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# THE DEVELOPMENT OF UNEMPLOYMENT INSURANCE IN THE UNITED STATES

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*Introduction*

The federal-state system of unemployment insurance in the United States is the result of a combination of influences. At its inception, it was influenced by experience with unemployment insurance abroad, by experience with voluntary plans already in existence in this country, by bills that had been introduced in state legislatures over a period of years, and by a number of studies that had been made by official commissions and students of the subject. Its structure was also considerably affected by the fact that those chiefly responsible for drawing up the original legislation had a background of experience in the administration of workmen's compensation, chiefly in New York and Wisconsin, and were imbued with a philosophy of states' rights. Its basic federal-state structure was partly the product of constitutional considerations. The limited nature of the benefits provided reflects the fact that the system was introduced during a period of very heavy unemployment, with the result that the possible costs of a system of unemployment insurance were overestimated.

Certain elements which went into the original structure of the unemployment insurance system in this country have also influenced its development. Apprehension as to the administrative difficulties of the program resulted in a restricted coverage of the system which has been difficult to overcome. Over-conservative estimates as to the high cost of the system resulted in the provision of very modest benefits at the beginning, and this continues to be a retarding factor on the provision of benefits that adequately meet the needs of the unemployed. The provisions for experience rating of employer contributions have given employers a much greater interest in the costs than in other countries, resulting in a heavy emphasis on the financing of the system and the progressive tightening of disqualification provisions. Finally, the large discretion and flexibility given to the states in the basic federal legislation has resulted in an underemphasis on the federal interest and a progressive weakening of federal influence on the system.

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## I. Experience with Unemployment Insurance Prior to the Social Security Act

### A. *Experience in Foreign Countries*

1. *Voluntary Plans*—Unemployment insurance was originated by trade unions. Plans for the payment of unemployment benefits to their unemployed members began to be developed in the middle of the nineteenth century in Great Britain and other European countries. The first successful plans for governmental action took the form of subsidy of trade union plans. The first instances of regular public subsidies to unemployment funds occurred in the French municipalities of Dijon in 1896 and Limoges in 1897. In Liege, Belgium, such funds were subsidized as early as 1899. However, a more successful plan was introduced in the town of Ghent, Belgium, in 1901, and the "Ghent system" had spread by 1913 to thirty communal or intercommunal unemployment funds in Belgium, extending to nearly 100 communes; to twenty-five similar institutions in the Netherlands; about twenty in France; nearly ten in Germany; three in Italy and two in Switzerland. The Ghent system was also introduced on a statewide basis in France in 1905, Norway in 1906, and Denmark in 1907, although these plans were modified in important respects, particularly in Denmark. At the time of the passage of the Social Security Act in 1935, ten countries were subsidizing voluntary unemployment insurance plans, and one, Switzerland, also had compulsory plans in thirteen cantons.

2. *Compulsory Legislation*—Great Britain was the first country to enact a compulsory unemployment insurance law. The original act of 1911 covered only the building, engineering and shipbuilding industries. In 1916, the system was extended to metal, leather, rubber, chemical, ammunition and other munition industries. In 1920, a new act extended coverage to all manual workers and certain non-manual workers with the exception of agricultural workers, domestic servants, permanent civil service workers, pensionable school teachers, permanent employees of local authorities and railway companies. The basic system was continued in the Irish Free State.

Compulsory unemployment insurance spread to other countries after World War I, being introduced in Italy in 1919, Austria in 1920, Queensland, Australia in 1922, Poland in 1924, Bulgaria in 1925 and Germany in 1927. Switzerland, as already mentioned, had compulsory insurance in thirteen cantons.

Whereas the voluntary unemployment insurance plans paid unemployment benefits as a proportion of wages, Great Britain provided a system of flat benefit amounts, varying with marital status and the number of dependents; and this approach was followed in the Irish Free State, Queensland, Poland and Bulgaria. On the other hand, the laws in Italy, Austria, Germany and Switzerland varied benefits by wages, usually by wage classes. All of these laws except that of Italy provided for allowances to be paid for dependents.

3. *Differences in Laws in the United States*—In the United States all state laws provide benefits as a proportion of wages, as distinguished from the flat benefits paid in England. The original state laws did not use wage classes, which is done in all European countries except Switzerland, although most laws in the United States now pay benefits by small wage classes. Another distinction from European laws was that only the District of Columbia provided dependents' allowances from the beginning.

The most important difference between the system of unemployment insurance in the United States and that of other countries is in the method of financing. In all the foreign systems, except New Zealand, contributions are made by the workers, as well as employers; and all laws paying flat benefits also provide contributions by the State. Originally, worker contributions were paid in ten states in this country, but this practice has practically disappeared.[1]

A more important difference in the American system of financing is the provision for variation of contributions for employers in accordance with their unemployment experience.

Other provisions in laws in the United States were, at least in the beginning, largely copied from European laws. These included disqualification provisions in connection with refusal of suitable work, voluntary quitting, discharge for misconduct and participation in labor disputes.

B. *Experience in the United States*

1. *Voluntary Plans*—The earliest plan for unemployment benefits in the United States was a trade union plan established in 1821. Union plans were introduced with varying success during the succeeding century and about 100,000 workers were covered by union plans in 1934. Joint union-management plans, with employers participating in the cost, grew up chiefly in the garment trades. In 1934, about 65,000 workers were covered by such plans. After World War I, a number of voluntary company plans financed by the employer were introduced, several of them being in the nature of guaranteed employment plans. At the time of the passage of the Social Security Act, about 70,000 workers were covered by such plans, over half of the workers being in one company.

1. Only Alabama and New Jersey now collect employee contributions. In Alabama the employee contribution varies from 0.1 to 1.0 percent as the employer's rate varies from 0.5 to 2.7 percent of wages; in New Jersey the employee rate is 0.25 percent.

These voluntary plans were modest in scope and were chiefly designed to pay benefits to seasonal workers in the off-season. Although these plans, especially the voluntary company plans, no doubt influenced early thinking regarding compulsory unemployment insurance in this country, they were so varied that they did not constitute a pattern to be copied by the state laws.

2. *State Legislation*—The earliest compulsory plan proposed in the United States was embodied in a bill introduced in the Massachusetts legislature in 1916. This bill was largely modeled after the British act of 1911 in that it required employer, employee and state contributions. However, it departed from the British plan in relating contributions and benefits to wages. A similar bill was introduced in the New York legislature in 1921. No action was taken on either of these bills.

A bill that had a considerable influence on thinking regarding the financing of unemployment insurance in this country was the bill introduced by Mr. Huber in the Wisconsin legislature in 1921. This bill was drafted by Professor John R. Commons of the University of Wisconsin and his students. It was modeled on workmen's compensation, with the cost to be borne entirely by the employer in order to encourage him to stabilize his employment. The insurance was to be carried by a mutual company under the control of a compensation insurance board, which was to classify employer contributions according to risk. The bill was defeated by one vote, and, in modified form, was introduced in each session of the Wisconsin legislature until 1931. Similar bills were introduced in Connecticut, Massachusetts, Minnesota and Pennsylvania in 1921, and bills were introduced in several other states during the 1920's.

The depression of the 1930's created a widespread interest in unemployment compensation. In 1931, fifty-two bills were introduced in seventeen states, based largely on the Huber bill; eighty-three bills were introduced in twenty-three states in 1933, largely of the two types discussed below.

In 1932, a new type of bill was introduced in the Wisconsin legislature. This bill, drafted by several young professors who had been students of Professor Commons, and sponsored by the American Association for Labor Legislation, provided for individual employer reserves in a state fund, with the contributions to be solely by employers and the rate to be varied with the size of their reserve funds in proportion to their payrolls. This bill passed the Wisconsin legislature and became law on January 29, 1932. The effective date for payment of benefits, however, was deferred for two years and later until 1936. A similar plan was reported in 1931 by the Governors' Interstate Commission on Unemployment Insurance representing New

York, Massachusetts, Ohio, New Jersey, Pennsylvania and Connecticut. Bills of the Wisconsin type were subsequently introduced in many state legislatures.

A widely different plan was reported by the Ohio Commission on Unemployment Insurance in 1932. This plan provided for a statewide pooled fund of employer and employee contributions with no variation in contribution rates. This plan was copied in bills introduced in New York and Michigan. The Ohio and Wisconsin plans were similar in their benefit provisions, the principal difference being in financing. However, the authors of the Ohio plan believed that with a pooling of contributions a much longer period of benefits could be paid; the Ohio plan provided for a uniform duration of twenty-six weeks, as against variable duration with a maximum of thirteen weeks in Wisconsin.

These two plans became the focal point for two schools of thought: the Wisconsin "school" stressing the importance of individual employer responsibility for unemployment, and the Ohio "school" stressing the importance of the social aspects of the problem of unemployment and the nationwide conditions that create unemployment.

A variation of the Wisconsin plan, developed by the staff of the University of Minnesota, sought to combine the employment stabilization features of the Wisconsin plan with a long duration of benefits. It provided for employer contributions, with classification of employers for contribution rate purposes on an industry basis. With respect to benefits, it sought to finance thirty-nine weeks of benefits by the savings provided by a four-week waiting period. This proposal for a long waiting period had a considerable influence on early state legislation. The contribution rate was to be four percent of payroll, as against a three percent rate in the Wisconsin law. This plan was passed by one house of the Minnesota legislature in 1933.

By 1934, bills had passed one house of the legislature in Ohio, Maryland, Connecticut, Utah, Minnesota, California and New York. State legislatures, however, were faced by strong pressure from employer groups against legislation on the twin grounds that they could not afford the increase in their costs in the midst of a depression, and that passage of legislation in their state would place them at a disadvantage in interstate competition. It appeared that no further progress could be made in securing unemployment insurance legislation without some type of federal action.[2]

2. Laws were passed in California, Massachusetts, New Hampshire and New York in 1935 before the signing of the Social Security Act, largely in anticipation of that Act.

## II. Development of Federal Legislation

### A. *Early Proposals*

As early as 1916, a resolution was introduced in Congress to create a committee to draft a national unemployment insurance law but it did not pass.

With the prosperity of the 1920's, no further interest was evidenced in Congress until 1928, when Senator Cousens introduced a resolution to investigate unemployment and unemployment insurance by the Committee on Education and Labor. The Committee, after holding hearings, reported that legislation for compulsory unemployment compensation was premature, but recommended the voluntary establishment of unemployment reserve funds by employers.

Another resolution was introduced in 1931 by Senator Robert F. Wagner to investigate experience with unemployment insurance in foreign countries. The Committee on Education and Labor recommended compulsory unemployment compensation, but believed that federal legislation should be limited to allowing credit against federal income taxes for contributions by employers to state unemployment reserve funds. Senator Wagner introduced several bills embodying this principle, but none of them came to a vote.

In 1934, Senator Wagner and Congressman David J. Lewis of Maryland introduced the so-called Wagner-Lewis bill, which would have provided for a Federal-State system of unemployment insurance. This bill was similar in its basic approach to the legislation enacted in the Social Security Act. It provided for a five percent payroll tax on employers of ten or more persons, with tax credits for contributions to state laws meeting certain standards. No action was taken on the bill, but it created widespread interest and discussion.

### B. *The Committee on Economic Security*

On June 29, 1934, President Franklin D. Roosevelt established by executive order the Committee on Economic Security[3] to study the whole problem of insecurity due to unemployment, old-age, disability and death. A technical board of Government experts and an advisory council with representatives of the public, employers and workers was appointed to advise the committee, and a staff of experts was collected. The Committee report was transmitted to Congress on January 17, 1935. In its report, the Committee said that the first objective of a program of economic security must be maximum employment through stimulation of private employment and provision of public work to the unemployed. The report recommended a program of unemployment insurance as a "first line of defense" . . . at the earliest

3. The Committee on Economic Security was composed of the Secretary of Labor (Chairman), the Secretary of the Treasury, the Secretary of Agriculture, the Attorney General and the Federal Emergency Relief Administrator.

possible date to increase the security of all who are unemployed.

*C. The "Economic Security" Bill*

Identical bills embodying the Committee on Economic Security's recommendations were introduced on January 17, 1935 by Senator Wagner (S. 1130), Congressman Robert L. Doughton, Chairman of the House Committee on Ways and Means (H.R. 4120) and Congressman Lewis (H.R. 4122). The bills included essentially the provisions on unemployment insurance that were eventually enacted, but with several important differences. In order to induce states to enact unemployment insurance laws, a federal unemployment tax was proposed in Title IX of the bills with a ninety percent offset for contributions under state unemployment compensation laws meeting certain requirements. Employers of four or more persons employed in thirteen or more weeks in the year were to be covered by this tax, and the only occupations to be excluded were government employees and any industry covered by a plan enacted by Congress. The Committee report had also recommended that the states cover state and local government employees. The tax proposed was to begin January 1, 1936, with tax rates in 1936 and 1937 to be one, two, or three percent of payrolls, depending on the index of production of the Federal Reserve Board. Only limited federal standards were proposed. The only one not finally adopted was a requirement that the state accept the Wagner-Peyser Act, which provided for a federal-state system of public employment offices. (Actually, all states subsequently accepted the provisions of this Act.) Variation of employers' contribution rates (later called experience rating) was permitted by provision for credit for the difference between the amount actually paid to the state and the ninety percent offset against the federal tax. A plan for grants to states to meet the entire cost of the administration of their state systems, embodied in Title III of the bill, was proposed in order to assure that the states would have adequate funds for administration. It was expected that this would be financed through the ten percent of the tax to be collected by the Federal Government.

Hearings were conducted by the House Committee on Ways and Means and the Senate Committee on Finance (the bills went to these committees because of their tax features) between January 20 and February 20, 1935. A revised bill passed the House on April 11th by a vote of 372 to 33; and a further modified bill was passed by the Senate on June 19th by a vote of 77 to 6. The final bill was signed by the President on August 14, 1935.

The bill as finally passed was different from the original bills in the following important respects: The House bill provided for coverage of employers of ten or more employees in twenty weeks in the year and the Senate provided for coverage of employers of six or more. The final act provided for coverage of eight or more in twenty or more weeks in a year. The bill as enacted exempted agricultural workers, domestic servants in private homes, maritime workers, non-profit religious, educational, medical and scientific institutions, and governmental employees. The House bill eliminated the features providing for the experience rating of employer contributions, but the Senate restored experience rating and cut the requirements so as to permit experience rating after three years instead of five years of coverage. The feature gearing the rate of contributions in 1936 and 1937 to the Federal Reserve Board index of production was eliminated and a rate of 1 percent in 1936, 2 percent in 1937, and 3 percent thereafter was prescribed.

D. *The Social Security Act of 1935*

The features of the original Social Security Act[4] need only be summarized here. A Federal Unemployment Tax was enacted as Title IX of the Social Security Act[5] (later transferred to the Internal Revenue Code) which permitted employers to receive credit up to 90 percent of the federal tax for their contributions under state unemployment compensation laws which met six prescribed conditions. These conditions were the minimum deemed essential to protect the federal interest and were as follows:

1. All benefits shall be paid through public employment offices, or such other agencies as the Social Security Board may approve;
2. No benefits shall be paid for unemployment occurring within two years after the first day with respect to which contributions are first required;
3. All contributions to the State fund shall be immediately transferred to the unemployment trust fund of the United States;
4. Money withdrawn from the unemployment trust fund shall be used only for the payment of benefits;
5. Benefits shall not be denied any otherwise eligible individual for refusing to accept any work vacant due directly to a trade dispute; if the wages, hours or other conditions are substantially below those prevailing for similar work in the locality; if as condition of being employed a worker has to resign from or refrain from joining a labor organization or would be required to join a company union;
6. The State law must provide that no vested rights are created which prevent modification or repeal of the State law.

The employer was to receive additional credit beyond his actual contributions under the state law for contributions he would have otherwise paid if he had not been granted a lower rate by the state. Additional credit could be secured under a state pooled fund after three years of experience with unemployment under the system;

4. 49 STAT. 620 (1935).
5. 49 STAT. 639 (1935).

under a law providing for individual reserve accounts with experience rating after the account reached 7½ percent of payroll, or under a guaranteed employment plan which guarantees at least thirty hours of work for forty weeks in a year (this last feature is practically a dead letter).

The other unemployment compensation feature of the Act provided for grants to the states to cover their total cost of administering an approved unemployment compensation law with the following additional requirements to those required for approval of Title IX: (1) such methods of administration as are calculated to insure full payment of benefits when due; (2) opportunity for a fair hearing before an impartial tribunal for all whose claims to benefits have been denied; and (3) full and complete reports to the Social Security Board on the activities under state laws, and requested information to other federal agencies engaged in the administration of public works or assistance.

Since the Act required payment of benefits through public employment offices or such other agencies as the Social Security Board approved, the Board by early action ruled that benefits could be paid through public employment offices and interpreted Title III to include payment of the administration of public employment offices for their activities related to unemployment insurance.

The Social Security Act left entirely to the states to choose the benefit, eligibility and disqualification provisions, with the sole exception of the so-called labor standard. This discretion left to the states was partly motivated by a fear that too many standards would jeopardize the constitutionality of the Act and partly by a belief in the desirability of permitting the states to experiment and adjust their state laws to local economic conditions and characteristics.

The federal legislation was effective in securing the enactment of state legislation. By June 30, 1937 every State in the Union and the District of Columbia, Hawaii and Alaska had passed approved legislation.

E. *Testing of Constitutionality in the Courts*

1. *Validity of the Federal Tax*—The constitutionality of the Federal Unemployment Tax was upheld by the Supreme Court of the United States on May 24, 1937 by a vote of five to four.[6] The petitioner paid the tax and then sued to recover the payment. It was contended that the tax was unconstitutional on the following grounds: the tax was not an excise and not uniform throughout the country; the exceptions were so many and arbitrary that they violated the fifth amendment; the purpose of the tax was not revenue but an unlawful invasion of the reserved powers of the state; and the states had yielded to the tax by establishing unemployment insurance laws only by coercion and had

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

thus abandoned functions of government they were not permitted to surrender. The majority opinion was written by Mr. Justice Cardozo. He said that the tax was an excise on the relation of employment, and that employment was a natural right "as much subject to taxation as rights of less importance."[7] It did not much matter whether it was classified as an excise or impost, since both are within the taxing power of Congress. He said that the tax was uniform in a geographical sense and need not be intrinsically uniform. The classification of the tax was not arbitrary, even though it applied only to employers of eight or more workers and exempted certain occupations. Justice Cardozo stated that the tax was not void because of the alleged coercion on the states to pass unemployment insurance laws. The proceeds of the tax are paid into the federal treasury and are subject to appropriation; therefore, the revenue provisions, separated from the credit, are capable of standing by themselves. In order to draw the line between duress on the states and inducement, it was necessary to consider the existing problem of unemployment and the cost to the Federal Government of its relief. The states had held back in enacting unemployment insurance laws, not because of a lack of interest, but because of the fear of individual states placing their industries at a competitive disadvantage with industries in states without laws. The Social Security Act is an attempt to find a method by which all these agencies (federal and state) may work together toward a common end. The taxpayer is not coerced since he pays in fulfillment of the mandate of the local legislature. The petitioner confused motive with coercion. The state "does not offer a suggestion that in passing the unemployment law she was affected by duress. . . . [S]he chose to have relief administered under laws of her own making, by agents of her own selection, instead of under federal laws. . . ."[8] In the tender of the tax credit for approved state laws, the Congress did not intrude on fields foreign to its function. It acted to safeguard its own treasury and "to place the states upon a footing of equal opportunity."

The court held that Title III was separable from Title IX and its validity was not an issue.

2. *Validity of the Alabama Law*—On the same day that the validity of the federal provisions was upheld, the Supreme Court ruled by a five to four decision that the Alabama unemployment compensation law was constitutional.[9] The petitioners contended that the Alabama unemployment compensation law infringed the due process and equal protection clauses of the Fourteenth Amendment. Mr. Justice Stone in the majority opinion frequently referred to pronouncements from the Cardozo opinion. The opinion stated that there was a valid exercise

7. *Id.* at 580.
8. *Id.* at 589-90.
9. Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937).

of the state's taxing power, the Fourteenth Amendment was not violated by the exemptions, and the exemption of small employers was not arbitrary. The Court recognized that relief of unemployment was a public purpose for which the states could raise taxes. It was held that the Fourteenth Amendment was not violated on the ground that the law exacted a tax from an employer who may either not have contributed to unemployment nor benefited by the expenditure—responsibility for unemployment and the business cycle "many believe . . . cannot be apportioned to individual employers in accordance with their employment experience. . . ."[10] Finally, the Alabama Act was not unconstitutional on the theory that the state was coerced by the federal law.

*F. Subsequent Revisions in Federal Legislation*

No basic changes have been made in the structure of federal employment security legislation since the passage of the original Social Security Act. On the other hand, there have been several important and many minor amendments.

1. *Changes in Coverage*—Railroad workers were taken out of the coverage of the Federal Unemployment Tax and covered under a federal system by the Railroad Unemployment Insurance Act,[11] approved June 25, 1938. Under this legislation, the states were required to transfer the contributions collected for railroad workers to the railroad fund.[12]

Certain other changes of a restrictive character were made in coverage in 1939, 1946, and 1948. In the Social Security Amendments of 1939,[13] family workers, employees of fraternal organizations and voluntary employee beneficial associations, students employed by educational institutions, student nurses and internes, employees of foreign governments, newsboys under eighteen, certain agricultural processing workers, and certain other minor groups were excluded from coverage of the federal tax. As a further restriction the tax was made applicable to only the first $3,000 in wages paid each year to each covered worker. In the 1946 Social Security Amendments certain other groups were excluded, including employees of small fishing vessels and employees of international organizations. In 1948, after a broad interpretation of the definition of "employee" was upheld by the United States Supreme Court,[14] Congress enacted the so-called "Status Quo" amendment,[15] which restricted the definition of employee

10. *Id.* at 524.
11. 52 STAT. 1094 (1938).
12. Two extensions were granted by Congressional action for such transfers, the final date being July 1, 1942.
13. 53 STAT. 1360 (1939).
14. United States v. Silk, 331 U.S. 704 (1947) (adopting the "economic reality" test of employment).
15. 62 STAT. 438 (1948).

to "the usual common-law rules applicable in determining the employer-employee relationship. . . ." This amendment removed from federal coverage about 750,000 workers who had been interpreted as covered, but a large proportion of these workers continued to be covered under the so-called "ABC" test of the employer relationship in most state unemployment insurance laws.

On the other hand, the 1939 amendments permitted the states to cover national banks, building and loan associations, and other financial institutions defined as instrumentalities of the United States. An Act in 1945[16] permitted the states to cover employees of the Bonneville Power Administration, and the Social Security Amendments of 1946 permitted the states to cover maritime workers on American vessels beginning January 1, 1948.

The only substantial increase in coverage of the Federal Unemployment Tax Act since its enactment was made in Public Law 767 of the 83d Congress (approved September 1, 1954), whereby coverage was extended from employers having eight or more employees within twenty or more weeks in a year to employers having four or more employees in twenty weeks, commencing January 1, 1956. It is estimated that this will extend coverage to about 1,400,000 workers in the states that do not already cover these smaller employers.

2. *Unemployment Compensation for Special Groups*—Several other important groups have been given temporary or permanent unemployment compensation protection through federal legislation. Title V of the Servicemen's Readjustment Act of 1944[17] provided a temporary plan of unemployment benefits for servicemen receiving an honorable discharge after service during World War II. The benefits were twenty dollar a week for a maximum of fifty-two weeks, subject to certain adjustments for benefits paid under regular unemployment insurance laws.

Veterans who have had ninety days or more of service since the beginning of the Korean conflict are provided with unemployment compensation under Title IV of the Veterans' Readjustment Assistance Act of 1952.[18] Under this Act, veterans are eligible for benefits after from thirty to ninety days, based on their mustering out pay, up to a maximum of twenty-six dollars a week for twenty-six weeks. These benefits are paid under the provisions of the unemployment insurance law of the state where the veteran resides and are paid only to the extent that the benefits that the veteran is entitled to under the applicable state law are less than the federal maximums. By Presidential Proclamation on January 1, 1955, no person entering military service after

16. 59 STAT. 546 (1945).
17. 58 STAT. 284 (1944).
18. 66 STAT. 663 (1952).

January 31, 1955, will be eligible for benefits, and all benefits will cease on January 31, 1960.

"Reconversion unemployment benefits for seamen" were provided under Title XIII of the Social Security Act for a period of three years ending June 30, 1950, to seamen who had been employed by operators of vessels who were general agents of the War Shipping Administration of the United States Maritime Commission.[19] These benefits were paid according to the provisions of the state law in the state where the seaman signed his articles, and were supplemental to benefits to which he was entitled under the state law. This legislation was necessary because seamen employed on federal vessels were federal employees.

Similar legislation was enacted on August 5, 1953[20] for seamen employed by general agents of the Maritime Administration of the Department of Commerce after June 30, 1953.

A permanent system of unemployment compensation was provided for federal civilian employees, with a few minor exceptions, in Public Law 767, enacted at the last session of Congress. This system, which applies to about 2,500,000 federal employees, began paying benefits January 1, 1955. The benefits will be the same as those provided in the state in which the former federal employee last worked in federal or private employment. If the worker has also had private employment during the base period, his federal and private earnings are combined in determining benefits.

All the federal programs of unemployment compensation described above, except that for railroad workers, have been or are being administered by the state employment security agencies under agreements with the Federal Government. The states are reimbursed for the additional cost of the compensation paid under the federal programs.

3. *Financing Amendments*—The War Mobilization and Reconversion Act of 1944[21] contained provisions under which a state whose unemployment fund was dangerously low could receive a federal advance to help meet its benefit liabilities. Such advances were to be financed out of the accumulated excess in federal unemployment tax receipts over employment security administrative expenses. These provisions, enacted as Title XII and amendments to Title IX of the Social Security Act, were extended twice, but expired as of March 31, 1952.

Public Law 567 of the 83d Congress, approved by the President on

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19. Social Security amendments of 1946. 60 STAT. 983 (1946). The original provisions expired June 30, 1949, but were extended to June 30, 1950, action of the 81st Congress. 63 STAT. 445 (1949).

20. 67 STAT. 386 (1953); INT. REV. CODE §§ 3305 (g) (h) (i); and 3306 (n) (1954).

21. 58 STAT. 785 (1944).

August 5, 1954, enacted a new Title XII on a permanent basis. Under the new provisions, a fund of $200 million will be built up out of the excess federal unemployment tax collections over federal and state employment security administrative expenses, beginning with the excess for the fiscal year ending June 30, 1954. A state will be eligible for a federal advance out of this fund if at the end of any calendar quarter its unemployment fund is less than its benefit payments over the preceding four calendar quarters. The amount of the advance may not exceed the highest benefit expenditures in any of the four preceding quarters. No interest will be charged on this advance. Although a state can repay an advance at any time, automatic repayment will commence following the fourth January after the advance is made. Such repayment will be effected through a reduced offset against the federal tax for wages paid in the state by employers covered under the state law. The offset will be reduced five percent for the first year of repayment, ten percent for the second year, and so on progressively until the loan is repaid.

Public Law 567 also provides that after the $200 million loan fund is accumulated, excess federal unemployment tax collections will be distributed at the end of each fiscal year to the state unemployment trust funds. Distribution will be in the proportion that each state's taxable payroll bears to the total taxable payrolls of all states. Such funds may be used by the state for benefit payments or, to the extent that appropriations are made by the state legislature, for administration in addition to administrative funds granted to the state under Title III of the Social Security Act.

In computing the excess federal unemployment taxes, the cost of administration by the Department of Labor (except its functions in Puerto Rico and the Virgin Islands), the Department of the Treasury, the state programs for unemployment insurance and public employment service,[22] and the veterans' and federal civilian workers' unemployment compensation programs will be subtracted from federal tax receipts. The dedication of the federal unemployment tax receipts to the employment security program is an important change in the system, since previously the excess receipts went into the general funds of the Treasury. This change should result in appropriations for administration being made without "budget balancing" and general federal economy measures affecting the adequacy of appropriations. The permission for the states to use excess tax receipts distributed to them for administration may also have important implications in the financing of the administration of the system.

22. Public Law 775, 81st Congress, 64 STAT. 822 (1950), amended the Wagner-Peyser Act so as to provide that the public employment service would be financed entirely out of federal funds, a *de facto* arrangement that had been in effect through language in the appropriation acts since the Employment Service was returned to state operation after World War II.

Only minor changes in the experience rating provisions of the federal law had been made until the enactment of Public Law 767 by the 83d Congress. In connection with extending the coverage of employers from those with eight or more employees to those with four or more employees, it was realized that the newly covered employers would have to pay maximum contribution rates for at least three years under federal requirements. In order to remove this competitive disadvantage as soon as practicable, it was provided that the states could, if they wished, grant reduced rates to newly covered employers after at least one year of experience with unemployment under the system. This change may also be applied to new employers, who now contribute a substantial proportion of all unemployment taxes in some states by reason of paying maximum rates for at least three years.

4. *Administrative Amendments*—In addition to the change in the financial basis for administration made by the "earmarking" of the excess federal unemployment tax receipts, as described above, several other changes have been made affecting the administration of unemployment compensation.

The 1939 Social Security Amendments added a requirement that personnel standards on a merit basis shall be established and maintained by a state as a condition for the receipt of administrative grants under Title III. This amendment has had a salutary effect on the quality of employment security personnel in those states that did not have civil service systems.

The 1939 Social Security Amendments also added, as conditions for the receipt of administrative funds, that they may be used only for the purposes and in the amounts found necessary by the Secretary of Labor for *proper and efficient* administration of the state law and that any funds not so used shall be refunded to the federal treasury.

The so-called "Knowland Amendment" in the Social Security Amendments of 1950 made important changes in the conditions under which the Secretary of Labor may find a state out of conformity with the requirements of Title III of the Social Security Act and the Federal Unemployment Tax Act. This will be described more fully in connection with the discussion of conformity issues in a later section on administration.

## III. State Unemployment Compensation Legislation

The federal legislation was very effective in securing the enactment of state legislation. By June 30, 1937, every state in the Union and the District of Columbia, Hawaii and Alaska had passed approved legislation.

A. *Provisions in Early Laws*[23]

In order to assist the states in drafting unemployment insurance legislation, the Committee on Economic Security prepared two "model" draft laws, one similar to the Wisconsin Law, with provision for individual employer reserve accounts, and one of the "pooled fund" type, with optional provisions for experience rating. These draft bills and later revisions issued by the Social Security Board had a marked influence on many of the original state laws, although there were a large number of variations from the draft bill provisions.

1. *Coverage*—The state laws followed the federal unemployment tax exemptions from coverage quite closely, except with respect to the size of firm covered. It is significant that the federal restriction of coverage to employers of eight or more in twenty or more weeks in a year was followed in only twenty-seven states. Wisconsin, which had originally covered employers of ten or more, changed to coverage of eight or more in eighteen weeks, and reduced this to coverage of seven or more in 1938 and six or more in 1939. Iowa covered employers of eight or more in fifteen weeks; Connecticut of five or more in twenty weeks; nine states covered employers of four or more; two states, of three or more; and nine covered one or more in twenty weeks. The District of Columbia covered employers of one or more at any time.

2. *Amount and Duration of Benefits*—Estimates of possible amounts and durations of unemployment benefits made by the actuarial staff of the Committee on Economic Security heavily influenced the original benefit provisions of the state laws. Two sets of estimates were prepared; one was based on 1922-30 employment and unemployment estimates and the other on 1922-33 estimates. On the basis of 1922-33 statistics, it was estimated that only eight weeks of benefits could be paid with a two-week waiting period and ten weeks with a four-week waiting period. On the basis of 1922-30 statistics, it was estimated that twelve weeks of benefits could be paid with a two-week waiting period and fifteen weeks with a four-week waiting period. These estimates assumed among other things that benefits would be paid at fifty percent of average weekly wages up to a weekly maximum of fifteen dollars and allowed for an additional week of benefits for each six months of employment during which no benefits were drawn up to a maximum of ten additional weeks.

The Committee on Economic Security's draft bills were based on the optimistic view that future unemployment experience would be no worse than that occurring in 1922-30; they recommended that the states provide an unemployment benefit of fifty percent of wages up to

23. The data in this section are based on a compilation of state laws as of April 1, 1938.

a maximum of fifteen dollars a week for a maximum duration of sixteen weeks, or of fifteen weeks if the ten additional weeks of benefits based on long-term employment were provided.

The Social Security Board issued revised draft bills in January, 1936, which recommended fifty percent of full time weekly wages up to a maximum of fifteen dollars for a maximum of twelve weeks with an initial waiting period of two weeks and an additional waiting period after thirteen weeks if unemployment was interrupted. Benefits were to be further limited by providing for one week of benefits for each four "uncharged" weeks of employment in the preceding 104 weeks. Additional benefits of 1/20th of each uncharged week of employment in the preceding 260 weeks were also suggested.

In a footnote the bills stated that the twelve-week duration was merely illustrative, and the duration that could be financed in each state depended on the contribution rate, length of the waiting period and other factors.

The actuarial estimates and recommended benefits of the Committee on Economic Security and the Social Security Board had a marked effect on the benefits provided in the original state laws. Forty-eight states provided a maximum weekly benefit amount of fifteen dollars, with Michigan providing a maximum of sixteen dollars and Wyoming a maximum of eighteen dollars. Wisconsin increased its maximum from ten to fifteen dollars in 1938. Twenty-three states, following the draft bills, paid minimum benefits of five dollars a week or ¾ths of full-time weekly wages, whichever was less. Most other states paid higher minimums, up to eight dollars in Oklahoma.

The states in general displayed more optimism with respect to the duration of benefits than the actuaries of the Committee on Economic Security. Four states provided for twenty weeks maximum benefits; one provided for eighteen weeks; twenty-eight for sixteen weeks; five for fifteen weeks; five for fourteen weeks; three for thirteen weeks; and three for twelve weeks. Wisconsin's maximum was thirteen weeks of consecutive or twenty weeks of intermittent unemployment in a year. Massachusetts provided for duration equal to 12.5 percent of wages in the first seven of the preceding eight calendar quarters plus three percent of wages in the next preceding sixteen quarters, and Kansas provided for eight percent of wages in the first eight of the last nine quarters. The District of Columbia and South Carolina provided an additional 10.6 weeks and Louisiana an additional ten weeks duration on the basis of an additional week for each twenty weeks of uncharged employment in the preceding five years, but these provisions were repealed before they became effective. Most of the other states with long duration provided for employee contributions to assist in financing. The most common waiting period was two weeks in thirteen (in thirty states); seven states required three weeks in thirteen. Only one state required only two weeks in fifty-two; while eight required three weeks in fifty-two and two required four weeks in fifty-two. While those states providing for longer duration of benefits provided the longer waiting periods, this was not consistently so. It would appear that most states were more concerned with providing adequate benefits than with strict adherence to actuarial calculations. Later experience, as we shall see, justified more optimism than the actuaries of the Committee on Economic Security displayed.

3. *Eligibility Requirements*—All states provided that an unemployed worker must be able to work and available for work. It would not be profitable to examine the original qualifying requirements of previous employment, since most states modified these when their benefit formulas were modified shortly after the original laws were passed, as will be brought out in the next section.

4. *Disqualification Provisions*—The Social Security Board draft bill of 1936 recommended as disqualification provisions a postponement of benefits for from one to five weeks (in addition to the waiting period) in case of voluntary quitting without good cause; of from one to nine weeks for discharge for misconduct and of from one to five weeks for refusal of suitable work without good cause. With respect to voluntary quitting without good cause, twenty-eight states followed the draft bills in disqualifying for the week that leaving occurred and up to the five weeks following. New York provided for no disqualification for this cause. The other states provided for shorter or longer periods of disqualification, the longest maximum disqualification being nine weeks. The Wisconsin law provided that rights to benefits were cancelled based on employment with the employer that the worker left, and for a four-week disqualification period for benefits based on employment with prior employers. With respect to discharge for misconduct, the draft bill recommendation of one to nine weeks disqualification was followed in only seventeen states. Eleven states provided for from one to five weeks. Most of the other states varied between these groups. Three states enacted more stringent provisions—New York imposing a flat period of ten weeks; Washington disqualifying for the duration of unemployment; and Wisconsin cancelling benefit rights earned under the discharging employer and disqualifying for the week of discharge and three additional weeks for benefits based on employment with previous employers. Pennsylvania had no disqualification provisions for this cause.

Thirty-one states followed the draft bill recommendation of one to five weeks disqualification for refusal of suitable work. Most other states imposed lesser periods. However, four states disqualified for the duration of the unemployment and Missouri and Wisconsin cancelled all benefit rights.

The states generally followed the draft bill provisions with respect to disqualification of persons involved in labor disputes. Forty-one states disqualified for any week of unemployment due to stoppage of work because of a labor dispute where the individual is or was last employed, unless neither he nor any member of his grade or class was participating in, financing or directly interested in the dispute. Seven states applied the same disqualification with a different definition of those involved. New York disqualified for only ten weeks, Rhode Island for eight weeks and Pennsylvania for three weeks.

Forty-five states with minor variations followed the draft bill in reducing the unemployment benefit by the amount of other remuneration received in wages in lieu of notice, workmen's compensation for temporary partial disability, or old-age benefits under Title II of the Social Security Act.

Other miscellaneous disqualifications were imposed by a dozen states including four for misrepresentation to obtain benefits.

5. *Financing of Benefits*—The question whether employer contributions should be varied with experience had perhaps been debated more than any other feature of unemployment insurance after the passage of the Wisconsin law. The virtues of individual employer reserves with variation in rates versus completely pooled funds were hotly argued. The advocates of individual reserves contended that the prospect of lower tax rates would provide an incentive to the employer to stabilize his employment; the advocates of pooled funds contended that the causes of unemployment were nation-wide and that more adequate benefits could be provided by pooling of funds. The draft bills of the Social Security Board offered a compromise—one bill provided for pooling of funds with experience rating based on the excess of contributions over benefits; the other bill provided for individual employer accounts with a partial pooling of the contributions. The experience rates suggested were the same in the two bills; a reduction of the rate of contribution to 1.8 percent of payroll if the excess of contributions by an employer over benefits paid to his former employees exceeded 7.5 percent of payroll, and to 0.9 percent if the excess was ten percent of payroll.

The original provisions in the state laws varied widely. All but eleven states provided for experience rating and nine of these provided for a study of experience rating. Surprisingly, in view of the early example provided by the Wisconsin law, only seven states provided for individual employer reserves, of which two provided for partial pooling of contributions. Thirty-three states provided pooled funds with experience rating of which twenty-eight provided for automatic rates and five provided for determination of rates by the administrative agency. Four states provided for guaranteed employment plans, and three provided for exemption from contributions if the employer provided benefits equal to or greater than those provided by the state law.

With respect to the experience rates, they largely followed the schedule suggested in the draft bills, with twenty states providing penalty rates of 3.6 percent, two of 3.7 percent and four of four percent if benefits paid to an employer's workers exceeded his contributions.

Ten states originally provided for employee contributions, but Indiana's provision lapsed as of April 1, 1937. The rates were usually one percent, although Louisiana provided for 0.5 percent and Rhode Island for 1.5 percent. Three states provided for experience rating of employee contributions.

B. *Developments in State Legislation*

1. *Coverage*—There was substantial progress in the coverage of smaller firms up to 1946, after which there were no further changes by state action. The number of states covering employers of one or more workers increased from ten to seventeen. Several other states covered smaller firms so that the tabulation in 1954 as compared with 1938 stood as follows:

| *Size of firm covered* | *1938* | *1954* |
|---|---|---|
| 1 or more | 10 | 17 |
| 3 " " | 2 | 2 |
| 4 " " | 9 | 8 |
| 5 " " | 1 | 0 |
| 6 " " | 0 | 2 |
| 7 " " | 1 | 0 |
| 8 " " | 28 | 22 |

With the passage of Public Law 767 in 1954, it is expected that all the states will cover employers of four or more, or smaller firms, by January 1, 1956. Most of the states covering only larger employers have provisions that any firm within a state which is subject to the federal tax is also subject to the state tax. This is usually interpreted to mean that the state coverage is changed when the federal coverage is changed.

2. *Benefit Amount*—The early state laws provided for a benefit amount equal to fifty percent of full-time weekly earnings. However, soon after contributions commenced, it was realized that it would be an insurmountable job to collect and tabulate weekly information of the wages of workers. Wisconsin solved this problem by providing for separation reports from employers on which the weekly wages were detailed; however, the Social Security Board was skeptical that such detailed reports could be secured from all employers, especially the smaller ones that did not keep detailed payroll records. Accord-

ingly, the Board encouraged the states to amend their laws so as to calculate weekly wages by dividing thirteen into the earnings in the quarter during the period of prior earnings (used as a base for determining benefits), within which quarterly earnings were highest. It was assumed that on this basis, an approximation to fifty percent of full-time weekly wages would be provided in benefits. By 1940, the Social Security Board was recommending a simplification of the benefit formula under which the concept of weekly wages would be dropped entirely and benefits would be computed directly as a fraction of high quarter earnings. Since for many individuals even the high quarter will include some unemployment, a fraction larger than 1/26th of high quarter earnings was advocated, such as 1/24th or 1/20th.

An alternative plan that was advocated by a representative of a large employer was to pay one percent of annual earnings as the weekly benefit.

Within a comparatively short time, all of the states except Wisconsin adopted one of these two alternatives, but with variations in the fractions of quarterly or annual earnings. In 1954, thirty-eight states calculated weekly benefits as a fraction of quarterly earnings and nine states used an annual-wage formula. Three states, Michigan, New Jersey and New York, had joined Wisconsin in using an average weekly wage formula, using weeks during the fifty-two weeks preceding the new claim in which there were at least minimum specified earnings.

There has been a progressive increase in the fraction used for calculated benefits under most laws of all three types. Of those states using a fraction of high quarter earnings, only six now use a fraction of 1/26th; eleven use a fraction of 1/25th, one of 1/24th, one of 1/23rd and eight of 1/20th. Eleven other states use a weighted schedule, which gives a greater proportion of the high-quarter wages to lower-paid workers than to those earning more. In these states the minimum fraction varies from 1/23rd to 1/28th; the maximum from 1/17th to 1/25th. All the states with an annual-wage formula use a weighted schedule which gives as weekly benefits a larger proportion of annual wages to the lower-paid workers. In these states the minimum fraction for the minimum benefit varies from 1.54 percent of annual wages to 3.41 percent; that for the maximum benefit varies from 0.88 to 1.37 percent. In the four states with average-weekly-wage formulas, the fractions are sixty-three to forty-one percent in Michigan (plus dependents allowances); in New Jersey two-thirds, in New York sixty-seven to fifty-two percent and in Wisconsin sixty-nine to fifty-one percent.

Whereas only the District of Columbia originally provided for dependents' allowances, eleven states now provide such allowances.

These states vary widely in the definition of a compensable dependent and in the allowance granted. Six states pay allowances only for dependent children under sixteen or eighteen years of age. The allowances vary from one dollar to seven dollars per dependent, four states varying the allowance with the basic benefit. The total allowances vary from three to thirty-five dollars.

All states provide both minimum and maximum amounts. The basic minimums now range from 0.50 a week to $15, with ten states providing a minimum of $5 and eighteen states providing a minimum of $10. Two states provide a minimum of $16 for a claimant with the minimum weekly benefit and the maximum number of dependents. All of the states have increased their maximum benefits from the original amounts. While only two states originally paid a maximum of more than $15, at present all states pay maximums of $20 or more. Eight states provide basic maximums of $20 to $24; twenty-three states have maximums of $25 to $28; eighteen have a maximum of $30; one of $33; and one of $35. The maximums are increased for those receiving dependents' allowances in all states except the District of Columbia. Alaska pays a maximum of $70 to a claimant with five dependents.

3. *Duration of Benefits*—There has been a general increase in the maximum duration of benefits in the states. Only four states provide a maximum duration of sixteen weeks; three of these provide this duration originally. Twenty-two other states provide a maximum duration of from eighteen to twenty-four weeks; fifteen of these provide twenty weeks. Twenty-five provide a duration of twenty-six weeks. Those states that originally provided additional duration on the basis of long-term employment have dropped such provisions. While only Ohio originally provided a uniform potential duration for all claimants, fourteen states now so provide, with four states providing a uniform potential duration of twenty-six weeks.

There has been a wide-spread shortening of the waiting period. Three states now require no waiting period, forty-six states require a waiting period of one week of total employment, and two states a waiting period of two weeks. A few states require a longer waiting period for partial unemployment, usually two weeks. In all states, except Texas, only one waiting period is required in a benefit year, while many of the early laws required a waiting period within every thirteen weeks, except when there was an uninterrupted period of unemployment.

4. *Eligibility Conditions*—With the shift to high-quarter-wage or annual-wage benefit formulas, qualifying requirements are now generally measured by wages.

Of the twenty-eight states with high-quarter-wage formulas, twenty-one use a multiple of the weekly benefit amount; four use varying multiples; eight use a flat dollar amount for minimum benefits; three require 1½ times the high-quarter earnings and one requires sixteen percent of average state wages. The nine states with an annual wage formula use flat qualifying wages. The four states with average-weekly-wage formulas use a qualifying period expressed in weeks of employment. Missouri, which has a minimum benefit of fifty cents, has no qualifying requirement. The most usual requirement in states requiring a multiple of the weekly benefit amount is thirty times that amount. The flat wage requirements vary from $100 to $600 which qualify for minimum benefits only; there are higher requirements for higher weekly benefits and in some states for longer duration of benefits. The states with weeks-of-employment requirements require from fourteen to twenty weeks, with only those weeks in which from thirteen to fifteen dollars is earned being counted.

For continuing eligibility for benefits during employment, in addition to the "able-to-work" and "available-for-work" requirements, twenty-six states now require a showing that the claimant is "actively seeking work" in addition to having registered at the local employment office.

5. *Disqualification from Benefits*—There has been a continuing trend toward more stringent disqualification provisions in many states. This has been principally in terms of disqualifying for the duration of the unemployment and reduction or cancellation of benefit rights. Several impose disqualifications with respect to earlier separations than the last.

With respect to voluntary leaving, "good cause" includes good personal cause in thirty states, as in the original laws, but in twenty states "good cause" is restricted to good cause connected with the work or attributable to the employment. Montana disqualifies for any voluntary leaving regardless of the cause. The period of disqualification has been increased in some states: to twenty weeks in one state. Sixteen states disqualify for the duration of unemployment and thirteen of these require employment after the voluntary quit before a worker can again qualify for benefits. In seventeen states, in addition to the postponement of benefits, benefit rights are cancelled or reduced, usually to the extent of the disqualification imposed.

The period of disqualification for discharge for misconduct has been lengthened in many states and in nine states it is for the duration of unemployment. Seventeen states reduce or cancel benefit rights. Fifteen states have heavier disqualifications for "aggravated misconduct."

For refusal of suitable work, a few states have lengthened the period of disqualification and fifteen states disqualify for the duration of unemployment, with ten of them specifying the amount of requalifying wages. Benefit rights are reduced or cancelled in sixteen states.

The definition of labor dispute has been liberalized in some states, nine excluding lockouts, three excluding disputes due to the employer's failure to conform to the provisions of a labor contract, and four states excluding those due to failure to conform to federal or state laws on such matters as wages, hours, working conditions, or collective bargaining. Thirty-three states disqualify during the stoppage of work due to the dispute, thirteen states while the dispute is in active progress, and three states so long as the unemployment is due to the existence of a labor dispute. In New York, the maximum disqualification is for seven weeks plus the waiting period; in Rhode Island it is for eight weeks plus the waiting period.

With respect to disqualifying income, a worker is disqualified or his benefits reduced if he receives workmen's compensation payments in twenty-three states, old-age insurance benefits in thirteen states, a pension from an employer in sixteen states, wages in lieu of notice in thirty states and dismissal payments in eighteen states. Forty-five states originally had the first, second, and fourth of these provisions.

In all states, under the regular provisions concerning availability for work and ability to work, students who are not available for work while attending school, women who are unable to work because of pregnancy, and women who are unavailable for work because of marital obligations are not qualified for benefits. In addition, many states have special provisions: thirty disqualify for unemployment due to pregnancy (usually before and after childbirth for a specified number of weeks); eighteen disqualify for unemployment due to marital obligations; seventeen limit the benefit rights of students who have had covered employment. In addition, thirty-one states exclude service performed by students for educational institutions and hospitals, and eight exclude part-time work of students from coverage.

While only a few states originally had special disqualifications for fraudulent misrepresentation to obtain or increase benefits, forty-seven states now have such provisions, which were necessary in order to tighten the laws against abuse and because of the difficulty of getting court convictions. The conditions for disqualification follow no general pattern, nor does the amount of disqualification. In many states, this disqualification is more severe than other disqualifications. In twelve states the disqualification is for a year; in other states it may last longer. Misrepresentation results in cancellation or reduction of benefit rights in thirty-two states, and in fourteen other states may involve reduction of benefit rights.

All states also have provisions for fine or imprisonment or both for fraudulent misrepresentation to obtain or increase benefits, which may be applied in addition to the disqualification provisions. Generally, court action is taken only in the more flagrant cases. In addition, the employer is subject to fine or imprisonment or both in all states for misrepresentation to prevent or reduce benefits; in twenty states the penalty on the employer is greater than that on the claimant.

6. *Financing Provisions*—All states now have some type of experience rating of employer contributions. Such provisions first became effective as late as 1947 in five states and in 1948 in one state, although experience rating commenced in most states in the early 1940's.

With respect to types of experience rating, only one state, Kentucky, has an individual reserve-account system, and it has a partial pooled fund. However, "reserve-ratio" systems within pooled funds are now used in thirty-two states. Ordinarily, the reserve in these plans is the difference between the employer's total contributions and the total benefits received by his workers since the law became effective. Such a reserve is computed as a proportion of the employer's taxable payroll in determining his "reserve-ratio." The size of the reserve-ratio determines the employer's tax rate, with rates declining as the ratio rises usually according to a prescribed schedule.

Five states use a "benefit-ratio" formula, the ratio of benefits to payrolls being the index for rate variation. Six states use a radically different method, commonly called the "benefit-wage-ratio" formula. The separation of workers which results in benefit payments are weighted by the wages earned by these workers with each base-period employer, and the result is recorded as "benefit wages." The relative experience of employers is determined by the ratio of each employer's "benefit wages" to his total taxable wages. Variable rates are then assessed which will raise the equivalent of the total amount paid out as benefits. The range of rates is limited by a minimum and a maximum. Connecticut used a "compensable-separations" formula which is somewhat similar.

Six states use a "payroll-decline" formula and New York combines this with its reserve-ratio plan. Under this formula, an employer's experience with unemployment is measured by the decline in his payrolls from year to year or quarter to quarter. The declines are expressed as a percentage of payrolls and rates are assigned in inverse ratio to the payroll decline.

It would, of course, be impossible to describe all the different features of the state laws, but the foregoing analysis has covered the more important provisions.

## IV. Administration

### A. *Federal Administration*

The administration of the federal side of the unemployment insurance system is divided between the Department of Labor and the Treasury Department. The Treasury Department collects the Federal Unemployment Tax and performs the fiscal operations in connection with deposits of moneys by the states in the Unemployment Trust Fund, withdrawals therefrom, the apportionment of interest thereto, and the disbursement of grants to the states for administration. The Department of Labor, through the Bureau of Employment Security, determines whether each state's law is in conformity with federal requirements and certifies this fact annually to the Treasury Department for tax-credit purposes. It also reviews the state administration of unemployment insurance to determine whether the state is administering its law in compliance with federal requirements and determines the amount to be granted to each state for proper and efficient administration of its law. The Bureau of Employment Security also furnishes assistance to the states on administration and operating problems and develops federal and state legislative recommendations designed to improve the program. It requires statistical reporting of state operations and analyzes and publishes statistical information on state benefit and fiscal operations. The Bureau also serves as a clearing-house of information on state operations and cooperates with the state agencies in developing plans for interstate payment of benefits for workers who move from state to state. An important service from a legal standpoint is the compilation and distribution of selected state benefit decisions that have reached the appeal or court review state for the guidance of the states in interpreting their laws.

The Bureau, in addition, carries out federal responsibilities for veterans' unemployment compensation and unemployment compensation for federal civilian workers, including working out agreements with the states for payment of these benefits.

The Social Security Board originally, and later the Federal Security Agency, carried out the federal responsibilities now administered by the Department of Labor. These were transferred to the Department of Labor on August 20, 1949, by Reorganization Plan No. 2.

The United States Employment Service, established by the Wagner-Peyser Act of June 6, 1933, was originally administered by the Department of Labor, but by Reorganization Plan No. 1, effective July 1, 1939, it was transferred to the Social Security Board and merged with the Bureau of Unemployment Compensation to become the Bureau of Employment Security. During World War II, the United States Employment Service and the state employment services were transferred to the War Manpower Commission. In September, 1945, the United States Employment Service was transferred by Executive Order 9617 to the Department of Labor, and on November 16, 1946, the state employment services were returned to state operation. The United States Employment Service was transferred to the Federal Security Agency on July 1, 1948, and again became a part of the Bureau of Employment Security.

The Wagner-Peyser Act and Reorganization Plan No. 2 of 1949 provide for a Federal Advisory Council, composed of representatives of employers, employees and the public, to advise the Secretary of Labor and the Director of the Bureau of Employment Security on policy questions relating to the Bureau's responsibilities and functions.

1. *Grants for Administration*—An important part of the responsibility of the Bureau of Employment Security is the determination of and the granting to the state employment security agencies of the amounts found necessary for proper and efficient administration of their laws.

Since the Social Security Act required that unemployment benefits should be paid "solely through public employment offices or such other agencies as the Social Security Board may approve" and the Board approved no other agencies, an agreement was reached with the Secretary of Labor on March 30, 1937, under which the Social Security Board granted funds to the states for the expansion of the public employment services to meet the needs of the unemployment insurance program. After the return of the state employment services to the states, following World War II, the appropriation acts provided for the entire cost of the state employment services to be paid out of Title III funds. This practice was formalized by Public Law 775 (81st Congress), approved September 8, 1950, which removed the requirement in the Wagner-Peyser Act that the states match federal granted funds for the employment service.

The budget process for determining the amount of administrative grants to the states is a functional system that combines the use of workloads which are estimated on the basis of expected economic conditions and the time necessary to perform the functions adequately. Time studies have been made of different functions where possible in order to establish standard time factors adjusted to the differences in state laws. Percentage allowances are made for overhead costs. The states prepare individual budgets on the basis of estimated workloads and other factors, which are carefully reviewed and used in developing the total budget for all states. This total budget, as adjusted by the Bureau of the Budget, serves as the basis for the request for Congressional appropriation. Once the appropriation is made, funds are allotted to the states, taking into account the state budget requests but adjusting the allotments consistent with the total funds made available in the basic appropriation. In recent years Congress has appropriated a contingency amount to be granted to the states to meet unexpected increases in workloads, additional expense incurred by amendments to state laws, and changes in state salary schedules. Fiscal standards have been promulgated by the Bureau as a guide to state administrators in the expenditure of granted funds. These guides enable state administrators to proceed with reasonable certainty that expenditures made in accordance with the standards will be considered as properly made. If a state makes expenditures which are not in accordance with or not covered by the promulgated standards, these are considered on the merits of the case.

2. *Compliance with Federal requirements*—One of the major responsibilities of the Bureau of Employment Security is to determine whether the state unemployment compensation laws are in conformity with the requirements for state laws listed in the Federal Unemployment Tax Act[24] and the conditions for additional credit allowance for experience rating also prescribed in that Act. The Secretary of Labor is required to approve any state law within thirty days of its submission, if he finds that it meets the requirements of the Federal Unemployment Tax Act. Thereafter, on December 31st of each taxable year, he is required to certify to the Secretary of the Treasury that the state law still meets the requirements. The Secretary of Labor does not so certify if, after reasonable notice and opportunity for hearing to the state agency, he finds that the state has amended its law so that it no longer contains the required provisions. Prior to 1950, the Secretary of Labor had authority to withhold certification if the state had "changed" its laws so as to no longer contain the required provisions. This was broadly construed to include changes made by rules and regulations as well as administrative and court rulings. However, Section 405(a) of the 1950 Social Security Amendments (the so-called Knowland Amendment) changed the certification provisions so that only amendments (as distinguished from changes) to the state law could be considered. The Knowland Amendment also made the following additional changes in the certification provision:[25] The Secretary may withhold certification of the law, if a state, during the taxable year, has failed to comply substantially with the required provision. No finding that a state is failing to comply substantially with Section 3305(a)(5) of the Federal Unemployment Tax Act (the so-called "labor standards") can now be based on an application or interpretation of a state law with respect to which further administrative or judicial review is

24. In 1939, Title IX of the Social Security Act was made a part of the Internal Revenue Code, as Subchapter C, Sections 1600-1611. It was recodified in 1954 and now appears as Sections 3301-3308 of the Internal Revenue Code.
25. INT. REV. CODE § 3304(c) (1954).

provided for under the laws of the state. Also, a finding of the Secretary cannot become effective until the ninetieth day after the Governor of the state has been notified of the finding, and the finding cannot then become effective if, in the meantime, the state has amended its law so that it will comply substantially with the Secretary's interpretation of the provisions of the Federal Unemployment Tax Act.

The Knowland Amendment was introduced after the Secretary of Labor had found the Washington State law out of conformity after a hearing in December, 1949, in which the Secretary found that the State's interpretation of its law violated the so-called "labor standards" in the then Section 1603 (a) (5) of the International Revenue Code. The State brought itself into conformity by changing its interpretation before the end of the year. California was involved in the same issue, but retracted its decisions during the Secretary's hearing so that the case was dropped. These cases, however, engendered considerable feeling which led to introduction of this amendment.

The Secretary of Labor also may not certify a state for administrative grants unless he finds the requirements of Section 303 (a) of Title III of the Social Security Act have been met. Whenever the Secretary finds, after reasonable notice and opportunity for hearing to the state agency, that in the administration of the state law there has been a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto, or there has been a failure to comply substantially with any of the requirements of Section 303 (a), he is required to notify the state that no further administrative grants will be made to the state until he is satisfied that there is no longer any such denial or failure to comply. The Knowland Amendment added the proviso that no such finding of denial of benefits may be made until the question of entitlement has been decided by the highest judicial authority given jurisdiction under the state law.

The Department of Labor determines whether each state law contains the required provisions through examination of the law and amendments thereto. The Department determines whether there is substantial compliance through an examination of the state's administrative or court rulings after they have become final. The Bureau of Employment Security also makes administrative surveys to determine whether the administrative requirements of Title III have been met.

Many questions of conformity with federal requirements are avoided in connection with proposed state amendments through informal conferences between the Bureau and the state agencies. The same method is used with respect to draft legislation drawn up by the state agency; the Bureau in most such cases is able to show the state administrators how they can revise their amendments so that no conformity issue will be involved. Also, many conformity questions on administrative practices, rules, and regulations or interpretations of the state law in appealed cases are resolved through conferences between the Bureau and the state agency. In fact, in only three cases have conformity issues reached the hearing state: the two cases referred to above and a case in 1947 involving the additional credit requirements. In the latter case, Minnesota passed an amendment which permitted employers to make voluntary contributions which were applied to previous years so as to permit them to lower their experience ratings. After a hearing was called early in the year and the amendment was found out of conformity, the Federal Unemployment Tax Act was amended later in the year to permit the practice involved in the amendment.

Administrative funds have been withheld only once under Title III of the Social Security Act. This occurred with respect to South Dakota in 1939, when it was proposed that benefits be paid through the state's welfare offices after no appropriations had been made for the state's employment offices to match federal grants under the Wagner-Peyser Act. The funds were restored when the State Governor made sufficient funds available, after a lapse of two months, in order to reopen the state employment offices.

B. *State Administration*

The state unemployment insurance laws are administered by independent boards or commissions in nineteen states, by independent departments of the state government in fourteen states, by the State Department of Labor in seventeen more, and by the State's Workmen's Compensation Agency in one state. In all states the same overall agency which administers unemployment insurance also administers the employment service. The states are required to have tripartite advisory councils under the Wagner-Peyser Act; and in all jurisdictions, except the District of Columbia and Texas, the unemployment insurance law requires an advisory council. In all but two states one council performs both functions.

Under the requirement in Title III that the state law provide for "methods relating to the establishment and maintenance of personnel standards on a merit basis," all states have made provision for the appointment on a merit basis of the personnel administering the program except for the policy-making heads of the agencies. In states with civil service laws, appointment of personnel is in accordance with state civil service regulations, or, in the case of the District of Columbia, under the federal civil service regulations. In the other states merit councils are required for the administration of the merit system.

The state employment security agencies administer all features of the unemployment insurance laws including determination of coverage, collection of contributions (with the exception of Utah), the taking and payment of claims, and the hearing of appeals from benefit decisions. Contributions collected must immediately be deposited with the United States Treasury for investment in the Unemployment Trust Fund and may be withdrawn only for the payment of benefits. The grants for administration received from the Federal Government are deposited in administrative funds created for that purpose. In forty-three states these are in the state treasury; in the rest of the states the employment security administrator deposits and expends the administrative funds.

All state laws, as required by Title III of the Social Security Act, provide for appeal tribunals, and all but four states provide for two appeal stages before cases can be appealed to the state courts. With respect to the first appeals stage, in twenty-three states the appeal is heard by a single referee. In most of the other states, the appeal is heard either by one referee or by a referee and two associates representing employers and employees. At the second stage of appeal, twenty-two states have a board of review or appeals board, all of which consist of three members. In twenty-five states the second appeal stage is handled by the commission or agency head.

## V. Appraisal of Unemployment Insurance

This survey may have raised a question whether, in view of the great variety of provisions in the state laws, the system has been effective in meeting the needs of unemployed workers. While there are definite limitations on the adequacy of the program in many states, it still can be said that unemployment insurance has made a major contribution to the needs of the unemployed and to the economy.

Since there was still a large volume of unemployment when the payment of benefits commenced in the states, the system encountered difficulties until rearmament in connection with World War II absorbed practically all of the unemployed. Those states that commenced benefit payments during the drop in employment in 1937 particularly had problems in making benefit payments to the flood of claimants that came to their doors. On the other hand, the collection of contributions for two years before benefits commenced assured adequate funds for the payment of benefits. By July, 1939, the unemployment insurance laws were in full operation in the forty-eight states, the District of Columbia, Alaska and Hawaii. In that year, out of an estimated 30 million covered workers, 5 million unemployed workers received a toal of $428 million in benefits, and at the end of the year reserves stood at $1.5 billion.

During World War II, benefits were at a low level. With high wartime payrolls, reserves grew to over $6.9 billion by the end of 1945, despite reduction in contribution rates to an average of 1.71 percent of taxable payrolls in that year. Only in 1946, which saw the peak of the post-war claim load, and in 1949, 1950 and 1954 did benefit payments exceed contributions. From the beginning of the program through November 30, 1954, contributions and interest aggregated over $21 billion, and benefits totalled about $13 billion. Funds available for benefits at the end of November, 1954, stood at approximately $8.2 billion.

Unemployment insurance has made a large contribution even in years of high employment. In 1953, with employment at peak levels, 6.9 million unemployed workers filed new claims for 10.3 million insured spells of unemployment; nearly 5.5 million earned sufficient wages to qualify for benefits; and 4.2 million of the insured claimants drew some benefits during the year. A total of $963 million was paid in benefits during 1953 for 42.6 million weeks of unemployment. During the same year, more than $1.3 billion was paid in contributions and $201 million earned on interests on reserves in the Unemployment Trust Fund.

In 1954—reflecting the increase in insured unemployment which commenced in November, 1953, reached a peak in April, 1954, and thereafter declined—a total of over $2 billion was paid out in unemployment benefits to 6.6 million claimants.

While this is an impressive picture, there is considerable room for improvement in the program. There follows a critical appraisal of the major features of the program which indicates where improvements could be made.

A. *Financing*

On the whole the system is adequately financed. At the end of 1953, reserves represented 8.9 percent of taxable wages, as against a benefit expenditure of 1.0 percent of taxable wages. While reserves declined to $8.2 billion at the end of November, 1954, because of the increase in benefit payments, this only illustrated the function of reserves in financing benefits in years of increased unemployment. The reserves in the individual states were also adequate in all but two jurisdictions, Alaska and Rhode Island, where the nature of the economy results in relatively high benefit costs. The reserves of these two states are solvent but are near the level where they would be eligible for an advance under the new Title XII of the Social Security Act. Some states have more than adequate reserves: Colorado in 1953 had reserves of eleven percent of taxable wages and benefit payments of only 0.3 percent of taxable wages, and Iowa had reserves of 11.2 percent and benefit payments of 0.5 percent of taxable wages. The healthy financial condition of the state funds existed in spite of the progressive lowering of contributions through experience rating, which averaged only 1.3 percent of taxable wages during 1953, with seventeen states having average rates below 1 percent.

On the other hand, there is evidence that the pressure for ever lower contribution rates has had a deterrent effect on increasing benefits to adequate levels and durations. Certainly, most states could afford substantial increases in benefits and could still keep contribution rates at moderate levels.

B. *Coverage*

As indicated earlier, there have been numerous exemptions from coverage of the unemployment insurance system through amendment of the Federal Unemployment Tax system, particularly in 1939; but few extensions of coverage were made until the legislation of 1954. By independent state action, there have been few additions to coverage except in the increase in the number of states covering smaller employers. With the federal extension of coverage to employers of four or more and the provisions of unemployment compensation for federal workers, the coverage will rise by approximately 4 million jobs to approximately 40 million. If coverage were extended to employers of one or more workers in all states, this would add about 1.9 million jobs to coverage. Approximately 4.3 million state and local government employees have no coverage; about 1.7 million hired farm workers and borderline agricultural workers on the average; about 2 million domestic workers in private homes; about 1.2 million employees of non-profit organizations; and possibly half a million workers, who are excluded by narrow definitions of the employer-employee relationship. The primary reason for originally excepting small employers from coverage no longer exists, since states of all sizes and industrial makeups have successfully covered employers of one or more persons. As to the excluded groups, any objections to covering them on the ground of administrative difficulty should be removed as experience is gained in covering them under old-age and survivors insurance.

C. *Benefit Amounts*

One of the areas in which unemployment insurance is most inadequate is in the amount of weekly benefits paid to the majority of workers. In the first six months of 1954, the average weekly benefit payment amounted to $24.45, or less than thirty-four percent of average weekly wages in covered employment of $72.98 during 1953. By contrast, average weekly payments in 1939, when all states had commenced making payments, benefits were forty-two percent of average covered wages. This decrease in the proportion of average benefits to average wages is due to the failure of most states to increase their maximum weekly benefit amounts in keeping with increases in wages. In fact, the proportion of benefits to wages is generally at least fifty percent of average weekly wages in most states for workers whose benefits fall below the maximum amounts. Dependents' allowances in the ten states that have added these allowances have also served to increase the proportion of benefits to wages below the maximums. But with the lag in increasing benefit maximums, an increasing proportion of workers have their benefits held down by the maximum. In 1953, in all but thirteen states, over fifty percent of the beneficiaries were receiving the maximum and the percentages in individual states ranged up to eighty percent of all beneficiaries. This means both that large numbers of unemployed workers are receiving benefits that are inadequate to meet their non-deferrable expenses and that the economy of the country is not bolstered as much as it might be through unemployment insurance. Because of these human and economic considerations, the President in his Economic Reports of January 1954 and 1955 suggested that the states increase their maximum amounts so that the great majority of covered workers would be eligible to receive benefits equal to at least fifty percent of their regular weekly earnings.

D. *Benefit Duration*

While unemployment insurance is designed primarily to compensate short-term unemployment, it is not doing this adequately in most states. In this respect, the unemployment insurance system is still suffering from the drag of the overconservative actuarial estimates of 1935 and the modest duration of benefits that was originally provided in most states. Four states still pay a maximum duration of only sixteen weeks, and the majority less than twenty-six weeks. Even in times of high employment, such as 1953, the proportion of insured claimants who exhausted their benefit rights ranged from 8.6 percent to 41.7 percent in the different states; in three-fifths of the states, over twenty percent of the claimants exhausted their benefits before finding employment again. While even in times of prosperity some workers have too long a period of unemployment to be protected, it is reasonable to expect that protection should be provided up to six months. It is significant that twelve of the seventeen states in which fewer than twenty percent of the claimants exhausted their benefit rights provided a maximum of twenty-six weeks duration of benefits. Due to higher unemployment, 1.6 million beneficiaries exhausted their benefits in the first eleven months of 1954, compared with fewer than 685,000 in the comparable period last year.

It also seems a sound principle that any worker who has sufficient employment to demonstrate his regular attachment to the labor market should have the same potential duration of benefits. This is more in accord with the principle of insurance than to vary the length of benefits with the length of previous employment. Whereas in the original state laws only one state provided for uniform duration, at the present time fourteen states provide the same potential duration to all insured claimants.

Again having in mind the needs of unemployed workers and the potential of unemployment insurance in maintaining purchasing power, the President in his Economic Reports of 1954 and 1955, also recommended that the states provide twenty-six weeks uniform potential duration to all insured workers.

E. *Qualifying Requirements*

The purpose of wage or employment qualifying requirements is to limit benefits to claimants who have had substantial and recent attachment to the covered labor force and ordinarily depend upon wages for their livelihood.

The qualifying requirements are too low in some states, too high in others, and in still others operate inequitably as between workers with low and high wages. Some requirements are so loose that they can be met by employment in a week or two; some are so rigid as to eliminate many steadily-employed low-wage claimants.

The requirements in some states are so low in dollar amounts as to make minimum weekly benefits too low and duration too short to justify bringing claimants into the program. The wages required in the base-period used for determining benefits are less than $150 in five states and less than $200 in eight additional states. Four of these thirteen states provide uniform duration of sixteen, eighteen or twenty weeks but the minimum weekly benefit is only three or five dollars. In the other nine states, the minimum weekly benefit is usually five or six dollars (ten dollars in one state) and the minimum weeks of benefits are six, seven or ten. The seventeen states with flat qualifying requirements, including the nine. states with an annual-wage formula, tend to require higher amounts—$200 to $600. However, under these requirements, a low-wage earner must work much longer than a high-wage claimant to qualify for any benefits.

At the upper end of the benefit scale, quite high base-period wages are required to qualify for weekly benefits. Base-period wages of from $1830 to $3000 are required for the maximum weekly benefit in the nine states with annual-wage formulas, and $1950 to $3118 are required for both the maximum weekly benefit and maximum weeks of benefits to be received in these states and in seventeen others.

The qualifying requirement is related to all the other elements of the benefit formula and to the wage-reporting procedures. The recency of the qualifying wages depends on the lag between the "base period" on which benefits are based and the period of compensable unemployment. In most states with a high-quarter formula and a base period of the first four of the last five completed calendar quarters before a valid claim, this lag is three to six months. In states with a uniform calendar-year base-period prior to a benefit year that begins the next April or July, the lag may be more than a year. The recent wages that are not yet in the base period create problems for new entrants to the labor force whose employment may be considerable but too recent to qualify them for benefits. At the other extreme are the long-term unemployed who can qualify for a second benefit year on wages before their first spell of unemployment. When objection has been raised to this result of the benefit year provision, many states have added special requalifying requirements to prevent payment of benefits in a second benefit year without a specified amount of intervening employment.

It is apparent that the qualifying-wage requirements of many laws need reexamination and also readjustment as benefit amounts and duration are increased.

F. *Disqualifications from Benefits*

Perhaps the most currently controversial area in unemployment insurance is that of disqualification provisions. Practically all the original state laws embodied the principle that disqualifications should be in the nature of a postponement of benefits for a reasonable period in cases of voluntary leaving without good cause, discharge for misconduct or refusal of suitable work. This was based on the reasoning that, after a time, the cause of a worker's continued unemployment is usually due to economic conditions if he is still seeking work. However, there has been an increasing tendency to disqualify for the duration of unemployment and to cancel a worker's benefit rights or reduce his benefits by the number of weeks of disqualification. This development has largely grown out of a belief on the part of those advocating such provisions that employers should be absolved from any responsibility for a former worker if the unemployment results from discharge for misconduct or unjustified quitting. In fact, this goes as far as their believing that in such cases the worker should be excluded from the benefits of the system even if the employer directly concerned is not charged with the worker's benefits.

This point of view is consistent with the views of those who believe that the cost of unemployment benefits should be charged as far as possible to the employer responsible for the worker's unemployment. However, it should not be overlooked that unemployment insurance is primarily a public program whereby the Government is systematically dealing with the social problem of unemployment. From a social and economic standpoint, in the interest of providing for the needs of the unemployed and of maintaining the purchasing power of the community, the program should so far as possible protect all workers who are involuntarily unemployed and are able to work and available for work. At what point a worker's unemployment ceases to be due to his own actions and is due to economic circumstances is, of course, a matter of judgment; but to disqualify a worker for the duration of his unemployment may work against the social purpose of the program. In like manner, reduction or cancellation of benefit rights may work against the social purpose of the program in that a worker may need such benefits if he later becomes involuntarily unemployed.

*Conclusion*

This survey of the origins, development and present status of the unemployment insurance program has indicated, if nothing else, that it is a varied, changing and dynamic program. The multitude of amendments that have occurred in the state laws indicate that there are many controversial issues that are not yet finally resolved. The uneven progress among the states in increasing benefit amounts and duration appears to reflect the relative strength of opposing forces in the state legislatures more than the adjustment to differing economic conditions. There is room for substantial improvement in the system. For example, the reasons for certain exemptions from coverage, such as the administrative feasibility of covering small employers, no longer exist. And the financial strength and the low average contribution rates of most of the state systems allow room for providing more adequate benefits.

While many problem areas, particularly with respect to the substantive provisions of unemployment insurance legislation, have been indicated in this survey, it would also take a much longer paper to indicate all the issues that exist. Other articles in this symposium will discuss in more detail some of the problems that have been indicated, and will deal with other matters that have not even been mentioned. It is hoped that this survey will at least provide a useful factual basis for the discussions that follow.