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UNEMPLOYMENT COMPENSATION—RESPONSE TO A CRISIS

Unemployment compensation has been “the Nation’s first line of defense”¹ against economic crisis. Its traditional purpose has been to provide economic security for workers with a high labor force attachment² during transitory periods of unemployment.³ Fluctuating economic conditions, however, have made it necessary to supplement the primary state system with a federal extended benefits program, which provides additional payments in times of high unemployment to those who have exhausted their regular state benefits.⁴ Because the United States continues to suffer the highest unemployment rate⁵ as well as the longest projected period of high

¹ *Hearings on Unemployment Compensation Benefits Before the Subcomm. on Unemployment Compensation of the House Comm. on Ways and Means*, 94th Cong., 1st Sess. 43 (1975) (testimony of Lawrence E. Weatherford, Acting Associate Manpower Administrator for Unemployment Insurance) [hereinafter cited as *Hearings on Unemployment Compensation*].

² A worker must be employed for a certain number of weeks to qualify for state unemployment benefits. Although this requirement varies from state to state, 14 to 20 weeks is the usual period for qualification. *Id.* at 48. If a worker fails to meet the state’s qualifying requirements, he will not be entitled to receive any federal extended unemployment benefits.

³ The House Ways and Means Committee, in reporting out the Social Security Act, outlined the objectives and limits of the new program:

The essential idea in unemployment compensation . . . is the accumulation of reserves in times of employment from which partial compensation may be paid to workers who become unemployed and are unable to find other work. Unemployment insurance cannot give complete and unlimited compensation to all who are unemployed. Any attempt to make it do so confuses unemployment insurance with relief, which it is designed to replace in large part. It can give compensation only for a *limited period* and for a percentage of the wage loss.

H.R. REP. NO. 615, 74th Cong., 1st Sess 7 (1935) (emphasis added).

⁴ See notes 16-26 and accompanying text *infra*.

⁵ The average unemployment rate for 1975 was 8.5%, the highest rate since 1941, when the rate was 9.9% due to the lingering effects of the 1930’s depression. U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES 73 (1960). May 1975 represented the highest monthly rate of unemployment for the year, with a total of 9.2% of the labor force (8,538,000 workers) out of work. JOINT ECONOMIC COMMITTEE AND THE COUNCIL OF ECONOMIC ADVISORS, ECONOMIC INDICATORS 10-11 (June 1975). By March 1976, the national unemployment rate had dropped to 7.5% (7,027,000 workers). N.Y. Times, Apr. 3, 1976, at 1, col. 8 (city ed.).

There has been growing criticism of the method employed by the federal government in compiling the unemployment statistics. Conservative critics argue that the statistics should only include serious cases of joblessness. More liberal critics, however, contend that the government underestimates the number of unemployed because the figures do not include long-term unemployed workers no longer searching for work or receiving unemployment compensation, slum residents who have never had jobs, and part-time and temporary workers. *Id.*, Jan. 11, 1976, § 1, at 36, col. 5 (city ed.). This criticism has led many Ford Administration officials to recommend that the President appoint a special committee to study possible redefinitions of unemployment and alternative methods of compiling unemployment statistics. *Id.*

unemployment since the 1930's depression,⁶ the burden of providing for the increasing needs of the long-term unemployed has recently shifted to the extended benefits program.⁷ In response to this economic crisis, Congress has expanded the potential duration of extended benefits to the present maximum of sixty-five weeks.⁸

Although it is widely recognized that substantial high-level unemployment reflects permanent structural changes in the economy,⁹ Congress has attempted to deal with these changes through a system designed solely to deal with short-term unemployment. A tension has thereby been created in attempting to solve long-term problems with short-term solutions.¹⁰ The additional extensions of benefits by Congress represent a patchwork of legislation¹¹ that has brought

⁶ During the 1930's depression, the unemployment rate stayed above 5.0% for eleven years. U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES 73 (1960). The Ford Administration has forecast that the unemployment rate, above 5.0% since Jan. 1974, will not return to that level until 1980, the longest consecutive period since the depression. N.Y. Times, June 26, 1975, at 26, col. 2 (city ed.).

⁷ The number of insured workers who exhausted their regular benefits rose from 340,000 for the Oct.-Dec. 1973 quarter to an estimated 900,000 for the Apr.-June 1975 quarter, and is projected to peak at 1,100,000 for the Jan.-Mar. 1976 period. SENATE COMM. ON FINANCE, 94TH CONG., 1ST SESS., STAFF DATA AND MATERIALS ON UNEMPLOYMENT 27 (Comm. Print 1975) [hereinafter cited as SENATE COMM.]. The financial burden of providing for these workers has fallen on the federal extended benefits program. Many insured workers, however, have also exhausted their extended benefits. For the Oct.-Dec. 1975 quarter, Congress estimated that 600,000 workers would exhaust their 26-39 week benefits (as compared to 37,000 workers in the Oct.-Dec. 1973 quarter), 400,000 workers would exhaust their 40-52 week benefits, and 200,000 workers would exhaust their 53-65 week benefits. *Id.* These workers must rely on welfare, family, or friends for assistance. For a description of a program that provides some assistance to unemployed fathers whose families qualify for Aid to Families with Dependent Children see Note, 1975 *Developments in Welfare Law—Aid to Families with Dependent Children*, 61 CORNELL L. REV. 777 (1976).

⁸ See notes 94-101 and accompanying text *infra*. The 65 weeks of unemployment benefits referred to in the text are composed of 39 weeks of extended federal benefits and 26 weeks of regular state unemployment benefits.

⁹ See notes 108-11 and accompanying text *infra*.

¹⁰ In debate on the House floor, Representative Ketchum defined this tension:

The principal question we must ask is whether we wish UI to remain an unemployment insurance program or whether it is to serve as the vehicle for an income-maintenance program. . . .

When we move into continued extensions of the program, when we move into a year or more of UI eligibility, the basic concept must change. . . .

. . . Sooner or later, if we keep extending the benefits, the money to pay for them will come out of the General Treasury.

It is at this point, to which I submit we are rapidly moving, that unemployment insurance actually becomes an income-maintenance program, of extended duration and funded by every American's tax dollars. *I believe that we should at least have the guts to call it by that name, and admit what we have done.*

121 CONG. REC. H 4527 (daily ed. May 21, 1975) (emphasis added).

¹¹ See notes 69-106, 138-40 and accompanying text *infra*.

state and federal programs to the brink of insolvency.¹² With this increased burden, the extended benefits program has been both confusing and inadequate in its operation, and it has aroused widespread criticism from employer and labor groups alike.¹³

The purpose of this Note is to analyze the federal extended benefits program within the framework of the existing unemployment compensation system and to explore alternatives for dealing with long-term unemployment. In the years since Congress first enacted the extended benefits system as a temporary program in 1958,¹⁴ it has been increasingly relied upon to alleviate the hardships of the long-term jobless. With the prospect of substantial long-term unemployment for years to come,¹⁵ it is important to reconsider the basic assumptions underlying the present approach.

I

OVERVIEW OF UNEMPLOYMENT COMPENSATION

Congress enacted the present federal-state system of unemployment insurance in 1935 as part of the Social Security Act.¹⁶

¹² On April 8, 1975, it was reported that over half of the state trust funds were below the level considered safe. Eight trust funds had already been depleted (Connecticut, Massachusetts, Michigan, New Jersey, Puerto Rico, Rhode Island, Vermont, Washington), and 20 states faced the possibility of exhausting their funds. The Federal Trust Fund was also operating at a deficit, requiring two advances totaling \$1.4 billion from general revenues to remain solvent. The Ford Administration has proposed that \$1.5 billion from general revenues be loaned to the states, and that an additional \$1.5 billion be transferred to the Federal Trust Fund to pay for the federal share of extended benefits. *Hearings on Unemployment Compensation, supra* note 1, at 63 (statement of Lawrence E. Weatherford).

¹³ *Id.* at 320-29 (testimony of James H. Tinsley, Chamber of Commerce of the United States); *id.* at 233-40 (testimony of George Hotton, Julius Kubier, and Randolph Hale, National Association of Manufacturers); *id.* at 353-63 (testimony of John Dankosky and J. Thomas Weyant, representing Pennsylvania Chamber of Commerce and Pennsylvania Employers Conference respectively); *id.* at 257-66 (testimony of John Stayt, Pennsylvania Manufacturer's Association); *id.* at 74-82 (testimony of Frank Walsh, William Heartwell, and Robert Goodwin, Interstate Conference of Employment Securities Agencies, Inc.); *id.* at 267-73 (testimony of Bert Seidman, Director, Department of Social Security, AFL-CIO); *id.* at 165-84 (testimony of Melvin Glasser and George Strugs, United Automobile Workers of America); *id.* at 542-44 (statement of Coalition of Black Trade Unionists); *id.* at 545-46 (statement of Wilbur Daniels, International Ladies Garment Worker's Union).

¹⁴ The Temporary Unemployment Compensation Act of 1958, Pub. L. No. 85-441, 72 Stat. 171.

¹⁵ See note 6 *supra*.

¹⁶ 42 U.S.C. § 501 (1970). For general discussion and analysis of the unemployment compensation system see S. BLAUSTEIN, UNEMPLOYMENT INSURANCE OBJECTIVES AND ISSUES (1968); V. CARLSON, ECONOMIC SECURITY IN THE UNITED STATES (1962); CHAMBER OF COMMERCE OF THE UNITED STATES, STATE VERSUS FEDERAL CONTROL OF UNEMPLOYMENT COMPEN-

Under this system, states were induced to establish their own unemployment insurance programs in compliance with federal guidelines through the use of a tax credit. The 1935 Act levied a federal unemployment tax of three percent, now 3.2 percent, on the payrolls of all covered employers, against which a credit was allowed for payment of state unemployment taxes up to 2.7 percent.¹⁷ The constitutionality of the unemployment compensation system was upheld by the Supreme Court in 1937,¹⁸ and by 1938 every state had enacted an unemployment compensation system in conformity with the Social Security Act.

The federal statute specifies which workers are protected and which payrolls are subject to the federal tax.¹⁹ Currently, the federal tax applies to employers with one or more employees in twenty or more weeks of the year, or with a payroll of at least \$1,500 in any calendar quarter.²⁰ Each state must cover these employers to qualify for the federal tax credit. In addition, state laws often provide coverage for types of workers not within the scope of federal law, for example, domestic household workers.²¹ When a state program meets the federal conditions that qualify its employers for the federal tax credit, the state also qualifies for federal grants to cover its program's administrative costs.²² Although the federal statutes include general administrative and financial provisions, they also dictate standards of eligibility for unemployment benefits.²³ Federal law, however, does not specify the length of labor force attachment or amount of earnings necessary to qualify for state benefits. As a

SATION (1969); W. HABER & M. MURRAY, UNEMPLOYMENT INSURANCE IN THE AMERICAN ECONOMY (1966); R. LESTER, THE ECONOMICS OF UNEMPLOYMENT COMPENSATION (1962); D. NELSON, UNEMPLOYMENT INSURANCE, THE AMERICAN EXPERIENCE, 1915-1935 (1969); W.E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH, STRENGTHENING UNEMPLOYMENT INSURANCE: PROGRAM IMPROVEMENTS (1975) (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 392); W.E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH, UNEMPLOYMENT AND INCOME SECURITY: GOALS FOR THE 1970s (1969); Wittee, *Development of Unemployment Compensation*, 55 YALE L.J. 21 (1945).

¹⁷ INT. REV. CODE OF 1954, § 3301.

¹⁸ *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937).

¹⁹ INT. REV. CODE OF 1954, § 3306.

²⁰ *Id.* § 3306(a).

²¹ Domestic service is specifically excluded by federal law. *Id.* § 3306(c)(2). Four states, however, presently offer unemployment compensation coverage for domestic household workers: ARK. STAT. ANN. § 81-1103(i)(6)(B) (Supp. 1975); D.C. CODE ANN. § 46-301(b)(1)(F) (Supp. 1975); HAWAII REV. STAT. § 383-7(2) (1968); N.Y. LABOR LAW § 560(1) (McKinney 1965).

²² INT. REV. CODE OF 1954, §§ 3302-03.

²³ *Id.* §§ 3304-06.

result, states have enacted varying eligibility requirements designed to limit access to their programs.²⁴

Federal law also permits states to specify the amount and duration of regular benefits. All states provide a potential duration of regular benefits of at least twenty-six weeks;²⁵ nine states offer benefits of longer duration, ranging from twenty-eight to thirty-six weeks.²⁶ But there is wide variation in the actual duration of regular benefits. Eight states provide the maximum for all claimants who qualify under a uniform duration system.²⁷ The remaining states make it more difficult to receive the maximum of twenty-six weeks by using variable duration systems.²⁸ Twenty-six weeks of benefits have generally been regarded as providing sufficient protection for the majority of unemployed workers in normal economic periods.²⁹

The federal unemployment tax of 3.2 percent applies to the first \$4,200 earned by each employee in a given year.³⁰ Revenues raised by the federal tax are used to defray administrative costs of state programs and to finance the federal share of extended benefits.³¹ When revenues exceed the amount needed to cover these costs, the excess is transferred to a federal trust fund from which the states may draw when their reserves are exhausted.³²

²⁴ See generally 1B CCH UNEMPL. INS. REP. ¶¶ 1940-60 (1975).

²⁵ See generally *id.* ¶ 1935.

²⁶ The following states offer regular benefits beyond 26 weeks: Alaska (28), District of Columbia (34), Iowa (39), Louisiana (28), Massachusetts (30), New Mexico (30), Pennsylvania (30), Utah (36), Washington (30), and Wisconsin (34). *Id.* ¶ 3001.

²⁷ These states are: Hawaii, Illinois, Maryland, New Hampshire, New York, Pennsylvania, Vermont, West Virginia. *Id.* In the "uniform duration" states, all claimants receive the same number of weeks of benefits once they meet the state's qualifying requirements. This concept is founded on the belief that "once a worker achieves 'insured status' he is entitled to the same income maintenance protection as all other insured workers." *Hearings on Unemployment Compensation*, *supra* note 1, at 60 (statement of Lawrence E. Weatherford).

²⁸ The variable duration systems base the number of weeks of benefits on the individual worker's experience. The longer the individual has worked or the more he has earned—the longer the duration of his benefits. Forty-four states have adopted this system of benefit calculation. *Hearings on Unemployment Compensation*, *supra* note 1, at 60-61 (statement of Lawrence E. Weatherford). See also M. MURRAY, THE DURATION OF UNEMPLOYMENT BENEFITS 11-15 (1974). For an analysis of the advantages and disadvantages of each duration system see UPJOHN INSTITUTE, PROGRAM IMPROVEMENTS, *supra* note 16, at 39-42 (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 438-41).

²⁹ M. MURRAY, *supra* note 28, at vii; UPJOHN INSTITUTE, PROGRAM IMPROVEMENTS, *supra* note 16, at 39 (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 438; *Hearings on Unemployment Compensation* 322 (testimony of James H. Tinsley).

³⁰ INT. REV. CODE OF 1954, §§ 3301, 3306(b).

³¹ Federal-State Extended Unemployment Compensation Act of 1970, § 202, 26 U.S.C. § 3304 nt. (1970).

³² *Id.* § 204(e).

The state tax rates must apply to at least the first \$4,200 annually earned by each employee, although states have increasingly adopted a higher wage base.³³ Each state also has an experience rating system. This system allows employers to vary their tax rate on the basis of their experience with unemployment.³⁴ It encourages employer planning and employment stabilization by subjecting employers whose workers have a high rate of involuntary unemployment to a higher tax rate. Experience rating is the only method allowed under federal law whereby an employer may reduce his state tax rate below 2.7 percent, the maximum credit allowed against the federal tax.³⁵ State tax rates, however, may exceed that figure, and some states have a tax rate at or above six percent.³⁶

II

LEGISLATIVE ACTIVITY

A. *Temporary Legislation (1958-1961)*

The Temporary Unemployment Compensation Act of 1958 (TUC)³⁷ represented the first federal legislative effort to provide extended benefits in a period of long-term unemployment.³⁸ Responding to the severe recession of that year,³⁹ Congress enacted a

³³ See, e.g., ALASKA STAT. § 23.20.175(c) (Cum. Supp. 1975) (\$10,000); CONN. GEN. STAT. ANN. § 31-222(b)(2)(A)(iii) (pamph. 1976) (\$6,000); MICH. STAT. ANN. § 17.548 (1975) (\$5,400). See also 1B CCH UNEMPL. INS. REP. ¶ 3000 (1975) for a tabulation of each state's taxable wage limits.

³⁴ See 1B CCH UNEMPL. INS. REP. ¶ 1120 (1975).

³⁵ INT. REV. CODE OF 1954, § 3302(c).

³⁶ See, e.g., MICH. STAT. ANN. § 17.520 (1975) (6.6%); MINN. STAT. ANN. §§ 268.06(2), (8), (22) (1975) (6.0%); N.J. STAT. ANN. § 43:21-7(c) (1975) (6.2%); WIS. STAT. ANN. § 108.18(4) (1974) (6.0%). For a tabulation of each state's tax rate see 1B CCH UNEMPL. INS. REP. ¶ 3000 (1975).

³⁷ Pub. L. No. 85-441, 72 Stat. 171.

³⁸ President Eisenhower, in a message to Congress, advocated adoption of the first federal extended benefits program:

Workers and their families should be enabled temporarily to receive weekly benefits for a longer period than is now in effect so that in the current economic situation they and their families can obtain a greater measure of economic security.

These recommendations reflect my strong conviction that we must act promptly, emphatically, and broadly to temper the hardship being experienced by workers whose unemployment has been prolonged.

H.R. Doc. No. 358, 85th Cong., 2d Sess. 1 (1958).

³⁹ The number of exhaustions of state benefit rights nationwide had risen from 1,191,000 in 1957 (22.7% of all beneficiaries) to 2,599,000 in 1958 (31.0% of all beneficiaries). *Hearings on H.R. 3864 and H.R. 3865 Before the House Comm. on Ways and Means, 87th Cong., 1st Sess., table 14, at 31 (1961).*

voluntary program that allowed participating states to draw interest-free loans from the United States Treasury in order to finance thirteen weeks of extra unemployment benefits.⁴⁰ During the program's duration,⁴¹ seventeen states participated,⁴² borrowing \$445.7 million from the Treasury.⁴³

The temporary benefits provided assistance to a significant number of unemployed workers and also aided the economy by maintaining a high level of consumer purchasing power.⁴⁴ TUC's repayment provision, however, imposed a great financial burden on the participating states; they were required to repay the Treasury by November 10, 1963.⁴⁵ Due to the period of only limited recovery following the 1958 recession⁴⁶ and the increased financial pressure on the states' trust funds resulting from the 1961 recession,⁴⁷ it

⁴⁰ The average weekly benefit amount of the extended benefits was \$30.41. The average duration of benefits was 9.9 weeks. *Id.* table 2, at 83.

⁴¹ The law became effective June 19, 1958, and was to expire Mar. 31, 1959. In March of that year Congress enacted legislation that extended the program for another three months. Act of Mar. 31, 1959, Pub. L. No. 86-7, 73 Stat. 14, *amending* TUC, Pub. L. No. 85-441, § 101(a), 72 Stat. 171.

⁴² These states were: Alabama, Alaska, Arkansas, California, Delaware, District of Columbia, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, and West Virginia. Five of the nonparticipating states independently enacted temporary programs of their own along lines similar to the federal law: Colorado, Connecticut, Illinois, Ohio, Wisconsin. Altogether, the 22 states with temporary programs included 71.2% of the workers covered by state unemployment compensation systems. *Hearings on H.R. 3864 and H.R. 3865, supra* note 39, at 82.

⁴³ *Id.* at 38.

⁴⁴ In his testimony before the House Ways and Means Committee, Secretary of Labor Goldberg filed a report stating:

Although it is not possible to gage precisely the effect of these additional millions of dollars entering the economy through the temporary programs, it seems fair to say that the total contribution of these benefits was not insignificant. Moreover, they had the added virtue of being injected into the purchasing power stream through the hands of people who were among those most in need of such additional finances.

Id. at 77-78.

⁴⁵ Failure to meet that deadline would have resulted in state employers losing a partial credit against their federal unemployment tax. The credit obtainable by an employer against this tax for 1963 would have been reduced by 0.15%, and by another 0.15% for each succeeding year until the amount outstanding was restored. Such a reduction in the allowable credit would have had the effect of increasing the *net* federal unemployment tax (federal tax minus allowable state credit) in the first year of its operation to 0.45% and in the second year the tax would have been increased to 0.6%. This increase in yearly tax would have continued until the debt to the federal government was repaid. TUC, Pub. L. No. 85-441, § 104(a), 72 Stat. 171.

⁴⁶ Exhaustion of regular state benefits, although declining from its 1958 peak, continued at a high level for 1959 (1,703,000, 30.6% of all beneficiaries) and 1960 (1,604,000, 26.05% of all beneficiaries). *Hearings on H.R. 3864 and H.R. 3865, supra* note 39, at 31.

⁴⁷ Exhaustion of regular state benefits increased greatly in 1961 to 2,400,000 (30.4% of all beneficiaries). SENATE COMM., *supra* note 7, at 24.

became evident that no participating state would be able to reimburse the Treasury by that deadline.⁴⁸ As a result, Congress was forced to enact legislation⁴⁹ that allowed employers to avoid increased taxation by establishing a system of partial repayments on an installment basis.⁵⁰ Unfortunately, certain states were unable to meet even this standard⁵¹ and some continued to repay the Treasury through 1966.⁵²

Faced with another recession and with increasing numbers of jobless workers exhausting their unemployment benefits,⁵³ in 1961 Congress again enacted temporary legislation, the Temporary Extended Unemployment Compensation Act of 1961 (TEUC), to deal with the problem of long-term unemployment.⁵⁴ For a number of reasons it structured TEUC along lines different from TUC: first, too few states had participated in the TUC program;⁵⁵ second, very few states had enacted their own extended benefits programs⁵⁶ and few were capable of doing so in the near future;⁵⁷ and third, TUC's financing and repayment provisions had been a disaster.⁵⁸ To secure

⁴⁸ The House Ways and Means Committee estimated that all 17 states would be repaying loans through 1964, with 11 continuing through 1965, and four completing payment in 1966. *Hearings on H.R. 3864 and H.R. 3865, supra* note 39, table 25, at 38.

⁴⁹ Act of Nov. 7, 1963, Pub. L. No. 88-173, 77 Stat. 305.

⁵⁰ This provision continues in effect, codified in 26 U.S.C. § 3302(c)(2) (1970). The annual installment for a state is set at 0.15% of state taxable wages for the previous year, adjusted to the federal limit on taxable wages. *Id.*

⁵¹ States failing to meet yearly installment deadlines are penalized by an effective increase in the federal unemployment tax rate. *Id.* See also S. REP. NO. 629, 88th Cong., 1st Sess. 1 (1963).

⁵² Michigan, New Jersey, Pennsylvania, and West Virginia continued repayment through 1966. For a further description of TUC's financing difficulties see H. MALISOFF, *THE FINANCING OF EXTENDED UNEMPLOYMENT INSURANCE BENEFITS IN THE UNITED STATES* 7-10 (1963).

⁵³ See note 46 *supra*.

⁵⁴ Pub. L. No. 87-6, 75 Stat. 8.

⁵⁵ See note 42 and accompanying text *supra*.

⁵⁶ The Senate Finance Committee, in its report on the TEUC legislation, stated: [T]his second extension of unemployment compensation benefits on a temporary basis is justified because generally the States have not dealt with the special problems involved in periods of protracted and high unemployment. In the case of those States that have established special provisions to meet the unusual circumstances that arise in a recessionary period, there has not been sufficient time to demonstrate the effectiveness of these programs. It is the hope of the committee that more States will act to deal effectively with the special problems imposed on the Federal-State unemployment compensation program so that the need for Federal action during times of recession can be alleviated.

S. REP. NO. 69, 87th Cong., 1st Sess. 4 (1961).

⁵⁷ The Senate Finance Committee also reported that "[f]or the most part State unemployment compensation programs at the present time are not designed to deal with long-term recession-created unemployment and the protracted period of seeking reemployment that typically exists in time of recession." *Id.* at 3.

⁵⁸ See notes 47-52 and accompanying text *supra*.

universal participation by the states in the extended benefits program, Congress financed TEUC by a general increase in the federal unemployment tax of 0.4 percent for 1962 and 1963.⁵⁹ Although participation in the program was voluntary, this provision had the effect of inducing all states to take part because employers had to pay for the program whether or not the state decided to participate. Congressional logic proved irresistible and state participation was unanimous.⁶⁰

Under TEUC, 2.8 million people received \$817 million in benefits.⁶¹ The unemployed who exhausted their regular state benefits were entitled to one-half of their regular benefit amount during the additional weeks of coverage, and the maximum duration of coverage for both federal and state programs was thirty-nine weeks.⁶² TEUC also established in the Federal Unemployment Trust Fund a federal extended benefits account⁶³ through which all payments were pooled.⁶⁴ Originally, Congress had provided that excess revenues derived from the increased tax rate would be transferred back to the states.⁶⁵ But when the Kennedy Administration projected that revenues would exceed payments by more than \$174 million,⁶⁶ Congress reduced the tax increase in 1963 to 0.25 percent.⁶⁷ The pooling of funds at the federal level resulted in total state participation and provided a satisfactory system of repayment. TEUC therefore represented an important legislative development

⁵⁹ This legislation increased the net federal unemployment tax from 0.3% to 0.7% on the existing wage base of \$3,000 for those two years. TEUC, Pub. L. No. 87-6, § 14(a), 75 Stat. 8, as amended, INT. REV. CODE OF 1954, § 3301.

⁶⁰ The method of pooled financing was also attractive to the states because it avoided the TUC experience, where each state was required to bear its costs in the program individually. P. MACKIN, EXTENDED UNEMPLOYMENT BENEFITS 8 (1965).

⁶¹ This represented a coverage increase of 0.8 million people and a payment increase of \$217 million above all the extended programs in 1958-1959. *Id.* at 9.

⁶² States that paid regular unemployment benefits beyond 26 weeks were reimbursed by the federal government for the additional weeks, a reimbursement that totalled \$46.3 million. H. MALISOFF, *supra* note 52, at 11.

⁶³ TEUC, Pub. L. No. 87-6, § 13, 75 Stat. 8, as amended, 42 U.S.C. § 1105 (1970 & Supp. IV, 1974).

⁶⁴ These funds were transferred from the United States Treasury as repayable, interest-free loans. The 0.4% increase in the federal unemployment tax rate went into this account, and was the means by which the Treasury was repaid. *Id.*

⁶⁵ Excess funds were to be distributed to the states in proportion to their wages subject to taxation. *Id.*

⁶⁶ S. REP. NO. 174, 88th Cong., 1st Sess. 2 (1963).

⁶⁷ This action reduced the net federal unemployment tax for 1963 from 0.7% to 0.45%. At the end of that year, the net tax returned to 0.3%. Act of May 29, 1963, Pub. L. No. 88-31, § 2(a), 77 Stat. 51, as amended, INT. REV. CODE OF 1954, § 3301.

because it recognized for the first time that long-term unemployment at high levels is a national responsibility.⁶⁸

B. *The Permanent Extended Benefits Program*

The Federal-State Extended Unemployment Compensation Act of 1970 (F-SEUC)⁶⁹ created the first and only permanent system of extended unemployment benefits. Still in operation today, the program assures, in addition to existing state benefits lasting at least twenty-six weeks, a potential maximum of thirteen weeks of benefits to the long-term unemployed during recessionary periods.⁷⁰ Nationwide extended benefits trigger "on" when the insured unemployment rate⁷¹ is 4.5 percent or more for three consecutive months.⁷² States can individually trigger "on" when they have an insured unemployment rate of four percent for a period of thirteen weeks, provided that this rate is at least 120 percent of the average unemployment rate for the same thirteen week period in the two previous years.⁷³ The thirteen weeks of extended benefits are financed equally by the federal government and the states. The federal unemployment tax was raised from an effective rate of 0.4 percent to 0.5 percent,⁷⁴ and the wage base from \$3,000 to \$4,200,⁷⁵ to cover the federal costs of the program.

⁶⁸ For a further analysis of TEUC's scope in providing benefits, see P. MACKIN, *supra* note 60, at 9-25.

⁶⁹ Pub. L. No. 91-373, tit. II, 84 Stat. 695 (codified in scattered sections of 15, 26, 52 U.S.C.).

⁷⁰ There is a limit of 39 weeks on combined regular and extended benefits. Therefore, if a state provides 30 weeks of regular benefits (*see* note 26 *supra*), only nine weeks of extended benefits are available. F-SEUC §§ 202(a)-(b)(1)(C), 26 U.S.C. § 3304 nt. (1970).

⁷¹ A trigger system was first proposed by the Kennedy Administration in 1961. H.R. 7640, 87th Cong., 1st Sess. (1961). The triggers were to be subject to presidential discretion, rather than rigid indicators. 107 CONG. REC. 10,396 (1961) (remarks of Representative King). The insured unemployment rate refers only to those workers whose employment is insured by unemployment compensation. As a "rule of thumb, a 4 percent unemployment rate among insured workers is the equivalent of a 6 percent unemployment rate of the entire work force." N.Y. Times, June 27, 1975, at 1, col. 1 (city ed.).

⁷² F-SEUC, § 203(d)(1), 26 U.S.C. § 3304 nt. (1970). When the national insured unemployment rate drops below 4.5% for three consecutive months, benefits trigger "off." *Id.* § 203(d)(2).

⁷³ *Id.* § 203(e)(1). Once either of these requirements is no longer present, the state is triggered "off." *Id.* § 203(e)(2). States may receive F-SEUC benefits, however, when the national trigger is "on," regardless of whether the state trigger is "on" or "off." It would be possible therefore for a state with an unemployment rate of 1.0% to receive F-SEUC benefits because the national unemployment rate was above 4.5% for the required period.

⁷⁴ INT. REV. CODE OF 1954, § 6157(b) (amendment added by Act of Aug. 10, 1970, Pub. L. No. 91-373, § 101(b)(2), 84 Stat. 695). The tax rate was temporarily raised to .58% in 1973. *Id.*

⁷⁵ INT. REV. CODE OF 1954, § 3306(b)(1) (amendment added by Act of Aug. 10, 1970, Pub. L. No. 91-373, § 302, 84 Stat. 695).

C. Temporary Legislation (1971-1975)

During the 1971 recession, there was a sharp rise in the number of workers exhausting regular⁷⁶ and F-SEUC benefits.⁷⁷ To cope with this problem, Congress enacted the Emergency Unemployment Compensation Act of 1971 (EUC 1971).⁷⁸ This Act provided an extra thirteen weeks of benefits, making the potential duration of all benefits fifty-two weeks: twenty-six weeks of state benefits, thirteen weeks of F-SEUC benefits, and thirteen weeks of EUC 1971 benefits. Two situations triggered the extra benefits "on" in a state: first, when the insured unemployment rate plus the average rate of those exhausting regular benefits was greater than 6.5 percent for a thirteen week period, or second, when there was a state or national "on" indicator for F-SEUC extended benefits, or there had been an indicator of this kind during the previous year and the state met the F-SEUC state trigger criteria without regard to the 120 percent requirement.⁷⁹ EUC 1971, slated to be operative in the first six months of 1972,⁸⁰ was financed completely from the federal unemployment account with funds raised by the federal unemployment tax.⁸¹

Nineteen states participated in this emergency extended benefits program.⁸² When the national trigger under F-SEUC went "off" in March 1972, seventeen states immediately triggered "on" for EUC 1971 benefits.⁸³ As the program continued, many states received benefits under EUC 1971, even though their F-SEUC

⁷⁶ The number of persons who had exhausted regular benefits rose from 1.3 million in 1970 (24.4% of all beneficiaries), to 2.0 million in 1971 (30.5% of all beneficiaries). SENATE COMM., *supra* note 7, at 24.

⁷⁷ See 118 CONG. REC. 22,991 (1972) (remarks of Representative Burke).

⁷⁸ Pub. L. No. 92-224, tit. 11, 85 Stat. 810.

⁷⁹ For an analysis of the 120% requirement see notes 137-44 and accompanying text *infra*.

⁸⁰ Congress, faced with the prospect of 300,000 to 400,000 workers exhausting all of their benefits before the end of 1972, extended the life of EUC 1971 through 1972. Act of June 30, 1972, Pub. L. No. 92-329, § 1, 86 Stat. 398, *amending* EUC 1971, Pub. L. No. 92-224, § 202(f), 85 Stat. 810. To finance this further extension, Congress increased the federal unemployment tax by 0.08%. Act of June 30, 1972, Pub. L. No. 92-329, § 2(a), 86 Stat. 398, *as amended*, INT. REV. CODE OF 1954, § 3301.

⁸¹ Under this legislation, the amounts paid to any state for EUC 1971 benefits were repaid by the Treasury's general funds. The transfers were made from the amounts that would otherwise have been paid over to a state out of excess federal unemployment tax collections. EUC 1971, Pub. L. No. 92-224, § 204, 85 Stat. 810.

⁸² An analysis of each state's experience under EUC 1971 is presented in U.S. DEP'T OF LABOR, REPORT ON EXPERIENCE UNDER THE EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1971, AS AMENDED, SUBMITTED TO THE HOUSE COMM. ON WAYS AND MEANS, 93d Cong., 1st Sess. 12-54 (1973).

⁸³ *Id.* Eight of these states would not have qualified if the 120% requirement had been in force.

benefits had triggered "off." When benefits were finally terminated in March 1973, the number of states qualifying for EUC 1971 benefits, which had dropped to three at the end of 1972, had risen to ten.⁸⁴

Confronted in 1974 with an increasing rate of unemployment⁸⁵ and benefit exhaustion,⁸⁶ Congress again found it necessary to supplement the F-SEUC program to aid the long-term unemployed.⁸⁷ The Emergency Unemployment Compensation Act of 1974 (EUC 1974),⁸⁸ structured along the same lines as EUC 1971, was enacted as a temporary measure to provide an extra thirteen weeks of extended benefits,⁸⁹ making available a total of fifty-two weeks of benefits. EUC 1974 changed the requirements for the F-SEUC national trigger by allowing states the option of individually lowering the indicator level from 4.5 to four percent for the permanent extended benefits.⁹⁰ For the additional thirteen weeks of temporary extended benefits, the national trigger was set at four percent. States that elected the optional trigger level and chose to participate in EUC 1974 would therefore have both the extended and emergency benefits trigger "on" at the same time.⁹¹ EUC 1974

⁸⁴ *Id.*

⁸⁵ The total unemployment rate rose from 4.9% to 5.6% in 1974, while the insured unemployment rate rose from 2.8% to 3.6%. SENATE COMM., *supra* note 7, at 23.

⁸⁶ The number of persons who had exhausted regular benefits rose from 1.5 million in 1973 (27.6% of all beneficiaries), to 1.9 million in 1974 (30.9% of all beneficiaries). The number of exhaustions of F-SEUC extended benefits went from 36,000 in Jan.-Mar. 1974 to 149,000 in Apr.-June 1974. *Id.* at 24, 27.

⁸⁷ Representative Ullman, in reporting to the House on the need for emergency unemployment compensation legislation, stated:

Every Member of the House is well aware, I am sure, that unemployment has increased significantly in recent months, rising to 6.5 percent in November, the highest monthly rate of unemployment that has occurred in 13 years. Under a realistic appraisal of the present conditions of the national economy, it is expected that unemployment will continue at a high level for many months to come. It is quite obvious, therefore, that we need to act to augment the existing unemployment compensation programs so that the needs of the long-term unemployed workers will be met.

120 CONG. REC. H 11,693 (daily ed. Dec. 12, 1974).

⁸⁸ 26 U.S.C.A. § 3304 nt. (Supp. 1976) (originally enacted as Pub. L. No. 93-572, 88 Stat. 1869).

⁸⁹ The EUC 1974 program provides emergency benefits that will terminate on Mar. 31, 1977. EUC 1974, § 102(f)(2), 26 U.S.C.A. § 3304 nt. (Supp. 1976).

⁹⁰ F-SEUC § 203(d), 26 U.S.C.A. § 3304 nt. (Supp. 1976) (amendment added by EUC 1974, Pub. L. No. 93-572, § 107, 88 Stat. 1869).

⁹¹ For states that did not lower the trigger level for F-SEUC benefits, the mandatory national trigger went "on" Feb. 2, 1975. It was estimated that both benefit programs would be in effect in all states for most of 1975 without regard to the optional trigger level. SENATE COMM., *supra* note 7, at 8. It is possible that some state legislatures could not meet in time to take advantage of the option to lower the trigger level. Of course, once the national trigger went "on" this was of no consequence.

also continued the EUC 1971 modification of the state trigger, requiring a four percent insured unemployment rate for a thirteen week period, without regard to the original 120 percent requirement of F-SEUC.⁹² The emergency benefits were financed from the federal unemployment account, with loans from general revenues available to cover shortages.⁹³

In 1975, facing a continued economic decline⁹⁴ and predictions of high exhaustion rates for EUC 1974 benefits,⁹⁵ Congress amended EUC 1974⁹⁶ by adding an additional thirteen weeks of emergency benefits, making available a total of sixty-five weeks of benefits through June 30, 1975.⁹⁷ Congress financed these extra thirteen weeks in the same manner as EUC 1974.⁹⁸ The unemployment situation, however, remained critical, with over one million unemployed workers facing benefit exhaustion before the end of 1975.⁹⁹ Congress therefore responded by continuing the twenty-six week total of EUC 1974 emergency benefits through the end of 1975 in the Emergency Compensation and Special Unemployment Assistance Extension Act (EC 1975).¹⁰⁰ Under this Act, a state's insured unemployment rate determines the state's eligibility for continued emergency extended benefits.¹⁰¹

⁹² F-SEUC, § 203(e)(2), 26 U.S.C.A. § 3304 nt. (Supp. 1976) (amendment added by EUC 1974, Pub. L. No. 93-572, § 106, 88 Stat. 1869). See notes 73, 79 and accompanying text *supra*.

⁹³ EUC 1974, § 104, 26 U.S.C.A. § 3304 nt. (Supp. 1976).

⁹⁴ At the time EUC 1974 was amended in 1975, unemployment was at 8.2% and the Gross National Product was \$200 billion below its potential. S. REP. No. 36, 94th Cong., 1st Sess. 1 (1975).

⁹⁵ Congress has projected that 100,000 unemployed workers will exhaust EUC 1974 benefits in Jan.-Mar. 1975, with the number peaking at 400,000 in Oct.-Mar. 1976. SENATE COMM., *supra* note 7, at 27.

⁹⁶ Tax Reduction Act of 1975, § 701(a), amending EUC 1974, § 102(e), 26 U.S.C.A. § 3304 nt. (Supp. 1976).

⁹⁷ The additional 13 weeks were made available through June 30, 1975. *Id.* At that point, benefits were available for 26 weeks under the original state plans, 13 weeks under F-SEUC, and 26 weeks under EUC 1974, making the total benefit package cover a maximum of 65 weeks.

⁹⁸ See note 93 and accompanying text *supra*.

⁹⁹ Representative Corman argued on the floor of the House that the bill was necessary to alleviate the critical unemployment situation: "Over a million unemployed workers could exhaust unemployment benefits by the end of this year unless these extensions are enacted." 121 CONG. REC. H 6253 (daily ed. June 26, 1975).

¹⁰⁰ EC 1975, § 101(f), amending EUC 1974, § 102(e)(3), 26 U.S.C.A. § 3304 nt. (Supp. 1976). The original legislation, H.R. 6900, 94th Cong., 1st Sess. (1975), provided for the 26 weeks of emergency benefits to be extended to June 30, 1976. The extension, however, was reduced in conference to six months. H.R. REP. No. 328, 94th Cong., 1st Sess. 1 (1975).

¹⁰¹ If a state's insured unemployment rate is more than 5.0% but less than 6.0% for a 13-week period, then the maximum duration of benefits will be 52 weeks, or emergency benefits of 13 weeks. If a state's insured unemployment rate is more than 6.0% for a 13-week period, then the maximum duration of benefits will be 65 weeks, or emergency benefits of

This latest enactment alters the general eligibility requirements for emergency benefits. Formerly, compliance with state eligibility standards and exhaustion of the permanent state and federal benefits was sufficient to qualify for emergency benefits. EC 1975, however, requires that persons unemployed more than thirty-nine weeks must register for job training, if they are not already participating in a training program.¹⁰² This requirement was enacted without a commensurate increase in federal training programs and the administrative burden is therefore on the individual states.¹⁰³

The financial provision of EC 1975 is similar to previous emergency benefit programs—the federal unemployment account supplies funds provided by the federal employer tax.¹⁰⁴ EC 1975 also lengthens the period in which states may repay the loans they secure to pay the increasing number of workers drawing state benefits and to finance the state share of F-SEUC costs.¹⁰⁵ The repayment date was formerly January 1, 1975, but it has been extended to January 1, 1978. This extension, however, is conditioned upon the Secretary of Labor finding that the state has taken appropriate action to restore the fiscal soundness of its unemployment trust fund.¹⁰⁶

As this description illustrates, the current extended benefits system does not adequately solve the problem of long-term unemployment. It does not provide sufficient job training for those

26 weeks. EC 1975, §§ 101(b), (g), *amending* EUC 1974, § 102(e), 26 U.S.C.A. § 3304 nt. (Supp. 1976).

¹⁰² *Id.* § 103, *amending* EUC 1974, § 102(g), 26 U.S.C. § 3304 nt. (Supp. 1976).

¹⁰³ Senator Harrison Williams, Chairman of the Senate Committee on Labor and Public Welfare, denounced this requirement as an ineffective measure, stating that “[a]s this provision is implemented by state officials, persons unemployed for more than 39 weeks will be told to register for job training, even when no training opportunities exist[.]” and he observed that “a significant increase in Federal manpower training programs will be necessary, unless jobs are created to absorb a substantial portion of the unemployed, reducing the unemployment compensation rolls and the job training that now attaches to them.” *N.Y. Times*, Aug. 6, 1975, at 34, col. 4 (city ed.).

¹⁰⁴ EC 1975, § 102(b), 26 U.S.C.A. § 3304 nt. (Supp. 1976).

¹⁰⁵ Failure to repay these loans on time results in a penalty. This penalty takes the form of a loss of employer credit against the federal unemployment tax. The federal tax credit is reduced by 10% for each year in which the state is delinquent in its repayment. *Id.* § 110, 26 U.S.C.A. § 3304 nt. (Supp. 1976), *amending* INT. REV. CODE OF 1954, § 3302(c)(3).

¹⁰⁶ Appropriate action refers to an increase in the unemployment tax rate or base, or an alteration in the state's experience rating formula to increase substantially the revenues raised by the state unemployment tax. Representative Corman, in his analysis of this provision, thought that Connecticut's raising of its tax base from \$4,200 to \$6,000 and its solvency tax rate from 0.9% to 1.0%, represented such appropriate action. (A solvency tax is the incremental tax added to each employer's tax rate to ensure that the state's unemployment trust fund remains solvent.) 121 CONG. REC. H 6254 (daily ed. June 26, 1975).

with little prospect of returning to their former or similar jobs, nor does it adequately place a limit on employer responsibility for extended benefits. Moreover, the trigger mechanism does not effectively respond to periods of economic recession. Finally, the current system is financially unsound—neither the federal government nor the states presently have adequate reserves to pay existing levels of benefits. The final section of this Note will therefore suggest alternatives to the present system and methods for restructuring it.

III

PROPOSALS FOR LONG-TERM UNEMPLOYMENT RELIEF

A. *Alternatives to Extended Benefits*

The underlying principle of the unemployment compensation system is that an insured worker, by right of his employment, is entitled to benefits for transitional periods of unemployment.¹⁰⁷ The present system, however, does not adequately meet the needs of long-term unemployed workers. The question, therefore, is whether the federal extended benefits program is the correct tool for coping with this economic problem. To analyze this issue, suggested alternatives to the program must be examined.

I. *Retraining*

Unemployment lasting longer than six to nine months is often due to structural changes in the economy reflecting technological advances and permanent demand shifts.¹⁰⁸ During regular economic periods, long-term unemployment usually results from either over-specialization, which makes a worker's employment possible only in periods of high demand, or else from a permanent decline in the need for his specific skill.¹⁰⁹ A recent study also

¹⁰⁷ 5 WEEKLY COMP. PRES. DOCS. 955 (1969).

¹⁰⁸ See, e.g., W. HABER, *THE IMPACT OF TECHNOLOGICAL CHANGE* 2-49 (1963); W. HABER & M. MURRAY, *supra* note 16, at 14-19; P. MACKIN, *supra* note 60, at 26-27; H. MALISOFF, *supra* note 52, at 46; M. MURRAY, *supra* note 28, at 65-66; UPJOHN INSTITUTE, *PROGRAM IMPROVEMENTS*, *supra* note 16, at 47-48 (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 446-48); Burns, *New Guidelines for Unemployment Insurance*, 29 *EMPLOYMENT SECURITY REV.* 5 (1962).

¹⁰⁹ Dr. Eveline M. Burns, a leading authority on unemployment insurance and public welfare, has distinguished between several types of long-term unemployment:

It may be recession unemployment, affecting workers in a wide variety of occupations and industries, for whom the presumption is that, once the economy revives,

suggests that those who remain unemployed longer than six months usually do not have a significant prospect of returning to their original job.¹¹⁰ Such unemployment, therefore, is not transitional

the vast majority of unemployed will be reabsorbed in their previous types of activity. Or it may be due to a permanent decline in demand for the type of skill or occupation of the worker. Examples of this type of unemployment are the unemployed in depressed areas or workers whose jobs have become extinct due to technological change. Here there is no presumption of reabsorption in the old job even if the economy as a whole is in a state of full employment. A change of occupation, perhaps even acceptance of a lower paid type of work, and sometimes a change of place of employment is necessary for reemployment. Finally, there is a type of long-term unemployment which is due to the fact that certain workers possess characteristics that in the current state of employers' preferences make them unacceptable for employment.

Burns, *supra* note 108, at 5.

¹¹⁰ In 1966-67, Pennsylvania conducted the most recent and most useful post-exhaustion study. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY, LABOR FORCE AND CLAIM STATUS OF WORKERS DURING THE TWELVE MONTHS FOLLOWING EXHAUSTION OF UNEMPLOYMENT COMPENSATION BENEFITS IN PENNSYLVANIA, 1966-1967 (1970). Unfortunately, the lack of other research in this area tends to limit the impact of the Pennsylvania study's conclusions concerning unemployed workers who return to the labor force. The study, however, does present significant findings regarding reemployment.

The Pennsylvania study focused for 12 months on 11,511 unemployed workers who exhausted their benefits for the months of May-Oct. 1966. The jobless received from 18 to 30 weeks of benefits under Pennsylvania's variable duration system of unemployment compensation (*see* note 28 *supra*). During the period of study (1966-67), Pennsylvania had low rates of insured unemployment (1.9 to 2.3%), and therefore opportunities for reemployment were available.

The study revealed a sharp decline in those successfully returning to work after a period of 28 weeks of unemployment. The reemployment rate, within two months of exhaustion of benefits, for those unemployed up to 28 weeks was 43.0%. The reemployment rate for those unemployed from 25 to 28 weeks was 43.2%. For those out of work over 29 weeks, however, the reemployment rate dropped to 25.1%. This reemployment figure continued to diminish until, after 51 weeks of unemployment, only 18.5% returned to work. PENNSYLVANIA STUDY, *supra*, at appendix table F-6.

These statistics have evoked proposals that all states provide 39 weeks of regular benefits to provide for those who cannot find a job even in periods of low unemployment. In fact, both a Nixon Administration task force composed of cabinet-level officials and the Labor Department's Manpower Administration studied a proposal for a federal standard requiring all states to extend their benefit programs to provide a maximum of 39 weeks of regular benefits. *See* Interstate Conference of Employment Security Agencies, Highlights of First Meeting of Legislative Committee (March 7-8, 1973); Unemployment Benefit Advisors, Inc., The Advisor (March 1973); both *cited in* M. MURRAY, *supra* note 28, at 26. Under this proposal, the federal government would have paid for half of a state's cost for benefits lasting longer than 26 weeks. The issue of how to finance the federal share of these costs, however, was never resolved, because the Nixon Administration never submitted a program to increase the length of regular state benefits, although the Interstate Conference Special Committee on Unemployment Problems, in proposing a similar plan, did suggest that federal costs be financed by an increase in the federal unemployment tax. Under the Nixon Administration's proposal, an unemployed worker, as a condition of receiving these benefits, would have been required to have a greater attachment to the labor force than that required for 26 weeks of benefits. The Interstate Conference proposed that for 39 weeks of benefits a worker would be required to have worked 50% longer than the standard for 26 weeks of benefits.

and does not fit the situations that unemployment compensation is designed to ameliorate.¹¹¹

Nine states currently provide regular benefits for periods longer than 26 weeks (*see note 26 supra*). But there would be many problems in requiring all states to establish uniformly 39 weeks of regular benefits. Such a proposal would both extend the financial responsibility of employers beyond what it should be (*see notes 125-36 and accompanying text infra*), and would not be in the best interests of the unemployed workers, who would be better served by a manpower program (*see notes 119-24 and accompanying text infra*). There would also be a serious question of whether 39 weeks of regular benefits could be successfully regulated by the federal government. Federal standards would be necessary to ensure uniform benefit levels and duration without regard to individual state laws. *See W. HABER & M. MURRAY, supra note 16, at 443-46*. However justified, proposed federal benefit standards face overwhelming logistical and political opposition by states that wish to retain control over their benefit programs. Indeed, such a provision was recently defeated in the House Ways and Means Committee. 1B CCH UNEMPL. INS. REP. 729 (*Unemployment Insurance Reports*) (1975).

Furthermore, a federal standard would require states to implement uniform duration benefits systems (*see note 27 supra*). Only eight states currently have such systems, and the trend has been toward the use of variable duration systems. It would therefore be necessary to alter drastically these variable duration systems in order to allow a substantial number of unemployed workers to qualify for 39 weeks of benefits. This, however, might conflict with legitimate state policies concerning the number of workers receiving state benefits, employer tax rates, and the state's tax base. The issue is further complicated by the different variable duration systems that would have to be modified to come within the scope of the 39-week proposal. Uniform duration states, on the other hand, might have to increase their labor force attachment requirements. Too high an increase, however, would disqualify many workers who deserve benefits for a shorter duration. *M. MURRAY, supra note 28, at 63-64*. Moreover, the political opposition of business groups and state administrators of unemployment compensation systems, successful in blocking proposed federal standards in the past, would be strongly allied against any fundamental change in the operation of the state systems. *See W. HABER & M. MURRAY, supra note 16, at 445-46; Hearings on Unemployment Compensation, supra note 1, at 321-24* (testimony of James H. Tinsley, Chamber of Commerce of the United States).

Finally, additional eligibility requirements would have to be proposed to assure that only those with a substantial attachment to the labor force were aided. Setting these standards, however, is extremely difficult. The Kennedy Administration, in legislation advanced in 1961 (H.R. 7640, 87th Cong., 1st Sess. (1961)), proposed that 78 weeks of employment in the previous three years be required for 13 weeks of extra benefits, with 104 weeks in the same time period required for 26 weeks of benefits. Subsequent studies have indicated, however, that these requirements would not be helpful in differentiating between those who had long-term and those who had slight attachments to the labor force. *M. MURRAY, supra note 28, at 63-64* (1974). The Kennedy bill represented an even greater attachment requirement than the 50% standard proposed by the Interstate Conference, but it would have had little effect in making fair distinctions. No proposal has therefore been made which successfully screens out those with low attachments and provides the longer regular benefits to workers with long-term attachments.

¹¹¹ Dr. Burns, in her analysis, concluded that "unemployment insurance is peculiarly well-suited to meet needs for income during periods of short-run unemployment." Burns, *supra note 108, at 8*. She also warned of misusing the unemployment insurance concept:

[T]he important point is that for these types of workers (the long-term unemployed) unemployment insurance is not the most appropriate form of social provision. We may find ourselves using unemployment insurance to meet the income needs of such people because at the moment nothing else is available, but we should recognize that in doing so we are bowing to an inadequacy of social planning

Reimbursement for income loss does not meet the needs of the long-term unemployed who seek to return to the labor force. These workers need retraining, relocation, counseling, and other support.¹¹² It is for this reason that income maintenance paid beyond the limit of the present federal and state systems "should be associated with and available only in conjunction with participation in these adjustment processes and should not be financed by unemployment insurance taxes."¹¹³ Manpower services would effectively respond to the conditions causing long-term unemployment by shifting retrained workers into areas of the economy that need skilled manpower. Such programs would also give the most support to those workers wishing to return to the labor force.¹¹⁴

The retraining provision in EC 1975 is a step in this direction. Congress, however, enacted the job-training requirement without a commensurate increase in federal training programs.¹¹⁵ Con-

and may well be endangering the integrity of unemployment insurance itself. For as this social invention is stretched to meet inappropriate problems, there is a danger that modifications will be introduced for the "extended benefits" and these may later be transferred to "normal benefits." Herein lies the danger, for example, of proposals to distinguish between the primary and the secondary wage earner in extended benefits.

Id. at 9.

¹¹² See B. BLAUSTEIN, *supra* note 16, at 9-10; W. HABER, *supra* note 108, at 22-23, 29-43; W. HABER & M. MURRAY, *supra* note 16, at 476-78; M. MURRAY, *supra* note 28, at 64-65; UPJOHN INSTITUTE, PROGRAM IMPROVEMENTS, *supra* note 16, at 47-49 (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 446-48). See generally Somers, *Training the Unemployed*, in *IN AID OF THE UNEMPLOYED* 227 (J. Becker ed. 1965).

In recent testimony before the House Unemployment Compensation Subcommittee, an AFL-CIO representative urged Congress to institute for the long-term jobless, "a comprehensive program of job counseling, training, retraining, upgrading of skills, rehabilitation services if needed, relocation assistance if desired, and job placement." *Hearings on Unemployment Compensation*, *supra* note 1, at 295 (testimony of Bert Seidman, Director, Department of Social Security, AFL-CIO).

¹¹³ UPJOHN INSTITUTE: PROGRAM IMPROVEMENTS, *supra* note 16, at 42 (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 441). A guaranteed minimum income program might be an attractive alternative to extended benefits, and a method of augmenting manpower programs. A study of the impact of such a program concluded, however, that very few workers drawing regular benefits would be aided by the different plans proposed to date. M. MURRAY, THE ROLE OF UNEMPLOYMENT INSURANCE UNDER GUARANTEED MINIMUM INCOME PLANS 18-24, 39-41 (1969). This conclusion was based on the inadequate level of income proposed. If a sufficient income level were provided, those who exhaust up to 52 weeks of benefits would be helped by a guaranteed income plan. M. MURRAY, *supra* note 28, at 68. Unfortunately, congressional resistance to guaranteed income plans is formidable, and it is not realistic to presume that such a program will be forthcoming in the near future. See N.Y. Times, Jan. 18, 1976, § 1, at 1, col. 5 (city ed.). See also D. MOYNIHAN, THE POLITICS OF A GUARANTEED INCOME: THE NIXON ADMINISTRATION AND THE FAMILY ASSISTANCE PLAN (1973).

¹¹⁴ See Burns, *supra* note 108, at 7-9; UPJOHN INSTITUTE, PROGRAM IMPROVEMENTS, *supra* note 16, at 45-46 (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 444-45).

¹¹⁵ See note 103 and accompanying text *supra*.

sequently, many people will register for state programs that, because of a lack of state funds to support new programs, do not exist.¹¹⁶ Furthermore, by leaving implementation to state officials, there is no guarantee that state training programs will be created to deal with the increasing number of workers exhausting benefits after thirty-nine weeks.¹¹⁷ Congress should take the initiative in this area by placing retraining programs under complete federal control, and by imposing uniform standards on state programs before they are funded.¹¹⁸ Retraining and income subsidies are more likely to alleviate the causes of long-term unemployment than is reliance on the unemployment compensation system alone.

2. *Public Works*

The current system has not functioned well under the strain of providing sixty-five weeks of income maintenance because unemployment compensation is designed principally to provide for the transitionally unemployed.¹¹⁹ However, workers cannot return quickly to the labor force in recessionary times, regardless of manpower programs. Therefore, it is necessary to provide some alternative to the present method of dealing with recessionary unemployment. During these periods, a federally-subsidized public-service jobs program similar to those created during the New Deal would be preferable to unemployment benefits extending beyond thirty-nine weeks.¹²⁰ Such a program would relieve unemployment compensation of the burden of providing for the long-term jobless.

¹¹⁶ See note 103 and accompanying text *supra*.

¹¹⁷ See note 103 and accompanying text *supra*.

¹¹⁸ Such uniform standards might include eligibility requirements, levels of benefits, types of training available, and duration of training.

¹¹⁹ E. Burns, *Social Security: What Should it Be?*, in THE SOCIAL WELFARE FORUM, 1972, at 110-11 (National Conference on Social Welfare ed. 1974).

¹²⁰ *Id.* In a similar vein, Arthur F. Burns, Chairman of the Federal Reserve Board, has recently proposed that low wage government jobs be provided as an alternative to extended unemployment benefits. N.Y. Times, Sept. 20, 1975, at 37, col. 6 (city ed.). In support of H.R. 5247, 94th Cong., 2d Sess. (1976), the Public Works Employment Act, Representative Hughes also spoke of the need for public work during high unemployment periods:

The principal purpose of this legislation, to create jobs by building public works projects and wastewater treatment plants, is just what the doctor ordered.

Today this Nation is faced with an unemployment rate of 8½ percent, an intolerable condition to say the least: The administration's response has been to increase unemployment benefits, but continue to oppose public works projects. Certainly workers need increased unemployment benefits during this present recession. More importantly, however, workers want and need jobs. This is what H.R. 5247 does: it takes men and women out of unemployment lines, puts them to work, and leaves this Nation's localities with improved roads, buildings, recreational areas, and other public facilities. Unlike simple unemployment payments, this bill leaves our communities with lasting improvements.

As you know, Mr. Speaker, this legislation is targeted in on areas of high

Outright public assistance, although an alternative to a public works program, is not an attractive option.¹²¹ For individuals who have a high attachment to the labor force and are work-oriented, a public works program would be more useful and productive.¹²² It would provide the unemployed with an opportunity to work and would give them the dignity of earning a living. A program of public works might be desirable in all economic periods because some workers will always exhaust benefits, no matter what their duration.¹²³ Manpower services, however, are a much better means of returning unemployed workers to the labor force in nonrecessionary times because such programs provide workers with new and needed skills—the workers then being able to step back into the regular economy.¹²⁴ A program of public works should therefore be

unemployment. South Jersey is in particular need of such aid, as its unemployment rate tops the 13.3 percent statewide average with some areas of my district as high as 26 percent. Among some of the construction trades unemployment approaches 80 percent. Not only will the funds provided by H.R. 5247 directly produce an estimated 50,000 jobs in New Jersey, but many more jobs in supporting industries and services will be indirectly created. This policy of directing the funds to areas which are in greatest need should be commended.

122 CONG. REC. H 476 (daily ed. Jan. 29, 1976).

¹²¹ As was pointed out by Representative Donald W. Riegle, Jr.:

An increasing number of the unemployed must now turn to the welfare programs. The accompanying hardship, heartache and humiliation they are experiencing as they become unwilling welfare clients is nothing short of an economic crime. These working men and women—of all ages and backgrounds—are the innocent victims of a national economy over which they have virtually no control. They feel a deep resentment and growing anger that so much of their whole life's work can be wiped away through no fault of their own. They know full well they are being forced to accept an unequal economic hardship by deliberate national economic policies which induced this recession.

Their patience is nearing an end—and I predict that soon they will be marching on Washington in massive numbers to demand new economic policies and programs that are sensible and just; policies and programs which insure jobs—and paychecks—for all people able and willing to work.

Hearings on Unemployment Compensation, supra note 1, at 337.

¹²² A public works program for those eligible for unemployment compensation would have a significant advantage over a public assistance program because unemployed workers would not be subjected to a needs test—a characteristic of most welfare programs. Valdemar Carlson has written that such a test is the "watershed" dividing social insurance from public assistance. V. CARLSON, *ECONOMIC SECURITY IN THE UNITED STATES* 7 (1962). A program open only to those who are eligible for unemployment insurance and who have therefore demonstrated a desire for reemployment, would also be more in keeping with the guidelines of Social Security and less open to attack as a welfare program. Wilbur Cohen, a former Secretary of Health, Education and Welfare, has written:

The widespread acceptance of Social Security is due in large part to the contributory earnings-related social-insurance philosophy that emphasizes the work ethic and individual responsibility and has appealed to both liberals and conservatives, Democrats and Republicans, and individuals in all socio-economic groups.

N.Y. Times, Aug. 18, 1975, at 25, col. 4 (city ed.). See also E. Burns, *supra* note 119, at 110-11.

¹²³ M. MURRAY, *supra* note 28, at 66.

¹²⁴ See notes 112-14 and accompanying text *supra*.

limited in scope to recessionary periods when manpower programs are unlikely to be effective.

B. *General Revenue Financing*

Short-term unemployment has been recognized as the financial responsibility of employers; long-term unemployment has not.¹²⁵ Long-term unemployment reflects a widespread economic problem, rather than a local, employer-related one. Those who have been unemployed for a long period are victims of technological and structural changes in the economy that are national in scope and origin.¹²⁶ Employers should therefore not be forced to pay for benefits beyond the thirty-nine weeks provided by F-SEUC. Requiring them to do so would ignore the fact that the longer an individual is unemployed, "the more remote his attachment to a former employer becomes and the more tenuous the employer's responsibility for his unemployment."¹²⁷

Increased employer taxes to pay for long-term extended benefits would undercut the experience rating system,¹²⁸ a method by which employers are encouraged to stabilize employment.¹²⁹ The higher tax rate would have no relation to an employer's unemployment record, thus defeating the system's purpose and alienating employer support for unemployment compensation.¹³⁰ In periods of continuing high unemployment, increased employer taxes would also exacerbate the general economic problem by reducing money available for business expansion and investment, key factors for economic recovery and reemployment.¹³¹

One result of the recent emergency benefit programs, which have failed to distinguish between responsibility for short and long-term unemployment, is the current insolvency of the Federal Trust Fund.¹³² Consequently, Congress has had to advance \$2.9 billion

¹²⁵ See, e.g., *Hearings on Unemployment and Compensation*, *supra* note 1, at 321 (testimony of James T. Tinsley).

¹²⁶ See notes 108-11 and accompanying text *supra*.

¹²⁷ M. MURRAY, *supra* note 28, at 71.

¹²⁸ See notes 34-35 and accompanying text *supra*.

¹²⁹ See note 35 *supra*.

¹³⁰ Telephone interview by the author with Michael Romig, Associate Director for Economic Security, The Chamber of Commerce of the United States, June 12, 1975.

¹³¹ See generally Burns, *supra* note 108, at 5-9.

¹³² This technical insolvency—the Federal Trust Fund's reserves have been exhausted and benefits have been paid by general revenue funds advanced to the Trust Fund—has resulted from the numerous federal laws providing more dollar benefits than the employer taxes could finance. Under the current employer tax structure, it will take several years before solvency can be attained. See *Hearings on Unemployment Compensation*, *supra* note 1, at 63 (statement of Lawrence E. Weatherford, Acting Associate Manpower Administrator for Unemployment Insurance); *id.* at 323 (testimony of James T. Tinsley).

from general revenues in order to continue the payment of benefits under both the extended and emergency benefit programs.¹³³

It is necessary to recognize that long-term unemployment at high levels is a national responsibility that should be borne by all taxpayers. In EC 1975,¹³⁴ Congress has partially recognized this responsibility by providing thirty-nine weeks of benefits for workers not covered by the unemployment compensation system.¹³⁵ These benefits are financed from general revenues. This financing principle should be extended to programs that currently place the burden of emergency benefits on employers. Long-term benefit support is properly a function of public assistance, not employer-financed unemployment compensation, and any new federal program providing benefits in addition to the thirteen weeks provided by F-SEUC should be financed from general revenues. To limit the burden on employers, short-term unemployment compensation should provide income maintenance only in periods of transitional unemployment.¹³⁶

C. *State and National Triggers*

The triggering mechanism for extended benefits has been F-SEUC's most controversial provision,¹³⁷ and its history has dem-

¹³³ See note 12 *supra*.

¹³⁴ EC 1975, § 201(a), amending Emergency Jobs and Unemployment Assistance Act of 1974, § 206, 26 U.S.C.A. § 3304 nt. (Supp. 1976).

¹³⁵ The program "provides unemployment compensation to jobless workers who are not covered under the Federal-State unemployment insurance program, mainly State and local employees, domestics and farm workers." 121 CONG. REC. H 6254 (daily ed. June 26, 1975) (remarks of Representative Corman).

¹³⁶ There is growing support for financing by general revenues. On April 15, 1975, the Federal Advisory Council, composed of business, labor, and public representatives with advisory responsibility to the Secretary of Labor, unanimously recommended that after 39 weeks benefits should be financed from federal general revenues, not from increased employer taxes. William H. Kolberg, Assistant Secretary for Manpower, Memorandum for the Secretary of Labor (Apr. 18, 1975) (copy on file at the *Cornell Law Review*).

¹³⁷ See, e.g., 121 CONG. REC. H 4528-31 (daily ed. May 21, 1975) (remarks of Representatives Pickle, Fisher, Corman, Steiger, and Frenzel). Criticism of triggers has generated a number of proposals for reform. The most sweeping proposal has advocated that all triggers be eliminated. UPJOHN INSTITUTE, PROGRAM IMPROVEMENTS, *supra* note 16, at 43-44 (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 442-43); *Hearings on Unemployment Compensation*, *supra* note 1, at 275 (testimony of Bert Seidman, Director, Department of Social Security, AFL-CIO). The Upjohn study has argued that triggers create arbitrary cut-offs that do not bear a very "precise relationship to fluctuations in unemployment." UPJOHN INSTITUTE, PROGRAM IMPROVEMENTS, *supra*, at 43-44, reprinted at 442-43. Regular benefits lasting up to 39 weeks (see note 110 *supra*), or an AFL-CIO proposal of extended benefits for 26 weeks at all times have been offered as alternatives. *Hearings on Unemployment Compensation*, *supra* note 1, at 275 (testimony of Bert Seidman).

Neither proposal is a viable alternative to the trigger system. The problems in implement-

onstrated the need for reform. Since 1972, Congress has had to modify the state trigger on eight occasions¹³⁸ by suspending the 120 percent requirement, so as to provide state workers with needed benefits. Congress has also temporarily reset the national trigger,¹³⁹ allowing states the option of triggering "on" at an earlier time in recessionary periods.¹⁴⁰

1. *Experience with the State Trigger*

The state trigger requirements under F-SEUC allow states to individually trigger "on" when they have an insured unemployment rate of four percent for a period of thirteen weeks, provided that the rate is at least 120 percent of the average unemployment rate for the same thirteen week period in the two previous years. The 120 percent indicator, however, has been counterproductive of the goal of extending benefits in times of long-term unemployment, for if a state has maintained a high level of unemployment over a long period of time, then the requirement is unlikely to be met.

The difficulties that Alaska encountered demonstrate the general problem in this area. Although Alaska experienced an extremely high unemployment rate throughout 1971 and 1972, it was precluded from receiving benefits because it failed to meet the 120 percent requirement.¹⁴¹ Similarly, when the national trigger for

ing 39 weeks of regular benefits in the majority of states, which use variable duration systems, have been previously discussed. *See* note 110 *supra*. Similarly the AFL-CIO proposal to provide 52 total benefit weeks even in periods of low unemployment faces a number of obstacles. First, a strong congressional consensus has developed that extended benefits should be payable only in periods of high-level, long-term unemployment. M. MURRAY, *supra* note 28, at 57. Second, a proposed work requirement of 20 weeks in order to receive 52 weeks of benefits has been criticized as being too limited an attachment to the labor force to justify a benefit duration of 52 weeks. *Id.* at 59. Third, the proposal incorporates a federal duration standard for regular benefits, a concept that faces formidable opposition. *See* note 110 *supra*.

¹³⁸ F-SEUC § 203(e), 26 U.S.C. § 3304 nt. (1970), *as amended*, Act of Oct. 27, 1972, Pub. L. No. 92-599, § 501, 86 Stat. 1324, *as amended*, Act of July 1, 1973, Pub. L. No. 93-53, § 3(b), 87 Stat. 134, *as amended*, Act of Dec. 31, 1973, Pub. L. No. 93-233, § 20, 87 Stat. 947, *as amended*, Act of Mar. 28, 1974, Pub. L. No. 93-256, § 2, 88 Stat. 52, *as amended*, Act of June 30, 1974, Pub. L. No. 93-329, § 2, 88 Stat. 288, *as amended*, Act of Aug. 7, 1974, Pub. L. No. 93-368, § 3, 88 Stat. 420, *as amended*, EUC 1974, Pub. L. No. 93-572, § 106, 88 Stat. 1869, *as amended*, EC 1975, § 102(b), 26 U.S.C.A. § 3304 nt. (Supp. 1976).

¹³⁹ EUC 1974, § 107, *amending* F-SEUC, § 203(d), 26 U.S.C. § 3304 nt. (1970).

¹⁴⁰ *See* note 90 and accompanying text *supra*.

¹⁴¹ Alaska triggered "on" for extended benefits in January 1971 and received them until November of that year. Benefits were terminated at that time because Alaska failed to meet the 120% requirement, even though it had a 6.8% rate of insured unemployment. Once the national trigger went "on" in January 1972, Alaska again received extended benefits. When the national benefits ended in March 1972, however, Alaska, with an insured unemployment rate of 14.46%, was unable to meet the 120% requirement.

F-SEUC benefits went "off" in March 1972, of the thirty-eight states that had insured unemployment rates above four percent, nine were unable to meet the 120 percent requirement and therefore failed to qualify for extended benefits.¹⁴² The number of states failing to qualify increased in the ensuing months, until in July 1972, only four states were able to meet both the four percent insured unemployment rate and the 120 percent requirement.¹⁴³ Due to the difficulties that states have had in meeting this requirement, Congress has been forced to suspend it repeatedly, suggesting that Congress would be wiser to repeal it altogether.¹⁴⁴ The suspension has recently been continued through March 31, 1977.

2. Area Triggers

In the last session of Congress, it was proposed that area triggers be substituted for state triggers.¹⁴⁵ This proposal represents the Ford Administration's solution to the state trigger problem.¹⁴⁶ If implemented, areas with population of 250,000 or more would receive thirteen weeks of extended benefits when both the national and area rates of insured unemployment were five percent for a thirteen week period. An area would receive twenty-six weeks of

¹⁴² The following table shows that all nine states had insured unemployment rates in excess of 6.5%, yet were unable to receive extended benefits because of the 120% requirement.

STATE INDICATORS FOR EXTENDED BENEFITS (APR. 1, 1972)

State	Insured Unemployment Rate	
	13-week rate	As percent of 2 prior years
Alaska	14.46	106
California	6.65	99
Idaho	6.73	112
Michigan	6.74	104
Montana	7.79	116
North Dakota	7.65	118
Oregon	7.07	96
Rhode Island	7.81	117
Washington	11.46	98

SENATE COMM., *supra* note 7, at 5.

¹⁴³ See generally notes 82-84 and accompanying text *supra*.

¹⁴⁴ See note 138 *supra*.

¹⁴⁵ H.R. 6504, 94th Cong., 1st Sess. (1975). Under the Administration's proposal, the triggering mechanism would be keyed to 139 Standard Metropolitan Statistical Areas (SMSA) of more than 250,000 population. Those parts of a state that "lay outside an SMSA of that size would be treated as a single 'balance of State' area." S. REP. No. 208, 94th Cong., 1st Sess. 5 (1975).

¹⁴⁶ 121 CONG. REC. H 4528 (daily ed. May 21, 1975) (remarks of Representative Steiger).

extended benefits if the area rate were six percent. This proposal did not receive full legislative scrutiny because Congress rushed to extend the existing emergency benefits program before it expired.¹⁴⁷ The proposal will receive close congressional attention in the future,¹⁴⁸ however, and therefore deserves analysis.

The rationale for an area trigger is that localities may experience high unemployment when the state as a whole does not. Under the present F-SEUC system such depressed areas do not qualify for extended benefits.¹⁴⁹ Under an area trigger, however, special local factors, such as seasonal unemployment or a long strike, might qualify a locality for extended benefits payments. Seasonal workers tend to have a very low attachment to the labor force and only short-term patterns of unemployment.¹⁵⁰ Their unemployment tends to be a recurring phenomenon. An extended benefits program responsive to this pattern of unemployment would run counter to the purpose of the extended benefits program, which is to respond to general periods of high unemployment.¹⁵¹ It would also be inappropriate to reward long-term strikers with extended benefits, because unemployment compensation is structured to help those who are seeking employment, not abstaining from it.¹⁵²

The Ford Administration's proposal has unsuccessfully at-

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at H 4530 (remarks of Representative Corman).

¹⁴⁹ See note 73 and accompanying text *supra*.

¹⁵⁰ W.E. UPJOHN INSTITUTE, PROGRAM IMPROVEMENTS, *supra* note 16, at 11-14 (reprinted in *Hearings on Unemployment Compensation*, *supra* note 1, at 410-13).

¹⁵¹ M. MURRAY, *supra* note 28, at 54.

¹⁵² A federal district court in Hawaii recently restrained the Hawaii Department of Labor and Industrial Relations from paying unemployment benefits to striking workers. *Hawaiian Tel. Co. v. State Dep't of Labor*, 1B CCH UNEMPL. INS. REP. 735 (*Unemployment Insurance Reports*) (D. Hawaii Nov. 6, 1975). The United States Court of Appeals for the First Circuit had previously struck down a Rhode Island statute permitting unemployment benefits for striking workers. *Grinnell Corp. v. Hackett*, 475 F.2d 449 (1st Cir.), *cert. denied*, 414 U.S. 879 (1973).

Although federal policy on this question is not clear, the manner in which Congress has dealt with the laws of the District of Columbia is instructive. There Congress has excluded strikers from unemployment benefits. D.C. CODE ANN. § 46-310(f) (1973). The policy of the Executive branch has also been clear:

The unemployment tax we require employers to pay was never intended to supplement strike funds to be used against them. A worker who chooses to exercise his right to strike is not involuntarily unemployed.

In two states [New York and Rhode Island, although this is no longer true in Rhode Island], workers on strike are paid unemployment insurance benefits after a certain period. This is not the purpose of the unemployment insurance system.

I propose a requirement that this practice of paying unemployment insurance benefits to workers directly engaged in a strike be discontinued.

Hearings on H.R. 12625 Before the House Comm. on Ways and Means, 91st Cong., 1st Sess. 12 (1969) (letter from President Nixon).

tempted to surmount these problems by linking the area unemployment rate to the national rate and to an area population requirement. With the Administration's forecast being that national unemployment will remain above five percent until 1980,¹⁵³ the local unemployment rate would be the only meaningful trigger in the program. This trigger would be subject to the wide fluctuations caused by local circumstances and would not be effective. For instance, the area population requirement might result in grave inequities to unemployed workers in lightly populated areas,¹⁵⁴ and the trigger would be too easily influenced in areas that are dominated by a few major industries.¹⁵⁵ In sum, relating extended benefits to local circumstances would allow special local pressures to exert too strong an influence upon the program. Area triggers would also undermine the rationale of the extended benefits program, which is to provide benefits in general periods of high unemployment, not to subsidize failing local economies.

3. *Reform of the State Trigger*

The state triggering device does not need radical reform to make it responsive to the needs of the unemployed. The ineffectiveness of the 120 percent requirement has been demonstrated by the numerous modifications required of it. Since there is little purpose in maintaining an indicator that, in effect, punishes states for having long periods of high unemployment,¹⁵⁶ Congress should permanently eliminate it.¹⁵⁷

The requirement that a four percent insured unemployment rate exist for thirteen weeks, however, has been a fair and accurate indicator of long-term unemployment in the states. In May 1975,

¹⁵³ See note 6 *supra*.

¹⁵⁴ S. REP. NO. 208, 94TH CONG., 1ST SESS. 5 (1975). The Senate Labor and Public Welfare Committee reported on the impact of H.R. 6504:

Grave inequities would result for unemployed workers in lightly populated "balance of State" areas. These are pockets of unemployment of 15 percent and higher where joblessness would remain at drastic levels long after the IUR [insured unemployment rate] for the State as a whole has receded below 6 percent. The trigger would activate without respect to the employment experience of 12 million workers who are not covered by the regular Federal-State unemployment compensation program and are not, therefore, taken into account in the IUR.

Id.

¹⁵⁵ See SUBCOMM. ON UNEMPLOYMENT COMPENSATION OF THE HOUSE COMM. ON WAYS AND MEANS, 94TH CONG., 1ST SESS., STATISTICAL INFORMATION ON UNEMPLOYMENT AND UNEMPLOYMENT COMPENSATION PROGRAMS 5-10 (Comm. Print 1975).

¹⁵⁶ See notes 141-44 and accompanying text *supra*.

¹⁵⁷ Currently before Congress is a bill that would entirely eliminate the 120% requirement. H.R. 10210, 94th Cong., 1st Sess. (1975).

for example, all but two states¹⁵⁸ had seasonably-adjusted rates above four percent, and were thus eligible for extended benefits.¹⁵⁹ F-SEUC benefits should trigger "on" in the states by means of the four percent indicator.¹⁶⁰

4. *The National Trigger*

When the national trigger became legally effective at the beginning of 1972, extended benefits were triggered "on" immediately because the national rate of unemployment had exceeded 4.5 percent for September, October, and November 1971.¹⁶¹ A slight drop in the rate for December 1971, however, triggered benefits "off" in March of 1972.¹⁶² The national indicator did not trigger "on" again until February 1975,¹⁶³ and has remained in effect since that time.¹⁶⁴

The 4.5 percent national trigger requirement has deprived large numbers of unemployed workers of extended benefits. The period between enactment and effectiveness for the original national trigger demonstrates the need for lowering this indicator.

¹⁵⁸ The two states not qualifying for state benefits on May 17, 1975, were Texas and Wyoming. SENATE COMM., *supra* note 7, at 21-22.

¹⁵⁹ *Id.*

¹⁶⁰ In legislation presently before Congress, the state trigger would be an insured unemployment rate of 4.0% measured over a moving 13-week period. H.R. 10210, 94th Cong., 1st Sess. (1975).

¹⁶¹ Extended benefits were triggered "on" in all states except Kentucky, whose legislature did not meet until 1972. At that time, it enacted legislation which made the state eligible for extended benefits.

¹⁶² The national indicator was triggered "off" as of the week of March 5th, but benefits did not cease until three weeks later.

¹⁶³ See note 91 *supra*.

¹⁶⁴ The following table lists the national insured unemployment rates for the purposes of the national trigger from F-SEUC's inception to April 1975.

NATIONAL INSURED UNEMPLOYMENT RATE
[In percent]

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

From August 1970 through December 1971 the insured unemployment rate was above four percent, with over three million covered workers unemployed. A four percent trigger would have made benefits available in December 1970; a 4.5 percent trigger would not have made benefits available until July 1971.¹⁶⁵

Based on past unemployment rates, a trigger set around four percent would be a fair standard to aid the long-term unemployed.¹⁶⁶ A significantly lower percentage would tend to provide more coverage to the transitionally unemployed, not the long-term unemployed.¹⁶⁷ For example, a lower level of 3.5 percent would have made benefits available for most of 1972, when the average insured unemployment rate was only 3.3 percent.¹⁶⁸ Benefits would also have been available again as early as June 1974, when the rate was 3.65 percent.¹⁶⁹ The only period not covered by such a trigger would have been 1973, which had an average rate of 2.8 percent.¹⁷⁰

F-SEUC extended benefits should be available whenever there is a clear trend in the economy toward widespread long-term unemployment.¹⁷¹ The experience of the national trigger in the last

¹⁶⁵ *Id.* at 25. The F-SEUC indicator triggered "off" in March 1972 due to the 4.5% requirement; with a 4.0% indicator, benefits would have remained available until September 1972. *Id.*

¹⁶⁶ The Subcommittee on Extended Benefits Trigger for the National Executive Committee of the Interstate Conferences of Employment Security Agencies, at a December 1972 meeting, proposed that the national trigger be lowered from 4.5 to 4.0%. Based on the statistics for the 1970-72 recession, they suggested that the national trigger had responded to widespread unemployment too late. In arguing for the lower rate, the Subcommittee asserted that F-SEUC benefits would be more effective if made available early in an economic downturn, as would have been the case had a 4% trigger been employed in the 1970-72 period. Interstate Conference of Employment Security Agencies, Explanatory Material and Considerations For and Against Agencies Changing Extended Benefit Trigger Formulas 3-4 (undated), *cited in* M. MURRAY, *supra* note 28, at 47.

¹⁶⁷ In discussions of unemployment benefits for transitionally and long-term unemployed workers, there is an implicit assumption that there exists a residual percentage of transitionally unemployed workers. As the unemployment rate rises above this residual level, the change represents long-term unemployed workers. In theory, extended benefits should trigger "on" when this residual level is exceeded. Triggers, although set at an arbitrary standard, are designed

to make extended benefits responsive to recessionary unemployment, triggers do not operate to assist long-term unemployed workers in pockets of persistent unemployment, or to assist individual unemployed workers when they experience long-term unemployment regardless of general economic conditions.

M. MURRAY, *supra* note 28, at 47.

¹⁶⁸ SENATE COMM., *supra* note 7, at 23.

¹⁶⁹ *Id.* at 26.

¹⁷⁰ *Id.* at 23.

¹⁷¹ W. HABER & M. MURRAY, *supra* note 16, at 232-33; UPJOHN INSTITUTE, PROGRAM

five years demonstrates that a trigger of about four percent would accomplish this goal. Congress recognized the four percent trigger as a better indicator when it adopted that level in EUC 1974 and the national trigger should be permanently set near four percent for F-SEUC benefits.¹⁷²

D. *Tax Rate and Wage Base Adjustments*

The continuing high level of national unemployment has created a financial crisis in the Federal Trust Fund.¹⁷³ The emergency benefits created by Congress are financed from the federal tax on employers.¹⁷⁴ Because the benefits paid out are greater than the tax revenues coming in, however, the Administration has estimated that it will be necessary to continue general revenue advances to the Federal Trust Fund indefinitely, and that the total funds available to the program will be inadequate by fiscal year 1977.¹⁷⁵

The best solution to this financial morass would be to recognize federal responsibility for long-term unemployment and earmark general revenues for all benefit payments beyond thirty-nine weeks,¹⁷⁶ leaving the federal tax on employers to cover only the thirteen weeks of F-SEUC benefits. In the absence of such reform, an increase in the federal tax rate and wage base is needed as a stop-gap measure.¹⁷⁷ For the calendar year 1977, the wage base should be raised from its present level of \$4,200¹⁷⁸ to provide increased

IMPROVEMENT, *supra* note 16, at 7 (reprinted in *Hearings on Unemployment Compensation, supra* note 1, at 406).

¹⁷² Legislation currently before Congress proposes that the national trigger remain at 4.5%, but the rate would be seasonally adjusted and would be based on a moving 13-week period instead of three consecutive months. H.R. 10210, 94th Cong., 1st Sess. (1975). This provision would allow the national trigger to go "on" more easily than under the present federal provision.

¹⁷³ See note 12 *supra*.

¹⁷⁴ See notes 12, 132-33 and accompanying text *supra*.

¹⁷⁵ *Hearings on Unemployment Compensation, supra* note 1, at 63 (statement of Lawrence E. Weatherford, Acting Associate Manpower Administrator for Unemployment Insurance).

¹⁷⁶ See notes 125-36 and accompanying text *supra*.

¹⁷⁷ ECONOMIC SECURITY, EDUCATION AND MANPOWER SECTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, DETAILED SUMMARY OF UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1975, PRELIMINARY PROPOSAL OF THE U.S. DEPARTMENT OF LABOR 2 (1975).

¹⁷⁸ Although there is general agreement that a wage base increase is needed, there are differences of opinion over what that increase should be. In legislation currently before Congress, the taxable wage base would be raised from \$4,200 to \$8,000 as of Jan. 1, 1977. H.R. 10210, 94th Cong., 1st Sess. (1975). The Administration, on the other hand, proposes that the tax base be raised to \$6,000 as of Jan. 1, 1977, with adjustments to be made every two years up to the level of two-thirds of the average annual wage covered by the program for the preceding year, rounded off to the next highest multiple of \$1,000. DETAILED SUMMARY, *supra*

revenues for the federal government, and for the states as well.¹⁷⁹ The federal unemployment tax rate should also be raised from its present figure of 3.2 percent.¹⁸⁰ These increases would bring an influx of tax revenues into the Federal Trust Fund and produce eventual solvency for the federal account.

CONCLUSION

Reliance upon the extended benefits program during the current economic recession has demonstrated the need for different methods to deal with long-term unemployment. The present system is conceptually and financially inadequate to combat the effects of such unemployment. A comprehensive retraining program would be a better method to deal with the problems of the long-term jobless. In recessionary periods, public works programs should also be implemented to provide interim employment for those who cannot be immediately reintegrated into the private sector of the economy. Moreover, a shift to general revenue financing of benefits beyond the thirty-ninth week and adjustments in the tax rate and wage base are needed to bring financial stability to the present extended benefits system. Finally, modifications of the trigger mechanisms would produce a system more responsive to national employment trends. Congress, recognizing the inadequacies of the present system, is considering fundamental reforms to deal with long-term unemployment. Such reform is urgently needed to alleviate the pressure on the unemployment compensation system. Unemployment compensation, however, should remain the nation's first line of defense against the hardships of recession.

Charles Evan Stewart

note 177, at 2. The Federal Advisory Council, although preferring federal responsibility for benefits beyond the 39th week, proposes an increase in the wage base to \$6,000. Memorandum for the Secretary of Labor, *supra* note 136.

¹⁷⁹ Memorandum for the Secretary of Labor, *supra* note 136.

¹⁸⁰ As with the taxable wage base (*see* note 178 *supra*), there are varying recommendations concerning the amount of increase needed in the federal unemployment tax. The Administration proposes that the tax rate be raised by 0.055%. DETAILED SUMMARY, *supra* note 177, at 2. The House Ways and Means Committee, on the other hand, has reported out a bill that would raise the tax rate by 0.2% as of Jan. 1, 1976. H.R. 10210, 94th Cong., 1st Sess. (1975). This increase would be temporary, ending either in 1982, or in the year after all advances to the Federal Unemployment Compensation Account have been repaid, whichever is earlier.