wages paid after 1969. The credit for State taxes is still computed on the basis of a Federal rate of 3.0 percent as under present law.

SECTION 302. INCREASE IN WAGE BASE

Section 302 of the bill amends section 3306(b)(1) of the Internal Revenue Code of 1954 (relating to the definition of wages) by increasing the maximum annual limitation on an individual's wages subject to tax under the Federal Unemployment Tax Act from \$3,000 to \$4,200 with respect to remuneration paid after December 31, 1971.

SECTION 303. CHANGES IN EMPLOYMENT SECURITY
ADMINISTRATION ACCOUNT

Section 303 of the bill amends section 901(c) of the Social Security Act (dealing with administrative expenditures) to take account of the changes made by Public Law 91-53, the increase in the tax rate and the provisions for financing the Federal share of costs under the Federal-State Extended Unemployment Compensation Act; to place a limit on employment security administrative account expenditures for functions under the act of June 6, 1933 (the Wagner-Peyser Act); and to delete certain language. Paragraph (1) of section 303(a) amends the language in section 901(c)(1), effective with respect to fiscal years after June 30, 1970, by deleting references to the Temporary Unemployment Compensation Act of 1958, and by adding a reference to new paragraph (4) of section 901(c) (relating to the limit on Federal unemployment tax revenue that may be used to pay the costs of administering the employment service). Paragraph (2) deletes an obsolete sentence in section 901(c)(2) relating to the Temporary Unemployment Compensation Act of 1958. Paragraph (3) amends paragraph (3) of section 901(c) to change the ceiling on the amount in the employment security administration account authorized for appropriation for State grants. The ceiling would become 95 percent of the amount set forth in the Budget of the U.S. Government as the amount by which the net receipts during the fiscal year are estimated to exceed the amount transferred to the extended unemployment compensation account under section 905(b). Paragraph (3) provides for computing net receipts of the Federal unemployment tax on the basis of the 0.5 percent rate. Paragraph (4) adds a new paragraph (4) to section 901(c), limiting the amount authorized to be made available out of the employment security administration account for the purposes of paragraph (1)(A)(ii) (relating to appropriations for State grants for operation of the Wagner-Peyser Act) and paragraph (1)(B)(iii) (relating to appropriations for Federal administration of the Wagner-Peyser Act) to the proportion of total State and Federal expenditures

under that act as the President determines is an appropriate charge to the employment security administration account and reflects in the annual budget. The President's determination after consultation with the Secretary of Labor is to take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the relationship between the number of claimants and the number of job applicants, and such other factors as he finds relevant.

Section 303(b) amends section 901(d) to remove the obsolete references to the Temporary Unemployment Compensation Act of 1958.

Section 303(c) amends section 901(e)(2), effective July 1, 1972, to make the provision relating to when an advance can be made from the revolving fund to the employment security administration account consistent with the revised ceiling on the amount in such account.

Section 303(d) amends section 901(f) of the Social Security Act, as amended by Public Law 91-53 (dealing with quarterly collections), to revise the provisions for the distribution of any excess in the employment security administration account as of the end of any fiscal year after June 30, 1972. Paragraph (1) inserts in section 901(f)(2) (A) (relating to the determination of any excess) a reference to the new paragraph (3)(C), and paragraph (2) revises present paragraph 901(f)(3) to consist of three subparagraphs. New subparagraph (A) of section 901(f)(3) provides that any excess (determined as provided in paragraph (2)) as of the end of any fiscal year after June 30, 1972, shall be retained, as of the beginning of the next fiscal year, in the employment security administration account until the amount in such account is equal to 40 percent of the total appropriation out of that account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or \$150 million, whichever is lesser, is authorized to be made available pursuant to subsection (c)(1) of section 901 for additional costs of administration due to an increase in the rate of insured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding fiscal year. New subparagraph (B) provides that any excess in the employment security administration account not retained in the account is transferred, as of the beginning of the next fiscal year, to the extended unemployment compensation account as needed to build that account to the limit provided in section 905(b)(2).

New subparagraph (C) provides that, as of the close of any fiscal year after June 30, 1972, any amount by which the fiscal year end balance in the extended unemployment compensation account exceeds the limit provided in section 905(b)(2) is to be transferred to the employment security administration account.

SECTION 304. TRANSFER TO FEDERAL UNEMPLOYMENT ACCOUNT AND REPORT TO CONGRESS

Section 304(a) amends section 902(a) to permit a transfer of any part of a fiscal year excess to the Federal unemployment account only after the employment security administration account and the extended unemployment compensation account have reached their ceilings, and to revise the ceiling on the Federal unemployment account. The

new ceiling is the greater of \$550 million or one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

Section 304(b) adds a new subsection (c) to section 902, providing that whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account, the Federal unemployment account and the extended unemployment compensation account will all reach their prescribed limits, he shall, after consultation with the Secretary of the Treasury, report that fact to the Congress with a recommendation for appropriate action by the Congress.

Section 304(c) makes necessary conforming changes in the section references in section 1203 of the Social Security Act relating to advances to the Federal unemployment account from the general fund of the Treasury and repayment of such advances.

SECTION 305. EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT

Section 305(a) amends title XI of the Social Security Act by striking out present section 905 (relating to an account out of which payments under the Temporary Extended Unemployment Compensation Act of 1961 were made) and inserting a new section 905, which establishes the "extended unemployment compensation account."

Section 905(a) establishes the extended unemployment compensation account in the Unemployment Trust Fund to be maintained as a separate book account for purposes of section 904(e). Under section 904(e), the Unemployment Trust Fund is invested as a single fund, but the Secretary of the Treasury credits to each book account on a quarterly basis its proportionate part of the earnings of the Fund.

Section 905(b)(1) requires the Secretary of the Treasury (as of the close of July 1970 and each month thereafter) to transfer from the employment security administration account to the extended unemployment compensation account an amount equal to a prescribed fraction of the amount by which transfers of amounts equal to the Federal unemployment tax from the general fund under section 901(b)(2) exceed monthly payments (to cover tax refunds) made under section 901(b)(3) and repayments (additional tax attributable to reduced credits) made under section 901(d). The amount to be transferred to the extended unemployment compensation account is 1/5 of the described amount for any month before April 1972 and 1/10 of such amount for any month after March 1972. The effect is to credit to the extended unemployment compensation account the entire amount of additional revenue produced by the new 0.1 percent net Federal tax on wages paid in calendar years 1970 and 1971. After the wage base goes to \$4,200, the extended unemployment compensation account will be credited on a current basis with 0.05 percent of taxable wages.

Section 905(b)(2) provides for transfers at the end of any fiscal year beginning after June 30, 1972, of any excess amounts in the employment security administration account not needed to build that account to its statutory ceiling to the extended unemployment compensation account until the balance in the extended unemployment compensation account reaches whichever of the following is the

greater: (A) \$750 million, or (B) an amount equal to one-eighth of 1 percent of total wages (determined without any limitation on amount) subject to contributions under all State unemployment compensation laws.

Section 905(b)(3) provides that no monthly transfer shall be made pursuant to paragraph (1) if the amount in the extended unemployment compensation account at the close of such month is equal to (or in excess of) the limitation provided in paragraph (2).

Section 905(c) makes funds in the extended unemployment compensation account available for transfer to the States as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970 (title II of the bill) to pay to the States the Federal share of the cost of the extended unemployment compensation program.

Section 905(d) authorizes the appropriation (as repayable advances) of sums necessary to carry out the purposes of the Federal-State Extended Unemployment Compensation Act of 1970. Any such advances shall be repaid, without interest, by transfers from the extended unemployment compensation account to the general fund of the Treasury at such times as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines that amount in the extended unemployment compensation account is adequate for such purpose. Any amount so transferred shall be credited against, and shall operate to reduce, any balance of advances repayable under this section.

Section 305(b) amends section 903(a)(1) of the Social Security Act to provide that if at the end of any fiscal year after June 30, 1972, the extended unemployment compensation account and the Federal unemployment account have reached their limits, all advances pursuant to sections 905(d) and 1203 have been repaid, and the amount remaining in the employment security is in excess of its ceiling, the excess, except as provided in section 903(b), shall be transferred to the accounts of the States in the Unemployment Trust Fund.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with subsection 4 of rule XXIX 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 italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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PART II—CERTAIN CONTROLLED CORPORATIONS

Sec. 1561. Surtax exemptions in case of certain controlled corporations.

Sec. 1562. Privilege of groups to elect multiple surtax exemptions.

Sec. 1563. Definitions and special rules.

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SEC. 1563. DEFINITIONS AND SPECIAL RULES.

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(f) OTHER DEFINITIONS AND RULES.—

(1) EMPLOYEE DEFINED.—For purposes of this section the term “employee” has the same meaning such term is given [in section 3306(i)] *by paragraphs (1) and (2) of section 3121(d).*

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CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

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SEC. 3121. DEFINITIONS.

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(o) CREW LEADER.—For purposes of this chapter, the term “crew leader” means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this [chapter and] *chapter, chapter 2, and chapter 23* a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

* * * * *

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

Sec. 3301. Rate of tax.

Sec. 3302. Credits against tax.

Sec. 3303. Conditions of additional credit allowance.

Sec. 3304. Approval of State laws.

Sec. 3305. Applicability of State law.

Sec. 3306. Definitions.

Sec. 3307. Deductions as constructive payments.

Sec. 3308. Instrumentalities of the United States.

Sec. 3309. *State law coverage of certain services performed for nonprofit organizations and for State hospitals and institutions of higher education.*Sec. 3310. *Judicial review.*

Sec. [3309] 3311. Short title.

SEC. 3301. RATE OF TAX.

There is hereby imposed on every employer (as defined in section 3306 (a)) for the calendar year [1961] 1970 and [for] each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to [3.1] 3.2 percent of the total wages (as defined in section 3306 (b)) paid by him during the calendar year with respect to employment (as defined in section 3306 (c)) [after December 31, 1938. In the case of wages paid during the calendar year 1962, the

rate of such tax shall be 3.5 percent in lieu of 3.1 percent. In the case of wages paid during the calendar year 1963, the rate of such tax shall be 3.35 percent in lieu of 3.1 percent.]

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 [for the taxable year] as provided in section 3304 *for the 12-month period ending on October 31 of such year (10-month period in the case of October 31, 1972).*

(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 [for the taxable year] as provided in section 3303 [(or with respect to any provisions thereof so certified),] *for the 12-month period ending on October 31 of such year (10-month period in the case of October 31, 1972), or with respect to any provisions thereof so certified,* 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 [the taxable year] *such 12 or 10-month period, as the case may be,* to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower.

* * * * *

SEC. 3303. CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE.

(a) **STATE STANDARDS.**—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis [1] (i) the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), or (3).

(b) **CERTIFICATION BY THE SECRETARY OF LABOR WITH RESPECT TO ADDITIONAL CREDIT ALLOWANCE.**—

[1] (1) On December 31 in each taxable year, the Secretary of Labor shall certify to the Secretary the law of each State (certified

with respect to such year by the Secretary of Labor as provided in section 3304) with respect to which he finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a).]

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

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any [taxable year] 12-month period ending on October 31 (10-month period in the case of October 31, 1972), and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on [December 31 of such taxable year] such October 31, certify to the Secretary only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such [taxable year] 12- or 10-month period, as the case may be, under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of such State law, or of the provisions thereof with respect to which such findings were made, for any [taxable year] 12-month period ending on October 31 (10-month period in the case of October 31, 1972) pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such [taxable year,] 12 or 10-month period, as the case may be, failed to comply substantially with any such provision.

(c) DEFINITIONS.—As used in this section—

(1) **RESERVE ACCOUNT.**—The term “reserve account” means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) **POOLED FUND.**—The term “pooled fund” means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) **PARTIALLY POOLED ACCOUNT.**—The term “partially pooled account” means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) **GUARANTEED EMPLOYMENT ACCOUNT.**—The term “guaranteed employment account” means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual’s guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) YEAR.—The term “year” means any 12 consecutive calendar months.

(6) BALANCE.—The term “balance”, with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) COMPUTATION DATE.—The term “computation date” means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) REDUCED RATE.—The term “reduced rate” means a rate of contributions lower than the standard rate applicable under the State law, and the term “standard rate” means the rate on the basis of which variations therefrom are computed.

(d) VOLUNTARY CONTRIBUTIONS.—A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

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

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

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

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

SEC. 3304. APPROVAL OF STATE LAWS.

(a) **REQUIREMENTS.**—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305 (b)) immediately upon such receipt be paid over to the Secretary to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (49 Stat. 640; 52 Stat. 1104, 1105; 42 U.S.C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(B) the amounts specified by section 903 (c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

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

services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms, and

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

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

(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;

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

(12) each political subdivision of the State shall have the right to elect to have compensation payable to employees thereof (whose services are not otherwise subject to such law) based on service performed by such employees in the hospitals and institutions of higher education (as defined in section 3309(d)) operated by such political subdivision; and, if any such political subdivision does elect to have compensation payable to such employees thereof (A) the political subdivision shall pay into the State unemployment fund, with respect to the service of such employees, payments (in lieu of contributions), and (B) such employees will (except to the extent otherwise provided in paragraph (6)(A) in the case of employees in an instructional, research, or principal administrative capacity) be entitled to receive, on the basis of such service, compensation payable on the same basis,

in the same amount, on the same terms, and subject to the same conditions as compensation which is payable on the basis of other service subject to such law;

【6】 (13) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) NOTIFICATION.—The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

【(c) CERTIFICATION.—On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision and such finding has become effective. Such finding shall become effective on the 90th day after the governor of the State has been notified thereof, unless the State has before such 90th day so amended its law that it will comply substantially with the Secretary of Labor's interpretation of the provision of subsection (a), in which event such finding shall not become effective. No finding of a failure to comply substantially with the provision in State law specified in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law with respect to which further administrative or judicial review is provided for under the laws of the State.】

(c) CERTIFICATION.—*On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year after 1971, the Secretary shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Employment Security Amendments of 1970 to be included therein, or has with respect to the 12-month period (10-month period in the case of October 31, 1972) ending on such October 31, failed to comply substantially with any such provision.*

(d) NOTICE OF NONCERTIFICATION.—If【,】 at any time 【during the taxable year,】 the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

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

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

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,
then such provision shall be applied by taking into account for each such portion the law applicable to such portion.

SEC. 3305. APPLICABILITY OF STATE LAW.

(a) **INTERSTATE AND FOREIGN COMMERCE.**—No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) **FEDERAL INSTRUMENTALITIES IN GENERAL.**—The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C. sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) **NATIONAL BANKS.**—Nothing contained in section 5240 of the Revised Statutes, as amended (12 U.S.C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the

Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) **FEDERAL PROPERTY.**—No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

[Sec. 3305(e)—Repealed]

(f) **AMERICAN VESSELS.**—The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as through such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) **VESSELS OPERATED BY GENERAL AGENTS OF UNITED STATES.**—The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

- (1) owned by or bareboat chartered to the United States, and
- (2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instru-

mentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) **REQUIREMENT BY STATE OF CONTRIBUTIONS.**—Any State may, as to service performed on or after July 1, 1953, and on account of which contributions are made pursuant to subsection (g)—

(1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) **GENERAL AGENT AS LEGAL ENTITY.**—Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

(j) **DENIAL OF CREDITS IN CERTAIN CASES.**—*Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year after December 31, 1971, if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c).*

SEC. 3306. DEFINITIONS.

(a) **EMPLOYER.**—For purposes of this chapter, the term “employer” does not include any person unless on each of some 20 days during the taxable year or during the preceding taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 4 or more.

(b) **WAGES.**—For purposes of this chapter, the term “wages” means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to **[\$3,000]** \$4,200 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer

during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to **[\$3,000]** *\$4,200* to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

* * * * *

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217; **[or]**

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, (ii) retirement for disability, or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated **[.]**; or

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

(c) **EMPLOYMENT.**—For purposes of this chapter, the term “employment” means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, **[(A)]** (i) within the United States, or **[(B)]** (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) *any service, of whatever nature, performed after 1971*

outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation or in the Virgin Islands) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless performed in the employ of a person (other than a crew leader as defined in section 3121(o)) who during the calendar year or preceding calendar year had 8 or more individuals in his employ to perform services which constitute agricultural labor (as so defined) during each of at least 26 calendar weeks;

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political division thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (52 Stat. 1094, 1095; 45 U.S.C. 351);

(10) (A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than \$50, or

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

(C) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

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

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

* * * * *

[(i) **EMPLOYEE.**—For purposes of this chapter, the term “employee” includes an officer of a corporation, but such term does not include—

[(1) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or

[(2) any individual (except an officer of a corporation) who is not an employee under such common law rules.]

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

(j) **STATE, UNITED STATES, AND CITIZEN.**—For purposes of this chapter—

(1) **STATE.**—The term “State” includes the District of Columbia and the Commonwealth of Puerto Rico.

(2) **UNITED STATES.**—The term “United States” when used in a geographical sense includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) *AMERICAN EMPLOYER.*—The term “American employer” means a person who is—

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

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

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

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

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

[(k) *AGRICULTURAL LABOR.*—For purposes of this chapter, the term “agricultural labor” includes all service performed—

[(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

[(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

[(3) in connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, § 3; 12 U.S.C. 1141j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

[(4) in handling, grading, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.]

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

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

* * * * *

SEC. 3308. INSTRUMENTALITIES OF THE UNITED STATES.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

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

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

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

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

(B) service performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education located in the State, if such service is excluded from the term "employment" solely by reason of paragraph (7) of section 3306(c); and

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

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

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

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

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

(4) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, by an individual receiving such rehabilitation;

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

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

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

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

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

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

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

(4) is a public or other nonprofit institution.

SEC. 3310. JUDICIAL REVIEW.

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

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

shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

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

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

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

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

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

SEC. [3309] 3311. SHORT TITLE.

This chapter may be cited as the "Federal Unemployment Tax Act."

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

Subchapter A. Place and due date for payment of tax.

Subchapter B. Extensions of time for payment.

SUBCHAPTER A—PLACE AND DUE DATE FOR PAYMENT OF TAX

* * * * *

SEC. 6157. PAYMENT OF FEDERAL UNEMPLOYMENT TAX ON QUARTERLY OR OTHER TIME PERIOD BASIS.

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

(1) if the person in the preceding calendar year employed 4 or more employees in employment (within the meaning of section 3306 (c) and (d)) on each of some 20 days during such preceding calendar year, each such day being in a different calendar week, compute the tax imposed by section 3301 for each of the first three calendar quarters in the calendar year, and

(2) if paragraph (1) does not apply, compute the tax imposed by section 3301—

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

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

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

(b) COMPUTATION OF TAX.—The tax for any calendar quarter or other period referred to in paragraph (1) or (2) of subsection (a) shall be computed by multiplying the amount of wages (as defined in section 3306(b)) paid in such calendar quarter or other period by [the number of percentage points (including fractional points) by which the rate of tax specified in section 3301 exceeds 2.7] 0.5 percent.

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SOCIAL SECURITY ACT

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TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

Appropriations

SECTION 301. The amounts made available pursuant to section 901(c) (1) (A) for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.

Payments to States

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

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a) pay, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws

SEC. 303. (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by him under the Federal Unemployment Tax Act, includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act), immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act: *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 903(c)(2) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices; and

(6) The making of such reports in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such report; and

(7) Making available upon request to any agency of the United States charged with the administration of public works, or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law.

(b) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such denial or failure to comply. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State: *Provided*, That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: *Provided further*, That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

JUDICIAL REVIEW

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

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

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

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of

Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28, United States Code.

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

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

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

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

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

* * * * *

TITLE IX—MISCELLANEOUS PROVISIONS RELATING TO EMPLOYMENT SECURITY

Employment Security Administration Account

ESTABLISHMENT OF ACCOUNT

SECTION 901. (a) There is hereby established in the Unemployment Trust Fund an employment security administration account.

APPROPRIATIONS TO ACCOUNT

(b)(1) There is hereby appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act (including interest on such refunds).

ADMINISTRATIVE EXPENDITURES

(c)(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, [1964] 1971, and for each fiscal year thereafter—

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

(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law [], except the Temporary Unemployment Compensation Act of 1958, as amended),

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

(iii) carrying into effect section [2012] 2003 of title 38 of the United States Code;

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

(i) this title and titles III and XII of this Act,

(ii) the Federal Unemployment Tax Act,

(iii) the provisions of the Act of June 6, 1933, as amended,

(iv) [subchapter II of] chapter 41 (except section [2012] 2003) of title 38 of the United States Code, and

(v) any Federal unemployment compensation law [], except the Temporary Unemployment Compensation Act of 1958, as amended].

The term "necessary expenses" as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees

for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this title and titles III and XII of this Act, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act, and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

[In determining the expenses taken into account under subparagraphs (B) and (C), there shall be excluded any amount attributable to the Temporary Unemployment Compensation Act of 1958, as amended.] If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

[(3) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year is an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the net receipts during such year under the Federal Unemployment Tax Act; except that this limitation is increased by any unexpended amount retained in the employment security administration account in accordance with section 901(f)(2)(B). Each estimate of net receipts under this paragraph shall be based upon a tax rate of 0.4 percent.]

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

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

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

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

an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination, after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.

ADDITIONAL TAX ATTRIBUTABLE TO REDUCED CREDITS

(d)(1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act with respect to any State by reason of the reduced credits provisions of section **【3302(c) (2) or (3)】** *3302(c)(3)* of such Act and covered into the Treasury for the repayment of advances made to the State under section 1201, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1201 to the State, with respect to which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1201 to the State, with respect to which employers paid such additional tax.

【If, for any taxable year, there is with respect to any State both a balance described in section 3302(c)(2) of the Federal Unemployment Tax Act and a balance described in section 3302(c)(3) of such Act, this paragraph shall be applied separately with respect to section 3302(c)(2) (and the balance described therein) and separately with respect to section 3302(c)(3) (and the balance described therein).】

【(2) The Secretary of the Treasury is directed to transfer from the employment security administration account—

【(A) To the general fund of the Treasury, an amount equal to the amount by which—

【(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act with respect to any State by reason of the reduced credit provision of section 104 of the Temporary Unemployment Compensation Act of 1958, as amended, and covered into the Treasury, exceeds

【(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

【(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which—

【(i) such additional tax received and covered into the Treasury, exceeds

[(ii) the total amount restorable to the Treasury under section 104 of the Temporary Unemployment Compensation Act of 1958, as amended, as limited by Public Law 85-457.]

[(3)](2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2).

REVOLVING FUND

(e)(1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year [is \$250,000,000] equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year, no advance may be made under this subsection during such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

DETERMINATION OF EXCESS AND AMOUNT TO BE RETAINED IN EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT

(f)(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2)(A) Except as provided in subparagraph (B), the excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 902(b) and section 901(f)(3)(C)) exceeds the net balance in the employment security

administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(B) With respect to the fiscal years ending June 30, 1970, June 30, 1971, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c).

[(3) If the entire amount of the excess determined under paragraph (1) as of the close of any fiscal year is not transferred to the Federal unemployment account, there shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account so much of the remainder as does not increase the net balance in such account (as of the beginning of such succeeding fiscal year) above \$250,000,000.]

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

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

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

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsection (d), and

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e).

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.

[Transfers Between Federal Unemployment Account and Employment Security Administration Account

[TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT

【SEC. 902. (a) Whenever the Secretary of the Treasury determines pursuant to section 901(f) that there is an excess in the employment security administration account as of the close of any fiscal year, there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the total amount of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

- 【(1) \$550,000,000, or
- 【(2) The amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to four-tenths of 1 per centum of the total wages subject to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.】

TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT AND REPORT TO CONGRESS

TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT

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

- (1) \$550 million, or*
- (2) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.*

TRANSFERS TO EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT

(b) The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) shall be transferred to the employment security administration account as of the close of such fiscal year.

REPORT TO THE CONGRESS

(c) Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 901(f)(3)(A), and the

Federal unemployment account will reach the limit provided for such account in section 902(a), and the extended unemployment compensation account will reach the limit provided for such account in section 905(b)(2), he shall, after consultation with the Secretary of the Treasury, so report to the Congress with a recommendation for appropriate action by the Congress.

* * * * *

Amounts Transferred to State Accounts

In General

Sec. 903. (a)(1) [Except as provided in subsection (b), whenever, after the application of section 1203 with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, the remainder of such excess shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.] *If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in the extended unemployment compensation account has reached the limit provided in section 905(b)(2) and the amount in the Federal unemployment account has reached the limit provided in section 902(a) and all advances pursuant to section 905(d) and section 1203 have been repaid, and there remains in the employment security administration account any amount over the amount provided in section 901(f)(3)(A), such excess amount, except as provided in subsection (b), shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.*

* * * * *

[Federal Extended Compensation Account

[ESTABLISHMENT OF ACCOUNT

[SEC. 905. (a) There is hereby established in the Unemployment Trust Fund a Federal extended compensation account. For the purposes provided for in section 904(e), such account shall be maintained as a separate book account. There are hereby authorized to be appropriated, without fiscal year limitation, such amounts as may be necessary to make the payments of compensation provided by sections 3 and 8 of the Temporary Extended Unemployment Compensation Act of 1961 and the reimbursements provided by section 4 of such Act. The amounts so appropriated shall be transferred from time to time to the Federal extended compensation account on the basis of estimates by the Secretary of the Treasury after consultation with the Secretary of Labor of the amounts required to make such payments and reimbursements. Amounts so transferred shall be repayable advances (without interest), except to the extent that such amounts are used to make the payments of compensation provided by sections 3 and 8 of the Temporary Extended Unemployment Compensation Act of 1961 to individuals by reason of the exhaustion of their rights to unemployment compensation under title XV. Such repayable advances shall be repaid by transfers, from the Federal extended compensation account to the general fund of the Treasury,

at such times as the amount in the Federal extended compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose.

【TRANSFERS TO ACCOUNT

【(b) The Secretary of the Treasury shall transfer (as of the close of each month in the calendar years 1963 and 1964), from the employment security administration account to the Federal extended compensation account established by subsection (a), an amount determined by him to be equal to 50 percent (with respect to the calendar year 1963), or 5/13 (with respect to the calendar year 1964), of the amount by which—

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

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

If for any such month the payments referred to in paragraph (2) exceed the transfers referred to in paragraph (1), proper adjustments shall be made in the amounts subsequently transferred.

【TRANSFERS TO STATE ACCOUNTS

【(c)(1) The Secretary of the Treasury shall transfer (as of December 31, 1963), from the Federal extended compensation account to the accounts of the States in the Unemployment Trust Fund, the balance in the Federal extended compensation account as of such date. Such balance shall be determined by deducting from the amount in the account on December 31, 1963, the amount of the outstanding advances made to such account pursuant to subsection (a).

【(2) Each State's share of the balance to be transferred under this subsection—

【(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before December 1, 1963, and

【(B) shall bear the same ratio to the balance in such account as of December 31, 1963, as (i) the amount of wages subject to contributions under such State's unemployment compensation law during 1961 and 1962 which have been reported to the State before May 1, 1963, bears to (ii) the total of wages subject to contributions under all State unemployment compensation laws during 1961 and 1962 which have been reported to the States before May 1, 1963.

【Termination of Account

【(d) Except as provided by subsection (c), no transfer to or from the Federal extended compensation account shall be made after December 31, 1964.】

EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT

ESTABLISHMENT OF ACCOUNT

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

TRANSFERS TO ACCOUNT

(b)(1) Except as provided by paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

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

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

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

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

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

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

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

TRANSFERS TO STATE ACCOUNTS

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

ADVANCES TO EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT AND
REPAYMENT

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

UNEMPLOYMENT COMPENSATION RESEARCH PROGRAM

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

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

(2) *establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups.*

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

PERSONNEL TRAINING

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

(1) *provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation*

program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;

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

(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve their qualifications for service in the administration of the unemployment compensation program.

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

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

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

FEDERAL ADVISORY COUNCIL

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

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

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

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

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

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

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TITLE XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

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Advances to Federal Unemployment Account

Sec. 1203. There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of this title. Whenever, after the application of [section 901(f)(3)] sections 901(f)(3) and 902(a) with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances.

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SECTION 8524 OF TITLE 5 OF THE UNITED STATES CODE

§ 8524. Accrued leave.

For the purpose of this subchapter, a payment for unused accrued leave under section 501(b) of title 37 at the termination of Federal service is deemed—

(1) to continue that Federal service during the period after the termination with respect to which the individual received the payment; and

(2) Federal wages, subject to regulations prescribed by the Secretary of Labor concerning allocation over the period after termination.]