MANUAL OF

STATE EMPLOYMENT SECURITY LEGISLATION

Revised September 1950

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UNITED STATES DEPARTMENT OF LABOR
Manpower Administration
Unemployment Insurance Service
Washington, D. C. 20210

INTRODUCTION

This is a reissue of a revision of the Manual of State Employment Security Legislation released by the Bureau of Employment Security in October 1948 for comment and suggestion. Prior to the 1948 preliminary edition, the Manual was last revised in 1942. Since then various recommendations for additional provisions or revised language have been made in program letters from time to time and in Unemployment Insurance Legislative Policy, 1947. Meanwhile changes in wage levels, in the cost of living, and in the benefit provisions of State laws have outmoded the monetary provisions of the benefit formulas recommended in 1942 and 1947. This 1950 revision brings together in one document all the changes of permanent value which have been recommended in the last 8 years and other changes which experience has shown to be desirable.

The Manual is made up of specific legislative provisions which, if adopted by a State, would conform to the statutory requirements of the Social Security Act, the Federal Unemployment Tax Act, and the Wagner-Peyser Act, all as amended through September 1950, and of Chapter V of the General Appropriation Act of 1951. It reflects also current thinking on desirable provisions for a socially adequate program of employment security. When alternative provisions are given, the preferred is presented first.

In 1946, sections 303(a)(5) of the Social Security Act and 1603(a)(4) of the Federal Unemployment Tax Act were amended to permit States to use certain amounts deposited in the unemployment trust fund in the payment of cash benefits with respect to disability. Such payments cannot be made, however, without special enactments by State legislatures. No provisions for disability benefits are included in this draft. The Bureau issued Draft Language for a State Temporary Disability Insurance Law Coordinated with Unemployment Insurance in January 1949, and in April 1949, a revised edition of Temporary Disability Insurance, a discussion of problems in formulating a disability program administered by a State employment security agency.

The legislative language in this Manual is not intended as a model for State adoption. It is recognized that bills prepared for introduction in the legislature of any State must conform to constitutional or other State requirements as to title and general style. Therefore any State may have to adapt the draft language. Obviously, where the draft includes the word "State" in parenthesis as in "the (State) Department of Employment Security," any State will insert its own name, and where the draft includes blanks, the State will insert the appropriate number or date.

This revision of the Manual involves changes in policy, arrangement, and language. The changes in policy are in part shifts in emphasis. For example, dependents' allowances which were included in 1942 in one formula for weekly benefit amount are now in three benefit formulas and two benefit formulas are included for the use of those States which do not want to provide dependents' allowances.

The changes in arrangement are of two types--rearrangement of the text to obtain a more logical grouping of subjects, and transfer of the commentary from the position of footnotes to a separate section.

The changes in terminology do not introduce any new concepts but rather seek to clarify old concepts, particularly in connection with "claims" and "eligibility." The term "claim" is confined to a claim for payment for a completed week of unemployment; it is not used in connection with the notice of unemployment (or initial claim as it is called in most States) which may be filed by a worker who has not had a week of unemployment and cannot either certify for waiting-period credit or claim benefits. The monetary computations that were previously included in the claim determinations are separated from such determinations and called determinations of workers' insured status. Experience in some States and letters received from claimants indicate misunderstanding of "eligibility" as used in connection with "initial determinations." Claimants frequently believe that they have been awarded benefits when all that they have received is a computation of potential monetary rights based on their base-period wages. Because the term "eligible" is commonly understood to connote a right to something, eligibility is limited in the Manual to claimants who have met all the requirements for the receipt of waiting-period credit or of benefits.

The commentary has been considerably expanded and has been separated from the text in order that either the text or the commentary may be read consecutively. The commentary is intended to explain the content of the draft language, the purpose of the language if that is not self-explanatory, the reasons for changes which have been made since the 1942 issue of this Manual, and the relationships between the various sections of the Act, and between various sections of the State Act and the related Federal acts. In section 3 on Benefit Formula, the commentary includes background information on benefit formulas in general; in that section and in section 4 on Conditions for Receipt of Benefits, the reasons for omitting certain provisions included in some State laws are explained.

It is hoped that this comprehensive commentary will be used for the training in the essentials of legislation in this field of new personnel in the State employment security agencies, of the regional and headquarters staff of the Bureau of Employment Security, and of other interested persons in various Federal agencies.

The changes between the October 1948 edition and this issue of the Manual reflect responses to the Bureau's request for comments on the preliminary edition and problems arising in the 1949 and 1950 State legislative sessions. This issue incorporates changes suggested at special meetings of the Bureau's regional staff in the Fall of 1948, and by State administrators, Labor Department attorneys, and Bureau staff members.

The major differences between this edition and the preliminary edition include: (1) changes in terminology and administrative set-up to reflect the transfer of the Bureau of Employment Security to the Department of Labor; (2) revision of section 2(k)(6) and 2(q) to reflect changes in the definitions of excluded employment and exclusions from wages in section 1607(b) and (c) of the Internal Revenue Code made by the Social Security Act Amendments of 1950; (3) revision of section 11 to reflect changes in the Wagner-Peyser Act made by P.L. 775 (81st Congress); (4) the shift from section 2(q)(3) to section 8(c) of the provision which would result in the automatic extension of the $3,000 limit if Congress should broaden the Federal tax base; (5) the shift from section 2(r) to section 4(a) of the provision that no waiting week need be served at the beginning of a benefit year if it would interrupt payments for continuous weeks of unemployment; (6) inclusion of an administrative disqualification for fraud; (7) expansion of the commentary for purposes of clarification, to avoid reference to other documents, and to include draft language for some provisions which States have found useful but which the Bureau is not now including in the text as recommendations for general adoption; (8) liberalization of the benefit formulas illustrated in the commentary on section 3 by increasing the maximum weekly benefit amount to $30 for a claimant without dependents and to as much as $45 for a claimant with the maximum number of compensable dependents; (9) revision of formula C, which was originally drafted to reflect Federal proposals current in 1948, in the pattern of formulas proposed in Federal legislation in 1950; and (10) expansion of the discussion of the transition provisions required when some or all of the benefit formula is amended.

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Declaration of State Public Policy

As a guide to the interpretation and application of this Act, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with a nation-wide system of public employment services; by devising appropriate methods for reducing the volume of unemployment; and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power, promoting the mobility and the use of the highest skills of unemployed workers, and limiting the serious social consequences of unemployment. The legislature, therefore, declares that in its considered judgment, the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police power of the State, for the establishment and maintenance of free public employment offices and for the compulsory setting aside of reserves to be used for the benefit of unemployed persons.

Section 1

SHORT TITLE AND RULE OF STATUTORY CONSTRUCTION

SEC. 1. This Act shall be known and may be cited as the (State) Employment Security Act. This Act shall be liberally construed to accomplish its purposes to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment.

The legislature hereby declares its intention to provide for carrying out the purposes of this Act in cooperation with the appropriate agencies of other States and of the Federal Government, as part of a nationwide employment security program; and particularly to provide for meeting the requirements of title III of the Federal Social Security Act, the requirements of section 1602 and section 1603 of the Federal Unemployment Tax Act (Chapter 9, subchapter C of Internal Revenue Code), and the Act of Congress approved June 6, 1933, entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes" (hereinafter cited as the Wagner-Peyser Act), and title IV of the Act of Congress approved June 22, 1944, each as amended, in order to secure for this State and the citizens thereof the grants and privileges available thereunder. All doubts as to the proper construction of any provision of this Act shall be resolved in favor of conformity with such requirements.

Section 2

DEFINITIONS

SEC. 2. As used in this Act, unless the context clearly requires otherwise--

(a) "American vessel" means any vessel documented or numbered under the laws of the United States; and any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(First definition)

(b) "Base period" 1/ means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(Second definition)

(b) "Base period" 1/ means (1) the preceding calendar year for benefit years beginning in May, June, or July; (2) the four consecutive calendar quarters ended on the preceding March 31 for benefit years beginning in August, September, or October; (3) the four consecutive calendar quarters ended on the preceding June 30 for benefit years beginning in November, December, or January; and (4) the four consecutive calendar quarters ended on the preceding September 30 for benefit years beginning in February, March, or April.

1/ Whenever the definition of base period or benefit year is amended, it is essential that the effective date of the new provision be specified in the law. It may also be necessary to include transition provisions. See Commentary, page C - 51.

Section 2(c)

(c) "Benefits" means the money payments payable to an individual, as provided in this Act, with respect to his unemployment.

(d) "Benefit year" 1/ means the one-year period beginning with the day as of which an insured worker first files a request for determination of his insured status, and thereafter the one-year period beginning with the day as of which he next files such request after the end of his last preceding benefit year. The filing of a notice of unemployment shall be deemed a request for determination of insured status if a current benefit year has not previously been established.

(e) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(f) "Claimant" means an individual who has filed a request for a determination of insured status, a notice of unemployment, a certification for waiting-week credit, or a claim for benefits.

(g) "Commissioner" means the head of the (State) Department of _____.

(h) "Contributions" means the money payments required by this Act to be made into the fund by an employer on account of having individuals performing service for him.

1/ Whenever the definition of base period or benefit year is amended, it is essential that the effective date of the new provision be specified in the law. It may also be necessary to include transition provisions. See Commentary, page C - 51.

Section 2(i)

(First definition)

(i) "Employer" means:

(1) Any employing unit which for some portion of a day within the current calendar year has or had in employment one or more individuals; and

(2) For the effective period of its election pursuant to section 7, any employing unit which has elected to become subject to this Act.

(Second definition)

(i) "Employer" means:

(1) Any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of $____ or more: Provided,1/ however, That for purposes of this subsection employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another State pursuant to an election under an arrangement entered into (in accordance with section 15(c)(1)) by the commissioner and an agency charged with the administration of any other State or Federal employment security law;

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this Act; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer

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1/ If the amount used in determining liability is low enough, paragraphs (3), (4), and (6) and the provisos in paragraphs (1) and (2) are not needed.

subject to this Act: Provided,1/ That such other employing unit would have been an employer under section 2(i)(1) if such part had constituted its entire organization, trade, or business;

(3)1/ Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit if such employing unit subsequent to such acquisition, and such acquired unit prior to such acquisition, both within the same calendar quarter, together paid for service in employment wages totaling $____ or more;

(4)1/ Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls (by legally enforceable means or otherwise) one or more other employing units, and which, if treated as a single unit with such other employing units or interests, or both, would be an employer under section 2(i)(1);

(5) Any employing unit not an employer by reason of any other paragraph of this subsection, for which within either the current or preceding calendar year service in employment is or was performed with respect to which such employing unit is liable for any Federal tax against which credit may be taken for contributions required to be paid into a State unemployment fund;

1/ If the amount used in determining liability is low enough, paragraphs (3), (4), and (6) and the provisos in paragraphs (1) and (2) are not needed.

Section 2(i)(6) (Second definition)

(6)1/ Any employing unit which, having become an employer under paragraph (1), (2), (3), (4), or (5) of section 2(i), has not, under section 7(d) ceased to be an employer subject to this Act; and

(7) For the effective period of its election pursuant to section 7(e), any employing unit which has elected to become subject to this Act.

(Third definition)

(i) "Employer" means:

(1) Any employing unit which for some portion of a day in each of ___ different calendar weeks, whether or not such weeks were consecutive, within either the current or the preceding calendar year (and for the purpose of this definition if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week), had in employment, ___ 2/ or more individuals (irrespective of whether the same individuals were in employment in each such day): Provided,3/ however, That for purposes of this subsection employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another State pursuant to an election under an arrangement entered into (in accordance with section 15(c)(1)) by the commissioner and an agency charged with the administration of any other

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1/ If the amount used in determining liability is low enough, paragraphs (3), (4), and (6) and the provisos in paragraphs (1) and (2) are not needed.

2/ If the figure inserted is more than one, it will be necessary to insert after "day" in the first line the phrase, "but not necessarily simultaneously."

3/ If the number of workers and of weeks used in determining liability is low enough, paragraphs (3), (4), and (6) and the provisos in paragraphs (1) and (2) are not needed.

Section 2(i)(1) (Third definition)

State or Federal employment security law;

(2)1/ (Same provision as in second definition);

(3)1/ Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit if the employment record of such employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to make an employing unit an employer subject to this Act under section 2(i)(1);

(4)1/ (Same provision as in second definition);

(5) (Same provision as in second definition);

(6)1/ (Same provision as in second definition); and

(7) (Same provision as in second definition).

(j)(1) "Employing unit" means any individual or type of organization including the State government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing, or the legal representative of a deceased person, which has, or subsequent to January 1, 1936, had one or more individuals performing service for it within this State.

(2) All individuals performing service within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be performing service for a single employing

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1/ If the number of workers and of weeks used in determining liability is low enough, paragraphs (3), (4), and (6) and the provisos in paragraphs (1) and (2) are not needed.

unit for all the purposes of this Act.

(3)1/ Whenever an employing unit contracts with any other employing unit for any work which is part of the usual trade, occupation, profession, or business of the former employing unit, each individual who performs service in employment under such contract shall, for the purpose of determining whether the former employing unit is an employer by reason of section 2(i), be deemed to be performing such service in employment for the former employing unit: Provided, That if the latter employing unit is not an employer by reason of section 2(i), each such individual shall be deemed to be performing such service in employment for the former employing unit for all the purposes of this Act.

(4) Each individual engaged to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged by such employing unit for all the purposes of this Act, whether such individual was engaged or paid directly by such employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work.

(k)(1) "Employment" means:

(A) any service performed prior to ____,2/ which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after ____ 3/ by an individual for wages or by an officer of a corporation, including service in interstate commerce;

1/ This provision should not be included if the first definition of employer for coverage of one or more is adopted.
2/ Insert the effective date of the amendment.
3/ Insert the day before the effective date of the amendment.

(B) service performed after ____ 1/ by an individual for this State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this State or by one or more of its political subdivisions;

(C) notwithstanding section 2(k)(2), all service performed after ____ 1/ by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this State; and

(D) notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any Federal law imposing a tax against which credit may be taken for contributions required to be paid into a State unemployment fund.

(2) The term "employment"shall include an individual's entire service, performed within, or both within and without, this State if the service is localized in this State. Service shall be deemed to be localized within a State if--

(A) the service is performed entirely within such State; or

(B) the service is performed both within and without such State but the service performed without such State is incidental to the individual's service within the State; for example, is temporary or transitory in nature or consists of isolated transactions.

(3) The term "employment" shall include an individual's entire

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1/ Insert the effective date of the amendment.

service, performed within, or both within and without, this State if the service is not localized in any State but some of the service is performed in this State and

(A) the individual's base of operations is in this State; or

(B) if there is no base of operations, then the place from which such service is directed or controlled is in this State; or

(C) the individual's base of operations or place from which such service is directed or controlled is not in any State in which some part of the service is performed, but the individual's residence is in this State.

(4) Service covered by an election pursuant to section 7, and service covered by an election duly approved by the commissioner in accordance with an arrangement pursuant to section 15(c) shall be deemed to be employment during the effective period of the election.

(5) Service performed by an individual shall be deemed to be employment subject to this Act irrespective of whether the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the commissioner that--

(A) such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact; and

(B) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and

Section 2(k)(5)(C)

(C) such individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

(6) The term "employment" shall not include--

(A) service performed in the employ of an individual owner or tenant operating a farm, in connection with the cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of livestock, bees, or poultry, or in connection with the processing, packing, or marketing of the produce of such farm as an incident to ordinary farming operations:

Provided,1/ That such individual operator of a farm has not paid in any calendar quarter in either the current or the preceding calendar year for such service wages of at least $____;

(Alternative proviso)

Provided,2/ That such individual operator of a farm did not employ in such service ____ or more persons in ____ different calendar weeks in the current or preceding calendar year, whether or not such weeks were consecutive and whether or not the same individuals performed such service in each such week;

(B) domestic service in a private home:

1/ This proviso would be used if the pay roll is used as a measure of the size of farming operations.

2/ This proviso would be used if the number of workers and weeks of employment is used as a measure of the size of farming operations.

Section 2(k)(6)(B)

Provided,1/ That the wages paid to the individual or individuals engaged in such service in such home did not exceed $____ in any calendar quarter in either the current or the preceding calendar year;

(Alternative proviso)

Provided,2/ That ____ or more individuals were not engaged in such service in such home in each of ____ different calendar weeks in the current or preceding calendar year, whether or not such weeks were consecutive and whether or not the same individuals performed such service in such home in each such week;

(C) service not in the course of the employing unit's trade or business performed after ____ 3/ in any calendar quarter by an individual, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs such service for some portion of the day, or (ii) such individual was regularly employed (as determined under clause (i)) by such employing unit in the performance of such service during the preceding calendar quarter.

1/ This proviso would be used if the pay roll is used as a measure of the size of the domestic establishment.

2/ This proviso would be used if the number of workers and weeks of employment is used as a measure of the extent of the domestic employment.

3/ Insert the effective day of amendment.

Section 2(k)(6)(D)

(D) service performed by an individual in any calendar quarter after ____ 1/ in the employ of any organization exempt from income tax under section 101 of the Federal Internal Revenue Code, if (i) the remuneration for such service is less than $50; or (ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association; or (iii) such service is performed by a student who is enrolled, and is regularly attending classes, at a school, college, or university; or (iv) such service is performed by a duly ordained, commissioned, or licensed minister of religion in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order;

(E) notwithstanding section 2(k)(2), service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this State;

(F) service performed on or in connection with a vessel not an American vessel by an individual if he performed service on and in connection with such vessel when outside the United States;

(G) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching,

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1/ Insert effective date of amendment.

taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (ii) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

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

(I) service performed in the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Act, except that to the extent that the Congress of the United States shall permit States to require any instrumentalities of the United States to make payments into an unemployment fund under a State employment security law, all of the provisions of this Act shall apply to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and service: Provided, That if this State shall not be certified for any year by the Secretary of Labor under section 1603(c) of the Federal Unemployment Tax Act, the payments required of such instrumentalities with respect to such year shall be refunded by the

commissioner from the fund in the same manner and within the same period as is provided in section 9(d) with respect to contributions erroneously collected;

(J) service performed in the employ of this State or any of its political subdivisions by an elected official or an official compensated on a fee basis;

(K) service performed on an unemployment work-relief project undertaken by this State or any subdivision thereof;

(L) service performed in the employ of any other State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more such States or political subdivisions; and any service performed in the employ of any instrumentality of one or more other States or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the Constitution of the United States from the tax imposed by section 1600 of the Federal Unemployment Tax Act;

(M) service with respect to which unemployment insurance is payable under an unemployment insurance program established by an act of Congress;

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

(O) service performed in the employ of an instrumentality wholly owned by a foreign government if (i) the service is of a character similar to that performed in foreign countries by employees

of the United States Government or of an instrumentality thereof, and (ii) the commissioner finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(P) service performed in the employ of an international organization;

(Q) service covered by an election duly approved by the agency charged with the administration of any other State or Federal employment security law, in accordance with an arrangement pursuant to section 15(c) during the effective period of such election, except 1/ as provided in section 2(i)(1).

(7) If the service performed during one-half or more of any pay period by an individual for an employing unit constitutes employment, all the service of such individual for such period shall be deemed to be employment; but if the service performed during more than one-half of any such pay period by an individual for an employing unit does not constitute employment, then none of the service of such individual for such period shall be deemed to be employment. As used in this paragraph the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment for service is ordinarily made to the individual by the employing unit. This paragraph shall not be applicable with respect

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1/ The exception is not needed with the first definition of employer.

to service performed in a pay period by an individual for an employing unit, when any of such service is excluded because it is subject to an unemployment insurance program established by an act of Congress.

(l) "Employment office" means a free public employment office or branch thereof operated by this or any other State as a part of a State-controlled system of public employment offices or by a Federal agency or any agency of a foreign government charged with the administration of an unemployment insurance program or of free public employment offices.

(m) "Fund" means the unemployment fund established by this Act.

(n) "Insured work" means employment for employers.

(o) "Insured worker" means an individual who, with respect to a base period, meets the wage and employment requirement of section 3(b).1/

(p) "State" includes the States of the United States of America, Alaska, Hawaii, and the District of Columbia.

(q)(1) "Wages" means all remuneration for service from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his service from persons other than his employing unit shall be treated as wages received from his employing unit. After ____ 2/ back pay awarded under any statute

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1/ Instead of using the words "meets the wage and employment requirement of section 3(b)," the State may insert the wage or employment requirements which qualify a worker for benefits.

2/ Insert the date as of which the amendment which includes back-pay awards in the definition of wages becomes effective.

of this State or of the United States shall be treated as wages. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the commissioner. For the purpose of a determination of insured status only, back-pay awards after ____ 1/ shall be allocated to the quarters with respect to which they were paid. If the remuneration of an individual is not based upon a fixed period or duration of time or if his wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, for the purpose of a determination of insured status only, the wages shall be allocated to weeks or quarters in accordance with regulations prescribed by the commissioner. Such regulations shall, so far as possible, produce results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals.

(2) Notwithstanding the provisions of section 2(q)(1), the term wages shall not include:

(A) The amount of any payment made after _____ 2/ (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals

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1/ Insert the date as of which the amendment which includes back-pay awards in the definition of wages becomes effective.
2/ Insert the effective date of this provision.

generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical or hospitalization expenses in connection with sickness or accident disability, or (iv) death;

(B) The amount of any payment made after _____ 1/ by an employing unit to an individual performing service for it (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(C) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made after _____ 1/ by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;

(D) The amount of any payment made after _____ 1/ by an employing unit to, or on behalf of, an individual performing services for it or his beneficiary (i) from or to a trust exempt from tax under section 165(a) of the Federal Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (ii) under or to an annuity plan which, at the time of

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1/ Insert the effective date of this provision.

such payments, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Federal Internal Revenue Code;

(E) The amount of any payment made by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under section 1400 of the Federal Internal Revenue Code with respect to service performed after _____ 1/; or

(F) Remuneration paid after _____ 1/ in any medium other than cash to an individual for service not in the course of the employing unit's trade or business;

(G) The amount of any payment (other than vacation or sick pay) made after _____ 1/ to an individual after the month in which he attains the age of sixty-five, if he did not perform services for the employing unit in the period for which such payment is made;

(H) Dismissal payments before _____ 1/ which the employing unit is not legally required to make.

(r)2/ "Waiting week" means the first week of unemployment, occurring in a benefit year or within the _____ 3/ day period immediately preceding such year, in which the worker has complied with all the requirements of section 4 .

(s) "Week" means such period of seven consecutive days as the commissioner may be regulation prescribe.

1/ Insert the effective date of this provision.
2/ This definition should be omitted if a State law does not require a waiting period.
3/ The number of days which should be specified in this sentence will depend upon the definitions of "week" used by the State; see page C - 22.

Section 2(t)

(t) "Week of unemployment" with respect to an individual means any week during which he performs less than full-time work for any employing unit if the wages payable to him with respect to such week are less than his weekly benefit amount.

BENEFIT FORMULA 1/

(Benefit formula A: weighted high-quarter schedule with dependents' allowances)

SEC. 3(a) Weekly benefit amount.--Except as provided in section 3(b), an insured worker's basic weekly benefit amount shall be the amount in column B of the table in this subsection /table 1/2/ on the line on which, in column A, there appears his total wages paid for insured work in that quarter of his base period in which such total wages were highest; and his augmented benefit amount if he has dependents shall be the amount on the same line in the column (C, D, or E) which shows the number of his dependents: Provided, That the number of dependents shall be determined as of the day with respect to which he first files a request for a determination of insured status in any benefit year, and shall be fixed for the duration of such benefit year, and provided further, That for the duration of such benefit year no dependent who has been included in the determination shall be included as a dependent in any determination which is made on behalf of another insured worker.

1/ Whenever new provisions on weekly benefit amount, maximum annual benefits, qualifying wages, benefits for a week of unemployment, base period, or benefit year are enacted, it is essential that the effective dates of the new provisions be specified in the law. In States using uniform benefit years, a date may be inserted at the beginning of each subsection which is amended. In States using individual benefit years it is essential also to include transition provisions. See Commentary, page C - 49.

2/ Reference to tables by number would not be necessary in any State law; the references are included here because five different formulas are presented.

Section 3(a) (Benefit formula A)

Table 1

Weekly benefit amount, weighted schedule of high-quarter wages with schedule of augmented benefits for claimant with one, two, and three or more dependents, and qualifying wages computed as one and one-half times high-quarter wages

High-quarter wages (Column A)	Basic weekly benefit (Column B)	Augmented weekly benefit amount			Minimum qualifying wages (Column F)
		1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)	

For table with illustrative figures, see Commentary, page C - 37.

(b) Qualifying wages.--To qualify as an insured worker an individual must have been paid wages for insured work in his base period totaling not less than the amount in column F of the table in section 3(a) on the line on which, in column B, there appears his basic weekly benefit amount, and such wages must have been paid in at least two calendar quarters of his base period: Provided, That if any individual during his base period has not been paid such an amount but has been paid wages totaling not less than the amount appearing in column F on the line immediately above, he can qualify as an insured worker and his basic weekly benefit amount shall be the amount appearing in column B on such line.

(c) Maximum potential benefits.--The maximum potential benefits of any insured worker in a benefit year shall be the amount in the column (B, C, D, or E) of the table in this subsection [table 2] which shows the number of his dependents, on the line on which, in column A, there appears his basic weekly benefit amount.

Section 3(c) (Benefit formula A)

Table 2

Maximum potential benefits in a benefit year, weighted schedule with dependents' allowances, by number of dependents and basic weekly benefit amount

Basic weekly benefit (Column A)	Maximum potential benefits for claimant with			
	No dependents (Column B)	1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)

For table with illustrative figures, based on 26 weeks uniform duration, see Commentary, page C - 39.

(Alternative provision: maximum potential benefits varying with base-period wages)

(c) Maximum potential benefits.--The maximum potential benefits of any insured worker in a benefit year shall be the amount equal to one-half of his wages for insured work paid during his base period, but not less than 15 times his augmented weekly benefit amount or his basic weekly benefit amount if he has no dependents, and not more than 26 times his augmented weekly benefit amount or his basic weekly benefit amount if he has no dependents: Provided, That if such total amount of benefits is not a multiple of his augmented weekly benefit amount or of his basic benefit amount if he has no dependents it shall be computed to the next higher multiple of such amount.

(d) Benefit for a week of unemployment.--Any insured worker who is unemployed in any week as defined in section 2(t) and who meets the conditions of eligibility for benefits of section 4 shall be paid with respect to such week an amount equal to his augmented weekly benefit amount or his basic weekly benefit amount if he has no dependents less

that part of the wages (if any) payable to him with respect to such week which is in excess of $5. Such benefit, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(e) Definition of dependent.--"Dependent" means a claimant's unmarried child (including stepchild and adopted child, whether or not legally adopted) who is under 18 years of age and is living with him or receiving regular support from him; his wife who is living with him or receiving regular support from him and who is not regularly engaged in rendering service for remuneration or in any occupation for profit; a claimant's husband, child (including stepchild and adopted child, whether or not legally adopted), parent, stepparent and parent-in-law who is wholly or mainly supported by such claimant; and any other person who is living with and wholly supported by the claimant.

(Benefit formula B: a uniform fraction of high-quarter wages with dependents' allowances additional)

(a) Weekly benefit amount.--Except as provided in section 3(b), an insured worker's basic weekly benefit amount shall be one twenty-fourth of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, but not more than $____ nor less than $____ and if not a multiple of $1 shall be computed to the next higher multiple of $1. His augmented weekly benefit amount shall be his basic weekly benefit amount plus the dependents' allowances in the column (C, D, or E) of the table in this subsection [table 3] which shows the number of his dependents on the line on which, in column B, there appears his basic weekly benefit amount: Provided, That the number of dependents shall be determined as of the day with respect to which he first files a request for a determination of insured

status in any benefit year, and shall be fixed for the duration of such benefit year, and provided further, That for the duration of such benefit year no dependent who has been included in the determination shall be included as a dependent in any determination which is made on behalf of another insured worker.

Table 3

Basic weekly benefit amount figured as one twenty-fourth of high-quarter wages with schedule of dependents' allowances for claimant with one, two, and three or more dependents, and qualifying wages computed as one and one-half times high-quarter wages

High-quarter wages (Column A)	Basic weekly benefit (Column B)	Dependents' allowance for 1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)	Minimum qualifying wages (Column F)

For table with illustrative figures, see Commentary, page C - 42.

(b) Qualifying wages.--(Same as in benefit formula A.)

(c) Maximum potential benefits.--The maximum potential basic benefits of any insured worker in a benefit year shall be equal to twenty-six times his basic weekly benefit amount. In addition he shall be entitled to dependents' allowances for each week of his unemployment for which benefits are payable.

(Alternative provision: maximum potential benefits varying with base-period wages)

(c) Maximum potential benefits.--The maximum potential basic benefits of any insured worker in a benefit year shall be the lesser of (1) twenty-six times his basic weekly benefit amount and (2) one-half of his wages for insured work paid during his base period: Provided, That if

such total amount of benefits is not a multiple of his basic weekly benefit amount, it shall be computed to the next higher multiple of that amount. In addition he shall be entitled to dependents' allowances for each week of his unemployment for which benefits are payable.

(d) Benefit for a week of unemployment.--(Same as in benefit formula A.)

(e) Definition of dependent.--(Same as in benefit formula A.)

(Benefit formula C: a uniform fraction of high-quarter wages with augmented benefits generally equal to 60-70 percent of average weekly wages)

(a) Weekly benefit amount.--(Same as in benefit formula A, referring to table 4.)

Table 4

Basic weekly benefit amount figured as one twenty-sixth of high-quarter wages, with augmented benefits equal to 60 percent of average high-quarter weekly wage for claimant with 1 dependent; 65 percent, with 2 dependents; and 70 percent, with 3 or more dependents

High-quarter wages (Column A)	Basic weekly benefit (Column B)	Augmented weekly benefit amount			Minimum qualifying wages (Column F)
		1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)	

For table with illustrative figures, see Commentary, page C - 44.

(b) Qualifying wages.--(Same as in benefit formula A.)

(c) Maximum potential benefits.--(Same provision and alternative as in benefit formula A, referring in the first provision to table 5.)

Section 3(c) (Benefit formula C)

Table 5

Maximum potential benefits in a benefit year, by basic weekly benefit and number of dependents, augmented benefits figured as percentage of average weekly wage in the high quarter

Basic weekly benefit (Column A)	Maximum potential benefits for claimant with			
	No dependents (Column B)	1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)

To obtain figures, multiply by 26 the amounts in columns B, C, D, and E of table 4, page C - 45.

(d) Benefit for a week of unemployment.--(Same as in benefit formula A.)

(e) Definition of dependent.--(Same as in benefit formula A.)

(Benefit formula D: weighted high-quarter schedule)

(a) Weekly benefit amount.--Except as provided in section 3(b), an insured worker's weekly benefit amount shall be the amount in column B of the table in this subsection [table 6] on the line on which, in column A, there appears his total wages paid for insured work in that quarter of his base period in which such total wages were highest.

Table 6

Weekly benefit amount figured from weighted schedule of high-quarter wages and qualifying wages computed as one and one-half times high-quarter wages, and maximum potential benefits in benefit year

High-quarter wages (Column A)	Weekly benefit amount (Column B)	Minimum qualifying wages (Column C)	Maximum potential benefits (26 weeks) (Column D)

For table with illustrative figures, see Commentary, page C - 47.

Section 3(b) (Benefit formula D)

(b) Qualifying wages.--To qualify as an insured worker an individual must have been paid wages for insured work in his base period totaling not less than the amount in column C of the table in section 3 (a) on the line on which, in column B, there appears his weekly benefit amount, and such wages must have been paid in at least two quarters of his base period: Provided, That if any individual during his base period has not been paid such an amount but has been paid wages totaling not less than the amount appearing in column C on the line immediately above, he can qualify as an insured worker and his weekly benefit amount shall be the amount appearing in column B on such line.

(c) Maximum potential benefits.--The maximum potential benefits of any insured worker in a benefit year shall be the amount in column D of the table in section 3(a) on the line on which, in column B, there appears his weekly benefit amount.

(Alternative provision: weighted duration categories for 15 to 26 weeks)

(c) Maximum potential benefits.--The maximum potential benefits of any insured worker in a benefit year shall be the amount equal to his weekly benefit amount times the number at the top of the column in part C of the table in this subsection /table 7/ in which his wages for insured work paid during his base period appear on the same line on which, in part B, there appears his weekly benefit amount.

Section 3(c) (Benefit formula D)

Table 7

Weighted high-quarter formula with duration categories, 15-26 weeks

(Part A)	(Part B)	(Part C)										
		Base-period wages required for weeks of benefits below and weekly benefit specified in Part B										
		Weeks of benefits for total unemployment										
High-quarter wages	Weekly benefit amount	15	16	17	18	19	20	21	22	23	24	25	26

For table with illustrative figures,
see Commentary, page C - 48.

(d) Benefit for a week of unemployment.--Any insured worker who is unemployed in any week as defined in section 2(t) and who meets the conditions of eligibility for benefits of section 4 shall be paid with respect to such week an amount equal to his weekly benefit amount less that part of the wages (if any) payable to him with respect to such week which is in excess of $5. Such benefits, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(Benefit formula E: uniform fraction of high-quarter wages)

(a) Weekly benefit amount.--Except as provided in section 3(b), an insured worker's weekly benefit amount shall be one-twentieth of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, but not more than $_____, nor less than $_____, and if not a multiple of $1 shall be computed to the next higher multiple of $1.

(b) Qualifying wages.--To qualify as an insured worker an individual must have been paid wages for insured work in his base period,

totaling not less than thirty times his weekly benefit amount, and such wages must have been paid in at least two calendar quarters of his base period: Provided, That if any individual during his base period has not been paid such an amount but had total wages equal to not less than thirty times the weekly benefit amount which is $1 less than his computed weekly benefit amount, he can qualify as an insured worker and his weekly benefit amount shall be such lesser amount.

(c) Maximum potential benefits.--The maximum potential benefits of any insured worker in a benefit year shall be the amount equal to twenty-six times his weekly benefit amount.

(Alternative provision: Maximum potential benefits varying with base-period wages)

(c) Maximum potential benefits.--The maximum potential benefits of any insured worker in a benefit year shall be the amount equal to whichever is the lesser of (1) twenty-six times his weekly benefit amount and (2) one-half of his wages for insured work paid during his base period: Provided, That if such total amount of benefits is not a multiple of his weekly benefit amount, it shall be computed to the next higher multiple of his weekly benefit amount.

(d) Benefit for a week of unemployment.--(Same as in benefit formula D.)

Section 4

CONDITIONS FOR RECEIPT OF BENEFITS

SEC. 4(a) Eligibility for benefits.--An insured worker shall be eligible for and shall receive waiting-week credit 1/ or benefits, as the case may be, for any week of his unemployment with respect to which he has not been determined to be disqualified under section 4(b) if such worker has, in accordance with regulations prescribed by the commissioner, with respect to such week:

(1) filed a notice of his unemployment;

(2) registered for work; and

(3) certified for waiting-week credit or filed a claim for benefits, as the case may be.

No benefits are payable for a waiting week and no benefits are payable for any week of unemployment occurring within the benefit year prior to the completion of such waiting week, except that no insured worker shall be required to serve a waiting week if the first week of his unemployment occurring within a benefit year is immediately preceded by a week of unemployment in the preceding benefit year for which benefits are payable.

(b) Disqualifications.--An insured worker shall not be disqualified for waiting-week credit or benefits for any week of his unemployment unless with respect to such week the commissioner finds that:

(1) He was not able to work or was not available for suitable work for such week; or

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1/ If a State law does not require a waiting period, all references to waiting-week credit should be omitted.

(2) He left suitable work voluntarily without good cause, in which case he shall be disqualified for the week in which he left work and the four weeks of continuous unemployment immediately following such week; or

(3) He was discharged or suspended for misconduct connected with his work, in which case he shall be disqualified for the week in which he was discharged or suspended and for the four weeks of continuous unemployment immediately following such week; or

(4) He has failed without good cause either to apply for available suitable work to which he was referred by the employment office, or to accept suitable work offered him, in which case he shall be disqualified for the week in which such failure occurred and for the four weeks of continuous unemployment immediately following such week; or

(5) For such week or any part of such week he has received or is seeking unemployment benefits under any other employment security law, but if the appropriate agency finally determines that he is not entitled to benefits under such other law, this paragraph shall not apply; or

(6) For such week his unemployment was due to a stoppage of work then existing because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, and for purposes of this subsection, each separate department of the same premises which is commonly conducted as a separate business in separate premises shall be deemed to be a separate factory, establishment, or other premises: Provided, That this paragraph shall not apply if the commissioner finds that—

(A) He was not participating in or directly interested in the labor dispute which caused the stoppage of work; and

(B) He did not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurred, any of whom were participating in or directly interested in the dispute.

(7) Within the 24 calendar months immediately preceding such week he has, with intent to defraud by obtaining any benefits not due under this Act, made a false statement or representation of a material fact knowing it to be false or knowingly failed to disclose a material fact, in which case he shall be disqualified for the week in which the commissioner makes such determination and for not more than the ____ weeks immediately following such week, Provided however, That no disqualification shall be imposed if proceedings have been undertaken against the claimant under section 14(a).

(c) Suitable work.--(1) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under any provision of this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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

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

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

Section 4(c)(2)

(2) In determining whether any work is suitable for a claimant and in determining the existence of good cause for leaving or refusing any work, the commissioner shall, in addition to determining the existence of any of the conditions specified in section 4(c)(1), consider the degree of risk to the claimant's health, safety, and morals, his physical fitness for the work, his prior training and experience, his prior earnings, the length of his unemployment, his prospects for obtaining work at his highest skill, the distance of the available work from his residence, his prospects for obtaining local work, and such other factors as would influence a reasonably prudent person in the claimant's circumstances.

Section 5

DETERMINATIONS, NOTICES, AND PAYMENTS OF BENEFITS

SEC. 5(a) Payment of benefits.--Benefits shall be paid through public employment offices in accordance with regulations prescribed by the commissioner.

(b) Information to workers on benefit rights.--The commissioner shall supply to each employer, without cost to the employer, printed statements concerning the regulations applicable to the establishment of benefit rights and other materials relating to the administration of this Act. Each employer shall post such printed statements and maintain them in places readily accessible to his workers and shall supply copies of such printed statements to his workers.

(c) Notice by employing unit.--An employing unit having knowledge of any facts which may affect an individual's right to waiting-week credit or benefits shall notify the commissioner of such facts promptly, in accordance with regulations prescribed by the commissioner.

(d) Determinations.--(1) Any individual may file a request for a determination of his insured status in accordance with regulations prescribed by the commissioner. Upon such request, or, if no such request has been made with respect to a current benefit year, upon the filing of a notice of unemployment, the commissioner shall promptly determine such individual's insured status. A determination that an individual is an insured worker shall remain in effect throughout the benefit year for which it is made, unless modified in accordance with sections 5(f) and (g).

(2) When an insured worker files a notice of unemployment, the commissioner shall determine promptly whether such worker is disqualified under any of the provisions of section 4(b) except paragraph (1) by reason of any facts which existed on the date such notice was filed.

(3) Thereafter, (A) whenever it is necessary to determine a claimant's right to waiting-period credit or benefits, the commissioner shall determine promptly whether the claimant is disqualified under the applicable paragraphs of section 4(b) except paragraphs (1) and (5) for each week of the period of continuous unemployment immediately following the filing of a notice of unemployment with respect to which he has not previously certified for waiting-week credit or filed a claim for benefits; and (B) when the claimant certifies for waiting-week credit or files a claim for benefits for any such week of unemployment, the commissioner shall determine promptly whether such claimant has satisfied the conditions of section 4(a) and whether he is disqualified for such week under sections 4(b)(1) and (5).

(4) Whenever a determination whether a claimant is disqualified involves the application of section 4(b)(6), the commissioner may refer the case to the board of review for hearing and decision in accordance with section 6.

(e) Written notice of determination.—(1) Written notice of a determination of insured status shall be furnished to the claimant promptly. Such notice shall include a statement as to whether the claimant is an insured worker, the amount of wages for insured work paid to him by each employer during his base period, and the employers

by whom such wages were paid. For an insured worker the notice shall include also his benefit year, his basic weekly benefit amount, his augmented weekly benefit amount if he has dependents, and the maximum amount of benefits that may be paid to him for his unemployment during such year; for a worker who is not insured, the notice shall include the reason for such determination.

(2) If the commissioner determines pursuant to section 4 that a claimant is not eligible to receive waiting-week credit or benefits for any week or weeks, he shall promptly furnish to such claimant written notice of such determination together with a statement of the reasons therefore and of the period covered by such determination. Written notice of such determination shall be given to the claimant only once with respect to the period covered by the determination except that if the commissioner determines that such claimant is disqualified for an indeterminate period under the provisions of section 4(b)(1) or (6) by reason of the same facts, written notice of such determination with respect to the first of such weeks shall be furnished to the claimant promptly; thereafter, written notice of such determinations with respect to any subsequent week or weeks for which a claimant has filed a claim shall be furnished to him promptly upon his request, or in the absence of such request, shall be furnished promptly with respect to each period of not more than four weeks.

(3) The last employing unit which employed a claimant shall be entitled to receive written notice of a determination made pursuant to section 4(b) only if it has furnished information to the commissioner in accordance with section 5(c) prior to such determination; and the

commissioner shall promptly give such employing unit written notice of any determination made pursuant to section 4(b) which is based in whole or in part on the information furnished, together with the reasons therefor, or, if it is determined that the individual concerned is not an insured worker, written notice to that effect.

(4) Written notice of any determination to which any party is entitled shall be given promptly by delivery thereof or by mailing to his last known address. Such notice shall include a clear statement of the appeal rights of the parties.

(5) A benefit payment shall be deemed a determination, and a notice to the claimant, that he is eligible to receive the payment for the period covered thereby.

(f) Finality of determination.--A determination shall be deemed final unless a party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within seven days after the notice was mailed to his last known address or otherwise delivered to him: Provided, That such period may be extended for good cause.

(g) Reconsideration of determination.--(1) The commissioner may in his discretion reconsider any determination upon application by any party entitled to notice thereof filed within the period authorized by section 5(f) or on his own motion within seven days after the date of the determination: Provided, That subject to the same limitations, a decision in a case referred to the board of review for determination under the provisions of section 5(d)(4) may, in the discretion of the board of review, be reconsidered by the body which rendered such decision, or, if the decision was rendered by an appeal tribunal which

is not available, by a tribunal designated for such purpose by the board of review.

(2) At any time within one year from the date of a determination of insured status, the commissioner on his own motion may reconsider such determination if he finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's insured status have become available, or if such determination of insured status was made as a result of a nondisclosure or misrepresentation of a material fact.

(3) At any time within two years from the end of any week with respect to which a determination allowing or denying waiting-week credit or benefits has been made, the commissioner on his own motion may reconsider such determination if he finds that such waiting-week credit or benefits were allowed or denied as a result of a nondisclosure or misrepresentation of a material fact.

(4) In any case in which the commissioner is authorized by the other provisions of this subsection to reconsider any determination but the final decision in the case has been rendered by an appeal tribunal, the board of review, or a court, the commissioner may petition the body or the court which rendered such final decision to issue a revised decision.

(5) Written notice of any redetermination shall be given promptly in the same manner, in the same form, and to the same parties, as provided in section 5(e).

(6) A redetermination shall be deemed final unless a party entitled to notice thereof files an appeal within seven days after the notice was mailed to his last known address, or otherwise delivered to him: Provided, That such period may be extended for good cause.

(h) Prompt payment of claims.—(1) Benefits shall be paid promptly in accordance with a determination or redetermination under this section except that no benefits shall be paid prior to the expiration of the period for appeal from a determination if the record with respect to the claim indicates that disqualification has been alleged. If an application for reconsideration is duly made or an appeal is duly filed, benefits with respect to weeks of unemployment not in dispute and benefits payable pursuant to a determination or redetermination in any amount not in dispute shall be paid promptly regardless of any reconsideration or appeal.

(2) The commencement of a proceeding for judicial review pursuant to section 6(i) shall not operate as a supersedeas or stay unless the board of review shall so order.

(3) If a determination allowing benefits is affirmed in any amount by an appeal tribunal, or by the board of review, or if a decision of an appeal tribunal allowing benefits is affirmed in any amount by the board of review, such benefits shall be paid promptly regardless of any further appeal, and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court; but if such decision is finally reversed, benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

(i) Payment of benefits due deceased or mentally incompetent insured worker.--Benefits due and payable to a deceased or judicially declared incompetent person shall be paid, in accordance with such regulations as the commissioner shall prescribe, to the person or persons payment to whom the commissioner finds would effectuate the purposes of this Act. Such regulations need not conform to the statutes applicable to the descent and distribution of decedents' estates. A receipt from the person or persons to whom the commissioner makes payment shall fully discharge the fund and the commissioner from liability for such benefits.

(j) Recovery and recoupment.--(1) Any person who makes, or causes to be made by another, a false statement or representation of a material fact knowing it to be false or knowingly fails, or causes another to fail, to disclose a material fact, and as a result thereof has received any amount as benefits under this Act to which he was not entitled shall, in the discretion of the commissioner, be liable to repay such amount to the commissioner for the fund or to have such amount deducted from any future benefits payable to him under this Act within the two-year period following the finding, if the existence of such nondisclosure or misrepresentation has been found by a court of competent jurisdiction or in connection with a reconsideration or appeal pursuant to this section or section 6.

(2) No redetermination or decision shall be construed to authorize the recovery of the amount of any benefits paid to a claimant or the deduction of such amount from future benefits payable to him unless the written notice of such redetermination or decision specifies that he is

liable to repay to the fund the amount of benefits paid to him by reason of a nondisclosure or misrepresentation of a material fact as specified in section 5(j)(1), the nature of such nondisclosure or misrepresentation, and the week or weeks for which such benefits were paid.

(3) In any case in which under section 5(j) a claimant is liable to repay any amount to the commissioner, such amount shall be collectible without interest by civil action in the name of the commissioner.

(k) Waiver of rights void.—Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Act shall be void. Any agreement by an individual performing service for an employer to pay all or any portion of any contributions required under this Act from such employer shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the contributions required from him, require or accept any waiver of any right hereunder by any individual in his employ, discriminate in regard to the hiring or tenure of work or any term or condition of work of any individual on account of his claiming benefits under this Act, or in any manner obstruct or impede the claiming of benefits.

(l) Assignment of benefits.—Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, order for the payment of attorney fees, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are

not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts, except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void.

Section 6

APPEALS

SEC. 6(a) Appeal tribunals.--The board of review shall appoint one or more referees, selected in accordance with section 13(d), each of whom shall constitute an appeal tribunal to hear and decide appeals from determinations and redeterminations. The board of review may in its discretion appoint a tripartite appeal tribunal to hear and decide cases involving sections 4(b)(6) or 4(c)(1), consolidated appeals, or other appeals, as appropriate. A tripartite tribunal shall consist of one referee selected pursuant to section 13(d) who shall act as chairman, one representative of employers, and one representative of employees. The latter two may be selected without regard to section 13(d), shall serve at the pleasure of the board of review, and shall be paid a fee of not more than $_____ per day of active service on such tribunal plus necessary expenses. In the absence or disqualification of any member of the tripartite appeal tribunal, the board of review may appoint an alternate. No hearing shall proceed in the absence of the chairman of the appeal tribunal and the chairman shall act alone in the absence of any other member and his alternate.

(b) Review by appeal tribunal.--Any party entitled to notice of determination as provided in section 5(e) may file an appeal from the determination to an appeal tribunal within the time specified in sections 5(f) and 5(g)(6). However, any appeal from a determination by the commissioner or an appeal tribunal which involves section 4(b)(6) shall be made to the board of review. The parties to an appeal from a determination shall include all those entitled to notice of the determination, and the commissioner. Whenever an appeal involves a question

whether service constitutes insured work, the tribunal shall give notice of the appeal and the issues involved to the commissioner and to the employing unit for which such service was performed; and that employing unit, if not already a party, shall then become a party to the appeal. If an appeal from a determination is pending as of the date a redetermination is issued, the appeal unless withdrawn shall be treated as an appeal from such redetermination. Appeals may be withdrawn at the request of the appellant and with the permission of the appeal tribunal if the record preceding the appeal and the request for the withdrawal support the correctness of the determination and indicate that no coercion or fraud is involved in the withdrawal. In addition to the issues raised by the appealed determination the tribunal may hear and decide any additional issues affecting the claimant's rights to benefits if as of the date of hearing the commissioner has issued no final determination concerning such additional issues and the parties involved have been notified of the hearing and of the pendency of such additional issues.

(c) Hearing procedure and record.--A reasonable opportunity for a fair hearing shall be afforded all parties promptly. An appeal tribunal shall inquire into and develop all facts bearing on the issues and shall receive and consider evidence without regard to statutory and common-law rules. The appeal tribunal shall include in the record and consider as evidence all records of the commissioner that are material to the issues. The board shall adopt regulations governing the manner of filing appeals and the conduct of hearings and appeals consistent with the provisions of this Act. A record shall be kept of all testimony and proceedings in an appeal, but testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to section 13(g)

shall be allowed fees at a rate fixed by the commissioner; and the fees of witnesses subpoenaed on behalf of the commissioner or of any claimant shall be deemed part of the expense of administering this Act. The commissioner, any member of an appeal tribunal or of the board of review, or any person acting on his behalf, shall in no case participate in any appeal in which he has a direct or indirect interest.

(d) Consolidated appeals.--When the same or substantially similar evidence is material to the matter in issue with respect to more than one individual, the same time and place for considering all such cases may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided no party is prejudiced thereby.

(e) Notice of decision of appeal tribunal and time for appeal.--After a hearing an appeal tribunal shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the commissioner's determination. Each party shall be furnished promptly a copy of the decision and the supporting findings and conclusions; this decision shall be final unless further review is initiated pursuant to section 6(f) within seven days after the decision has been mailed to each party's last known address or otherwise delivered to him: Provided, That such period may be extended for good cause.

(f) Review by the board of review.--An appeal to the board of review by any party shall be allowed as of right if the appeal tribunal's decision reversed or modified the commissioner's determination, or if a question arising under section 4(b)(6) or (7) is presented; in all other

cases further appeal shall be permitted only at the discretion of the board of review. The board on its own motion may initiate a review of a decision or determination of an appeal tribunal within seven days after the date of the decision. The board may affirm, modify, or reverse the findings or conclusions of the appeal tribunal solely on the basis of evidence previously submitted, or upon the basis of such additional evidence as it may direct to be taken.

(g) Labor disputes: determinations and appeals.—In any case involving section 4(b)(6) which is referred to the board of review for determination, the board may designate an appeal tribunal to hear and decide the case. The determination of the appeal tribunal shall then be appealable, as of right, to the board of review within the same period as that provided for appealing a determination made by the commissioner. If the board elects to make the determination, it shall afford all parties a fair hearing as required by this section with respect to proceedings before an appeal tribunal. No further administrative appeal shall be permitted from the board's determination in that case, but judicial review may be initiated, as provided in section 6(i).

(h) Removal to the board of review.--The board may remove to itself or transfer to another appeal tribunal any appeal pending before an appeal tribunal. The parties to any appeal so removed to the board before a fair hearing has been completed shall be given a fair hearing by the board as required by this section with respect to proceedings before an appeal tribunal.

(i) Notice of decision of board of review and judicial review.—(1) Each party including the commissioner shall be furnished promptly a copy of the decision and the supporting findings and conclusions of the

board of review. The decision shall be final unless a party initiates judicial review by filing in the ____ court of ____ a petition for review within fifteen days after the board's decision has been mailed to each party's last known address, or otherwise delivered to him. For the purposes of judicial review, an appeal tribunal's decision from which an application for appeal has been denied by the board shall be deemed to be the decision of the board of review, except that the time for initiating judicial review shall run from the date of the mailing or delivery of the notice of the denial of the application for appeal by the board of review. The petition for review shall state the grounds upon which review is sought but need not be verified. Exceptions taken to the rulings of the board of review shall not be necessary to obtain judicial review nor shall a bond be required either as a condition of initiating a proceeding for judicial review of a determination of benefit rights or of entering an appeal from the decision of the court upon such review.

(2) The board of review and all parties to the proceedings before it shall be parties to the review proceedings. If the commissioner is a party respondent, the petition shall be served by leaving with him, or any representative whom he designates for that purpose, as many copies of the petition as there are respondents. The commissioner shall file with the court certified copies of the record of the case together with his petition for review or his answer to the appellant's petition. Upon the filing of a petition for review by the commissioner, or upon service of a petition upon him, the commissioner shall send a copy of the petition by registered mail to each party and such mailing shall constitute service upon the parties.

(3) The jurisdiction of the reviewing court shall be confined to questions of law, and, in the absence of fraud, the findings of fact by the board of review, if supported by substantial evidence regardless of statutory or common-law rules, shall be conclusive. Additional evidence required by the court shall be taken before the board of review; and the board, after hearing such additional evidence shall file with the court such additional or modified findings of fact or conclusions as it may make, together with transcripts of the additional record. All proceedings under this section shall be heard summarily and given precedence over all other civil cases except those arising under the workmen's compensation law of this State; appeals involving benefit rights shall be given precedence over all other cases arising under this Act. An appeal may be taken from the decision of the _____ court of _____ to the _____ court of _____ in the same manner consistent with the provisions of this Act as provided in civil cases.

(j) Conclusiveness of final determinations and decisions.--Except insofar as there is a redetermination under section 5(g) of this Act, all final determinations and decisions shall be conclusive upon employing units with notice, the commissioner, and the claimant. No final determination or decision as to benefit rights shall be subject to collateral attack by an employing unit regardless of notice. The commissioner, appeal tribunal, or board of review shall reopen a determination or decision or revoke permission for withdrawal of an appeal if (1) he or it finds that a worker or employer has been defrauded or coerced in connection with the determination, decision, or withdrawal of the appeal, and (2) the defrauded or coerced person informs the appropriate officer or body of the fraud or coercion within sixty days after

he has become aware of the fraud or within sixty days after the coercion has been removed.

(k) Rule of decision and certification to board of review.—Final decisions of the board of review and the principles of law declared in their support shall be binding in all subsequent proceedings involving similar questions unless expressly or impliedly overruled by a later decision of the board or of a court of competent jurisdiction. Final decisions of appeal tribunals and the principles of law declared in their support shall be binding on the commissioner, and shall further be persuasive authority in subsequent appeal tribunal proceedings. If in any subsequent proceeding the commissioner or an appeal tribunal has serious doubt as to the correctness of any principles previously declared by an appeal tribunal or by the board of review, or if there is an apparent inconsistency or conflict in final decisions of comparable authority, then the findings of fact in such case may be certified, together with the question of law involved, to the board of review. After giving notice and reasonable opportunity for hearing upon the law to all parties to the proceedings, the board of review shall certify to the commissioner or appeal tribunal and the parties its answer to the question submitted; or the board in its discretion may remove to itself the entire proceeding as provided in section 6(h) and render its decision upon the entire case.

(l) Limitation of fees.—No claimant shall be charged fees or costs of any kind by the commissioner, an appeal tribunal, or the board of review, or by any court or any court officer, except that a court

may assess costs against such claimant if it determines that the proceedings for judicial review have been instituted or continued without reasonable grounds.

(m) Representation of claimant.--Any claimant in any proceeding before the commissioner, an appeal tribunal, or the board of review may be represented by counsel or other duly authorized agent. No such counsel or agent shall either charge or receive for such services more than an amount approved by the board of review.

(n) Fees of attorneys for claimants on appeals to courts.--An attorney at law representing a claimant on appeal to the courts shall be entitled to counsel fees as fixed by the court not to exceed $____ and necessary court costs and printing disbursements not exceeding $____. In difficult cases the court to which the appeal was taken may, upon application of counsel for the claimant, increase such fees, court costs, or disbursements to an amount which the court deems reasonable. Such counsel fees, costs, and disbursements shall be paid by the commissioner out of employment security administration funds in each of the following cases: (1) any court appeal from an administrative or judicial decision favorable in whole or in part to the claimant, (2) any court appeal by a claimant from a decision which reverses a decision in his favor, (3) any court appeal by a claimant from a decision denying or reducing benefits awarded under a prior administrative or judicial decision, (4) any court appeal as a result of which the claimant is awarded benefits, (5) any court appeal by a claimant from a decision by a tribunal, board of review, or court which was not unanimous, or (6) any other court appeal by a claimant if the court finds that a reasonable basis exists for the appeal.

Section 7

COVERAGE

SEC. 7(a) Coverage determination.--(1) On his own motion or on the application of an employing unit, the commissioner shall, on the basis of facts found by him, determine whether the employing unit is an employer and whether service performed for it constitutes employment.

(2) Within one year after he has made a determination under section 7(a)(1), the commissioner may, on his own motion, reconsider his determination in the light of additional evidence and make a redetermination.

(3) A notice of the commissioner's determination made under paragraph (1) or (2) of section 7(a), which shall include a statement of the supporting facts found by the commissioner, shall be mailed to the last known address of the employing unit affected, or otherwise delivered to it.

(4) Within fifteen days after a notice of a determination made under paragraph (1) or (2) of section 7(a) was mailed to the last known address of an employing unit, or otherwise delivered to it, that employing unit may apply to the commissioner to reconsider his determination in the light of additional evidence and to issue a redetermination. The commissioner shall, if the request is granted, mail to the last known address of the employing unit affected, or otherwise deliver to it, a notice of the redetermination, which shall include a statement of the supporting facts found by the commissioner; if the request is denied, he shall furnish a notice of the denial of the application.

(5) Within fifteen days after a notice of a determination made under paragraph (1), (2), or (4) of section 7(a) or a denial of the

application under section 7(a)(4) was mailed to the last known address of an employing unit, or otherwise delivered to it, that employing unit may appeal from the determination to the board of review. The commissioner shall be a party to such appeal. The board of review shall afford the parties a reasonable opportunity for a fair hearing as provided in the case of hearings before appeal tribunals in section 6. The board's decision shall be final unless, within fifteen days after the decision was mailed to the last known address of a party, or otherwise delivered to it, that party initiates judicial review in accordance with the provisions of section 6(i).

(b) Conclusiveness of determination.--A determination of the status of an employing unit by the commissioner under section 7(a), in the absence of appeal therefrom, and a final determination of the board of review upon an appeal, together with the record of the proceeding, shall be admissible in any subsequent proceeding under this Act. If supported by substantial evidence and in the absence of fraud, the determination shall be conclusive, except as to errors of law, upon any employing unit which was a party to such proceeding.

(c) Period of coverage.--Any employing unit which is or becomes an employer subject to this Act within any calendar year shall be deemed to be an employer during the whole of such calendar year except as provided in section 7(e) and (f) and shall remain an employer until coverage is terminated as provided in section 7(d), (e), and (f).

Section 7(d) (First provision)

(First provision)

(d) Termination of coverage 1/.—Except as otherwise provided in section 7(e) and (f), an employing unit shall cease to be an employer subject to this Act as of the first day of any calendar year, only (1) if, not later than March 15 of such year, it has filed with the commissioner a written application for termination of coverage as of the first day of January, and the commissioner finds that within the preceding calendar year the employing unit did not pay wages of $____ or more in any calendar quarter for employment subject to this Act and that in the preceding calendar year no service was performed for it with respect to which it was liable for any Federal tax against which credit may be taken for contributions required to be paid into the unemployment fund of this State,2/ or (2) if, not later than March 15 of such calendar year, the commissioner has made such findings on his own motion: Provided,3/ That for the purpose of this subsection the two or more employing units mentioned in paragraph (2), (3), or (4) of section 2(i) shall be treated as a single employing unit.

(Second provision)

(d) Termination of coverage 4/.—Except as otherwise provided in section 7(e) and (f), an employing unit shall cease to be an employer

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1/ No such subsection is needed with the first definition of employer, section 2(i). This provision is appropriate with the second definition.

2/ The finding relative to Federal tax liability should be included only if a provision similar to section 2(i)(5) is adopted.

3/ This proviso should be included only if the State law includes the provisions referred to.

4/ No such subsection is needed with the first definition of employer (section 2(i)). This provision is appropriate with the third definition.

subject to this Act as of the first day of any calendar year, only (1) if, not later than March 15 of such year, it has filed with the commissioner a written application for termination of coverage as of the first day of January, and the commissioner finds that within the preceding calendar year there were not _____ different days, each day being in a different calendar week, on which the employing unit had _____ or more individuals in employment subject to this Act and that no service was performed for it with respect to which it was liable for any Federal tax against which credit may be taken for contributions required to be paid into the unemployment fund of this State,1/ or (2) if, not later than March 15 of such calendar year, the commissioner has made such findings on his own motion: Provided,2/ That for the purpose of this subsection, the two or more employing units mentioned in paragraph (2), (3), or (4) of section 2(i) shall be treated as a single employing unit.

(e) Elective coverage for employing units 3/.—(1) An employing unit, not otherwise subject to this Act, which files with the commissioner its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval.

1/ The finding relative to Federal tax liability should be included only if a provision similar to section 2(i)(5) is adopted.
2/ This proviso should be included only if the State law includes the provisions referred to.
3/ No such subsection is needed with the first definition of employer, section 2(i)(1).

(2) Any employing unit subject to this Act by reason of an election under section 7(e)(1) shall cease to be subject hereto as of January 1 of any calendar year, subsequent to the two calendar years for which it elected coverage, only if not later than March 15 of such year, either such employing unit has filed with the commissioner a notice to that effect, or the commissioner on his own motion has given notice of termination of such coverage.

(f) Elective coverage of excluded service.—(1) Any service performed for an employing unit, which is excluded under the definition of employment in section 2(k)(6) and with respect to which no payments are required under the employment security law of another State or of the Federal Government may be deemed to constitute employment for all purposes of this Act, provided that the commissioner has approved a written election to that effect filed by the employing unit for which the service is performed, as of the date stated in such approval. No election shall be approved by the commissioner unless it (A) includes all the service of the type specified in each establishment or place of business for which the election is made, and (B) is made for not less than two calendar years.

(2) Any service which because of an election by an employing unit under section 7(f)(1) is employment subject to this Act shall cease to be employment subject to the Act as of January 1 of any calendar year subsequent to the two calendar years of the election, only if not later than March 15 of such year, either such employing unit has filed with the commissioner a written notice to that effect, or the commissioner on his own motion has given notice of termination of such coverage.

Section 8

CONTRIBUTIONS

SEC. 8(a) Payment of contributions.--Contributions with respect to wages for employment shall accrue and become payable by each employer for each calendar year in which he is subject to this Act. Such contributions shall become due and be paid by each employer to the commissioner for the fund, in accordance with such regulations as the commissioner may prescribe, and shall not be deduced, in whole or in part, from the wages of individuals in employment for such employer.

(b) Rate of contributions.--Each employer shall pay contributions equal to 2.7 percent of wages paid by him during the calendar year with respect to employment, except as otherwise provided in section 8(c), (d), and (e).

(c) Base of contributions.--For the purposes of section 8(a) and (b) and subsequent to ____ 1/ wages shall not include that part of remuneration which after remuneration equal to $3,000 has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a Federal law imposing a tax against which credit may be taken for contributions required to be paid into a State unemployment fund. For the purposes of this subsection, the term employment shall include service constituting employment under any employment security law of another State or of the Federal Government.

1/ Insert the date as of which the latest amendment to subsection (c) becomes effective.

(d) Experience rating--contributions based on quarterly pay-roll declines.--(1) As used in this section,

(A) "Computation date" means September 30 1/ of the year immediately preceding the calendar year for which the contribution rates are effective;

(B) "Pay roll" means the amount of remuneration paid by an employer or employing unit to individuals in its employ for service in employment as defined in this Act; and the term "quarterly pay roll" means the amount paid during a calendar quarter. For the purpose of determining the rate for a newly subject employer the definition of employment in force at the time that he becomes subject shall apply to service performed for him prior to the date on which he becomes subject;

(C) "Qualifying period" for a person, firm, or corporation which has been an employer or an employing unit during the entire period means the period of twenty consecutive calendar quarters ending on the computation date. In the case of an employer who has not been an employer or an employing unit for the entire twenty calendar quarters, the qualifying period shall consist of not less than the twelve consecutive calendar quarters ending on the computation date;

(D) "Reserve percentage" means the percentage which the total amount available for benefits in the unemployment fund, as of the computation date, bears to the total amount of all pay rolls subject to

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1/ A lag between the computation date and the effective date of the new rates is desirable. Because of the simplicity of the procedures, a three-months lag is adequate and September 30 is suggested as the computation date for rates to be effective the following January 1.

contributions under this Act for the twelve-calendar-month period ending on the computation date.

(2) The standard rate of contributions shall be 2.7 percent. No employer's rate shall be varied from the standard rate unless as of the computation date the reserve percentage equals or exceeds 6.0.

(3) Subject to the provisions of the preceding paragraph, the commissioner, for the calendar year ____ 1/ and for each calendar year thereafter, shall determine each eligible employer's contribution rate in the manner set forth below. An employer shall be deemed to be eligible for rate determination in accordance with the provisions of this subsection, if during each year of the qualifying period ending on the computation date, he (as an employing unit or an employer) has had individuals in his employ and has maintained pay-roll records of the remuneration paid to such individuals during each quarter of such year.

(A) The commissioner shall arrange each employer's quarterly pay rolls in chronological order beginning with the first quarterly pay roll occurring within the qualifying period and ending with the last quarterly pay roll within such period.

(B) Whenever an employer's pay roll with respect to any calendar quarter is less than the pay roll for the immediately preceding quarter within the qualifying period, the quarterly percentage decline shall be computed to the sixth decimal place by dividing the amount of the decline by the amount of the pay roll for the preceding calendar

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1/ Insert date as of which the amendment providing reduced rates based on pay-roll declines becomes effective.

quarter. For the purpose of computing quarterly percentage declines, the commissioner may, by regulation, prescribe: (i) The manner in which remuneration paid in the form of annual bonuses or other lump-sum payments for service performed over a period of more than three months shall be apportioned among the calendar quarters of the calendar year in which such service was performed 1/; and (ii) the method for making adjustments in quarterly pay rolls to eliminate the effect upon quarterly percentage declines in pay roll resulting from unemployment which would not be compensable by reason of the labor-dispute provisions of section 4(b)(6).

(C) The average quarterly percentage decline shall be computed to the sixth decimal place for each employer by dividing the sum of his quarterly percentage declines by nineteen or, in the case of an eligible employer whose qualifying period is less than twenty quarters, by one less than the number of quarters in his qualifying period.

(D) The rate of contributions payable by each eligible employer for the succeeding calendar year shall be the rate indicated for his average quarterly percentage decline in that column of the following schedule which is appropriate for such year as determined by the reserve percentage in the fund:

1/ An alternative to the apportionment of bonuses and lump-sum payments to calendar quarters is their elimination in the determination of quarterly declines while retaining such payments for purposes of contributions and benefit determinations.

If an employer's average quarterly percentage decline is:	If the reserve percentage in the fund is: 6 but less than 9	9 but less than 12	12 and over
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.....	.....	.....	.....
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(4) If the commissioner finds that any employer has failed to file any pay-roll report or has filed an incorrect or insufficient report, the commissioner shall make an estimate of the amount of contributions required from such employer on the basis of the best evidence available to him at the time, and shall notify the employer thereof by registered mail sent to his last known address. Unless such employer shall file the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of such notice, the commissioner shall compute such employer's rate of contributions on the basis of such estimate. The rate so determined shall be subject to increase but not to reduction on the basis of subsequently ascertained information.

(5) Whenever an employing unit (whether or not an employer within the meaning of section 2(i)) in any manner succeeds to, or acquires substantially all the assets of, an organization, trade, or business of another employing unit which at the time of acquisition was an employer subject to this Act, the pay-roll records of such predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

Notwithstanding any other provision of this section, if the successor employer was an employer subject to this Act prior to the date of acquisition, his rate of contributions for the remainder of the calendar year shall be his rate with respect to the period immediately preceding the date of acquisition. If the successor was not an employer prior to the date of acquisition, his rate shall be the rate applicable to the predecessor employer or employers with respect to the period immediately preceding the date of acquisition provided there was only one predecessor or there were only predecessors with identical rates; if the predecessor rates were not identical, the successor's rate shall be the highest rate applicable to any of the predecessor employers with respect to the period immediately preceding the date of acquisition.

(6) The commissioner shall notify each employer promptly of his rate of contributions as determined for any calendar year pursuant to this subsection. Such determination shall become conclusive upon the employer unless within fifteen days after the notice was mailed to his last known address or otherwise delivered to him, the employer files an application for review and redetermination, setting forth his reasons therefor. If the commissioner grants such review, the employer shall be notified thereof promptly and shall be granted a reasonable opportunity for a fair hearing. The commissioner shall make a redetermination and shall notify the employer of the redetermination and the reasons therefor. If the commissioner denies a review, he shall notify the employer of the denial and the reasons therefor. A redetermination or a denial of review shall become final, unless within fifteen days after the notice was mailed to the last known address of the employer,

or otherwise delivered to him, petition for judicial review is filed in accordance with section 6(i).

(e) Financing benefits paid to State employees 1/.--In lieu of contributions required of employers under this Act, the State of _____ shall pay into the fund an amount equivalent to the amount of benefits paid to individuals based on wages paid by the State. If benefits paid an individual are based on wages paid by both the State of _____ and one or more other employers, the amount payable by the State to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the State bear to the total amount of base-period wages paid to the individual by all his base-period employers.

The amount of payment required under this section shall be ascertained by the commissioner quarterly and shall be paid from the general funds of the State at such time and in such manner as the commissioner may prescribe 2/ except that to the extent that benefits are paid on the basis of wages paid by the State from special administrative funds, the payment by the State into the unemployment fund shall be made from the special funds.

1/ Benefits paid to employees of the political subdivisions of a State may be financed in a manner similar to that provided in this subsection.

2/ If the State law prescribes that the State treasurer or other official must pass on fiscal policies and expenditures, this provision should be modified to provide for the approval by the appropriate State official of the time and manner of payment prescribed by the commissioner.

Section 9

COLLECTION OF DELINQUENT AND CONTESTED CONTRIBUTIONS

SEC. 9(a) Interest on past-due contributions.--If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereafter remaining unpaid shall bear interest at the rate of _____ percent per month or any fraction thereof from and after such date until payment is received by the commissioner. Interest collected pursuant to this subsection shall be paid into the unemployment fund.

(b) Collection by suit.--(1) If any employer defaults in any payment of contributions or interest thereon, the amount due may (in addition to or alternatively to any other method of collection prescribed in this Act) be collected by civil action in the name of the commissioner,1/ and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 6 and cases arising under the workmen's compensation law of this State.

(2) Any employing unit which is not a resident of this State and which exercises the privilege of having one or more individuals perform service for it within this State, and any resident employing

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1/ If a State wishes such actions brought in the name of the State, the word "State" should be substituted for the word "commissioner."

unit which exercises that privilege and thereafter removes from this State, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this subsection. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this State: Provided, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such civil action is pending.

(3) The courts of this State shall in the manner provided in section 9(b)(1) and (2) entertain actions to collect contributions or interest thereon for which liability has accrued under the employment security law of any other State or of the Federal Government.

(4) No suit (including an action for a declaratory judgment) shall be maintained and no writ or process shall be issued by any court of this State which has the purpose or effect of restraining, delaying, or forestalling the collection of any contributions under this Act or substituting any collection procedure for those prescribed by this Act.

Section 9(c)

(c) Priorities under dissolutions or distributions.--(1) In any distribution of an employer's assets, judicially ordered or otherwise, including dissolution, reorganization, receivership, assignment for the benefit of creditors, administration of estates of decedents, compositions, or any similar situation, any claims for contributions and interest thereon due or accrued under this Act which have not been reduced to a lien in accordance with the provisions of section 9(e) shall be paid in full, prior to all other claims which have not been reduced to liens, including claims for taxes or other debts due this State: Provided, That, where both a claim for contributions and a claim for wages, neither of which has been reduced to a lien, are owed by such employer, the order of priority as between such claims and other claims which have not been reduced to a lien shall, notwithstanding any other provisions of the law of this State to the contrary, be as follows:

(A) such claims for wages, other than the remuneration of officers of corporations, in the amount of $____ to each worker, earned within _____ months of the commencement of the proceeding, or of the date of adoption of an arrangement not judicially ordered, for the distribution of an employer's assets;

(B) such claims for contributions and interest thereon due or accrued under this Act; and

(C) other claims in the order of priority provided by other provisions of law.

(2) Notwithstanding the provisions of section 9(c)(1) or any other provisions of the laws of this State, if such employer is indebted to the Federal Government for taxes due or accrued under the Federal

Unemployment Tax Act (or under any other Federal law hereafter enacted imposing a tax against which credit may be taken for contributions required to be paid under a State employment security law), and a claim for such taxes as well as a claim for contributions due or accrued under this Act has been duly filed, the order of priority, as between such claim for contributions and other claims, including claims which have been reduced to a lien either before or after the date of the enactment of this provision, shall be as follows:

(A) claims for contributions due or accrued, whether or not reduced to a lien, to the extent that the payment of such claim will result in a credit against such claim for Federal taxes and will not prejudice the holders of any other claims;

(B) in the order of priority provided by other provisions of the law of this State, all lien claims subordinate to such claim for Federal taxes, including State tax liens, whether such liens attached prior to or after the date of enactment of this provision, and claims for wages, other than the remuneration of officers of corporations, in the amount of $____ to each worker, earned within____ months of the commencement of the proceeding, or of the date of adoption of an arrangement not judicially ordered, for the distribution of the employer's assets;

(C) to the extent that they are not included in (A), claims for contributions and interest due or accrued under this Act, which have not been reduced to a lien;

(D) other claims in the order of priority provided by other provisions of law. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, claims for contributions

and interest due or accrued under this Act, which have not been reduced to a lien, shall be entitled to such priority as is provided in said Bankruptcy Act for taxes due any State of the United States.

(d) Refunds.--(1) If any individual or organization makes application for refund or credit of any amount paid as contributions or interest under this Act and the commissioner determines that such amount or any portion thereof was erroneously collected, the commissioner may, in his discretion, allow a credit therefor, without interest, in connection with subsequent contribution payments, or refund from the fund, without interest, the amount erroneously paid. No refund or credit shall be allowed with respect to a payment as contributions or interest unless an application therefor shall be made on or before whichever of the following dates is later: (A) one year from the date on which such payment was made; or (B) three years from the last day of the period with respect to which such payment was made. For a like cause and within the same period a refund may be made, or a credit allowed, on the motion of the commissioner. If the commissioner determines that contributions or interest were erroneously paid to this State on wages insured under the employment security law of some other State or of the Federal Government, refund or adjustment thereof may be made without interest, irrespective of the time limits provided in this subsection, on satisfactory proof that contributions or interest on such wages have been paid to such other State or to the Federal Government. Nothing in this Act, or any part thereof, shall be construed to authorize any refund or credit of money due and payable under the law and regulations in effect at the time such money was paid.

(2) In the event that any application for refund or credit is rejected, a written notice of rejection shall be forwarded to the

applicant. Within fifteen days after the mailing of such notice to the applicant's last known address, or, in the absence of such mailing, within fifteen days after delivery of such notice, the applicant may appeal to the board of review, setting forth the grounds for such appeal. Proceedings on such appeal shall be in accordance with the provisions of section 9(f).

(e) Assessments.—(1) If any employer files reports for the purpose of determining the amount of contributions due but fails to pay any part of the contributions or interest due thereon, or fails to file such reports when due, or files an incorrect or insufficient report, the commissioner may assess the contributions or interest due on the basis of the information submitted by the employer or on the basis of an estimate as to the amount due and shall give written notice of such assessment to such employer. Within fifteen days after such notice was mailed to the employer's last known address, or otherwise delivered to him, the employer may appeal to the board of review, setting forth the grounds for such appeal. Proceedings on such appeal shall be had in accordance with the provisions of section 9(f).

(2) If the commissioner determines that the collection of any contributions or interest under the provisions of this Act will be jeopardized by delay, he may, whether or not the time prescribed by this Act or any regulations issued pursuant thereto for making reports and paying such contributions has expired, immediately assess such contributions, together with interest, and shall give written notice of such assessment to the employer. In such cases the right of appeal to the board of review shall be conditioned upon payment of the contributions and interest so assessed or upon giving appropriate security to the commissioner for the payment thereof.

Section 9(e)(3)

(3) If an employer fails to pay the amount assessed pursuant to this section, the commissioner may file with the clerk of the _____ court of the county wherein the employer has his principal place of business, and a copy thereof with the clerk of the _____ court of any county in which such employer may have real or personal property, a certificate under his official seal, stating: the name of the employer, his address, the amount of the contributions and interest assessed and in default, and that the time in which a judicial review is permitted, pursuant to section 9(f), has expired without such appeal having been taken (or that delay will jeopardize collection), and thereupon such clerk shall enter into the judgment docket of the court the name of the employer mentioned in the certificate, the amount of such contributions and interest assessed and in default, and the date such certificate is filed. When such certificate is duly filed and recorded, the amount of the assessment shall be a lien upon the entire interest of the employer, legal or equitable, in any property, real or personal, tangible or intangible, situated in the county where the certificate or a copy thereof was filed. The priority of said liens shall be governed by the same rules as apply to that of a lien for taxes under the law of this State.1/ No lien for contributions or interest shall be valid against

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1/ If the State has no general tax lien law, this sentence would not be appropriate. If the State law gives to liens for certain types of taxes a preference over others regardless of the relative dates of attachment of such liens, it is suggested that there be inserted before "taxes" a reference to the type of tax having the highest such preference. However, before recommending such insertion, the agency should obtain legal advice to determine whether such action would conflict in any way with constitutional limitations. Such a conflict might arise in a situation where as a result of ranking contribution liens with tax liens which have a special priority over pre-existing mortgages, such mortgages are subordinated to the liens for contributions.

one who purchases personal property from the employer in the usual course of his business in good faith and without actual notice of such lien. Such lien may be enforced against any real or personal property in the same manner as a judgment of the _____ court duly docketed.

(4) The foregoing remedies shall be in addition to all other remedies.

(f) Hearings before the board of review.—Upon appeal from an assessment or from a denial of a claim for refund or credit and after affording the appellant and the commissioner a reasonable opportunity for a fair hearing, the board of review shall make findings of fact and conclusions of law and on the basis thereof affirm, modify, or reverse the action of the commissioner. The conduct of such hearings shall be consistent with the provisions of section 6(f).

(g) Judicial review.—The board's decision shall be final unless within fifteen days after the notice was mailed to the last known address of a party, or otherwise delivered to it, that party initiates a proceeding for judicial review in accordance with section 6(i).

(h) Conclusiveness of determination.—Any determination or decision duly made in proceedings under section 9(b), (e), (f), or (g) which has become final, shall be binding in proceedings under section 9(d), (f), or (g) relating to applications for refund or credit, insofar as such determination or decision necessarily involves the issue of whether an employing unit constitutes an employer or whether service performed for, or in connection with, the business of such employing unit constitutes employment.

Section 9(i)

(i) Liability of successor.--Any individual or organization (including the types of organizations described in section 2(j) of this Act), whether or not an employing unit, which acquires the organization, trade, or business or a substantial part of the assets thereof, from an employer, shall be liable, in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, for any contributions or interest due or accrued and unpaid by such employer, and the amount of such liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens: Provided, That the lien shall not be valid as against one who acquires from the successor any interest in the property or assets in good faith, for value and without notice of the lien. On written request made after the acquisition is completed, the commissioner shall furnish the successor with a written statement of the amount of contributions and interest due or accrued and unpaid by the employer as of the date of such acquisition, and the amount of the liability of the successor or the amount of the lien shall in no event exceed the liability disclosed by such statement. The foregoing remedies shall be in addition to all other existing remedies against the employer or his successor.

(j) Contributions paid in error to another State.--Contributions due under this Act with respect to wages for insured work shall for the purpose of this section be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another State or Federal employment security law if payment into the fund of such

contributions is made on such terms as the commissioner finds will be fair and reasonable as to all affected interests. Payments to the fund under this subsection shall be deemed to be contributions for purposes of section 8.

Section 10

UNEMPLOYMENT FUND

SEC. 10(a) Establishment and control.--There is hereby established as a special fund, separate and apart from all public money or funds of this State, an unemployment fund, which shall be administered by the commissioner exclusively for the purposes of this Act. This fund shall consist of (1) all contributions collected pursuant to this Act, together with any interest thereon collected pursuant to section 9; (2) all fines and penalties collected pursuant to the provisions of this Act; (3) all interest earned upon any money in the fund; (4) all property or securities acquired in lieu of contributions or other liabilities to the fund; (5) all earnings of such property or securities; (6) all money recovered on losses sustained by the fund; (7) all money received from the Federal unemployment account in the unemployment trust fund in accordance with title XII of the Social Security Act, as amended; and (8) all money received for the fund from any other source. All money in the fund shall be commingled and undivided.

(b) Accounts and deposit.--(1) The commissioner shall maintain within the fund three separate accounts: a clearing account, an unemployment trust fund account, and a benefit account. All money payable to the fund, upon receipt thereof by the commissioner, shall be immediately deposited in the clearing account. Except as herein otherwise provided, all money in the clearing account shall, after clearance, be deposited immediately with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, notwithstanding any

provisions of law in this State relating to the deposit, administration, release, or disbursement of money in the possession or custody of this State to the contrary. Refunds payable pursuant to sections 9(d) and 2(k)(6)(I) may be paid from the clearing account or the benefit account. The benefit account shall consist of all money requisitioned from this State's account in the unemployment trust fund in the Treasury of the United States for the payment of unemployment benefits.

(2) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited in any depositary bank in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Money in the clearing and benefit accounts shall not be commingled with other State funds, but shall be maintained in separate accounts on the books of the depositary bank. Such money shall be secured by the depositary in which it is held to the same extent and in the same manner as required by the general depositary law of this State, and collateral pledged for this purpose shall be maintained in a separate custody account.1/ The commis-

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1/ In a State where there is no general depositary law or the existing law is inadequate or uncertain, a provision such as the following is recommended in place of this sentence:

> "Such money shall be secured by the depositary bank by collateral in the full amount of the funds on deposit. Such security shall consist of (a) United States Government obligations, direct or guaranteed, and (b) direct obligations of the State of _____. Such collateral security shall be pledged at not to exceed the face value of the obligation and shall be kept separate and distinct from any collateral security pledged to secure other funds of the State."

sioner shall give a bond conditioned upon the faithful performance of his duties with respect to the fund in an amount not to exceed $_____. The bond shall be approved as to legality and form by the attorney general of this State.

(c) Advances from the Federal unemployment account.--The commissioner is authorized and directed to apply for an advance to the State unemployment fund from the Federal unemployment account in the unemployment trust fund, and to accept the responsibility for the repayment of such advance in accordance with the conditions specified in title XII of the Social Security Act, as amended, in order to secure to this State and its citizens the advantage available under the provisions of such title.

(d) Withdrawals from the unemployment trust fund.--(1) Money requisitioned from this State's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to sections 9(d) and 2(k)(6)(I). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this State's account therein, as he deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof such money shall be deposited in the benefit account.

(2) Any balance of money requisitioned from the unemployment trust fund which remains in the benefit account after the expiration of the period for which it was requisitioned shall be deducted from estimates for, and utilized in the payment of, benefits and refunds during

succeeding periods, or, in the discretion of the commissioner, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of the State's account in the unemployment trust fund, as provided in section 10(b).

(e) Expenditures from the unemployment fund.--Expenditures of money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued for the payment of benefits and refunds shall bear the signature of the commissioner or his duly authorized agent for that purpose.

(f) Management of funds upon discontinuance of the unemployment trust fund.--The provisions of section 10(a), (b), and (d) to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State together with this State's proportionate share of the earnings of such unemployment trust fund, from which no other State is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all money belonging to the unemployment fund of this State shall be administered by the commissioner as a trust fund exclusively for the purposes of this Act, and the commissioner shall have authority to hold, invest, transfer, sell, deposit, and release such money, and any proper-

ties, securities, or earnings acquired as an incident to such administration. Such money shall be invested in bonds or other interest-bearing obligations of the United States of America or of this State so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

Section 11

EMPLOYMENT SECURITY ADMINISTRATION FUND

SEC. 11(a) Establishment of administration fund.--There is hereby created in the State treasury a special fund to be known as the employment security administration fund. All money deposited or paid into this fund shall be continuously available to the commissioner for expenditure in accordance with the provisions of this Act, and shall not lapse at any time or be transferred to any other fund. The fund shall consist of all money appropriated by this State in accordance with section 11(d); all money received from the United States of America, or any agency thereof, and all money received from any other source for the administration of this Act; all money received from any agency of the United States or any other State as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment security administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of this Act.

(b) Protection against loss.--Such money shall be secured by the depositary in which it is held to the same extent and in the same manner as required by the general depositary law of this State, and

collateral pledged shall be maintained in a separate custody account.1/ The State treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security administration fund provided under this Act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future.

(c) Deposit and disbursement.--All money in the employment security administration fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, except that money in this fund shall not be commingled with other State funds, but shall be maintained in a separate account on the books of a depositary bank. All money in this fund shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of the employment security program.

1/ Where there is no general depositary law or the existing law is inadequate or uncertain, a provision such as the following is recommended in place of this sentence:

> "Such money shall be secured by the depositary bank by collateral in the full amount of the funds on deposit. Such security shall consist of (a) United States Government obligations, direct or guaranteed and (b) direct obligations of the State of _____. Such collateral security shall be pledged at not to exceed the face value of the obligation, and shall be kept separate and distinct from any collateral security pledged to secure other funds of the State."

Section 11(d)

(d) Reimbursement of the fund.--If any money received in the employment security administration fund after June 30, 1941 is found by the Secretary of Labor, because of any action or contingency, to have been lost or to have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of the employment security program, it is the policy of this State that such money shall be replaced by money appropriated for such purpose from the general funds of this State to the employment security administration fund for expenditures as provided in section 11(c). Upon receipt of such a finding by the Secretary of Labor, the commissioner shall promptly report the amount required for such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this State of its obligations with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the Social Security Act.

Section 12

ADMINISTRATIVE ORGANIZATION

(First provision)

SEC. 12(a) Bureau of Employment Security.—There is hereby created in the Department of Labor a bureau to be known as the Bureau of Employment Security, with two coordinate program divisions, an employment service division and an unemployment insurance division, and such other administrative units as are necessary to carry out the purposes of the law. The Bureau of Employment Security shall be administered by a full-time salaried director, who shall be subject to the supervision and direction of the commissioner of labor. In accordance with the provisions of section 13(d), the commissioner shall appoint, fix the compensation of, and prescribe the duties of the director of the Bureau of Employment Security.

(Second provision)

(a) Department of Employment Security.—There is hereby created a Department of Employment Security with two coordinate program bureaus, an employment service bureau and an unemployment insurance bureau, and such other units as are necessary to carry out the purposes of the law. The Department of Employment Security shall be administered by a commissioner, appointed by the Governor in the same manner as the commissioners of other departments of the State government.

(First provision)

(b) Board of review.—In accordance with the provisions of section 13(d), the Governor shall appoint a board of review consisting of three full-time members.

Section 12(b) (Second provision)

(Second provision)

(b) Board of review.--The Governor shall appoint a board of review consisting of one full-time member, selected pursuant to section 13(d) who shall act as chairman, one representative of employers and one representative of employees. The latter two may be selected without regard to section 13(d) and shall be paid a fee of not more than $_____ per day of active service plus necessary expenses. No hearing shall proceed in the absence of the chairman of the board of review; the chairman shall act alone in the absence of any other member.

(Third provision)

(b) Board of review.--The _____ 1/ of this State shall constitute the board of review.

(c) Advisory councils.--The commissioner shall appoint a State advisory council, composed of men and women, including an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the commissioner may designate. Such council shall aid the commissioner in formulating policies and solving problems related to the administration of the employment security program and in assuring impartiality, neutrality, and freedom from partisan influence in the solution of such problems. The commissioner may also appoint special councils to perform appropriate services. Members of such advisory councils shall serve

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1/ Enter the title of the person, such as "commissioner," "director," or the name of the board or commission that is to hear benefit and liability appeals.

without compensation but shall be reimbursed for any travel and subsistence expenses incurred, in accordance with the travel and subsistence regulations applicable to employees of the Bureau of Employment Security. The advisory council shall meet as frequently as the commissioner deems necessary but not less than twice each year. The advisory council shall make reports of its meetings; such reports shall include a record of its discussions and its recommendations. The commissioner shall make such reports available to any interested persons or groups.

Section 13

ADMINISTRATION

SEC. 13(a) Duties and powers of the commissioner.--(1) It shall be the duty of the commissioner to administer this Act; and he shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, devise such methods of procedure, and take such other action as he deems necessary or suitable to that end. The commissioner shall determine his own organization pursuant to section 12(a); he may delegate such power and authority as he deems reasonable and proper for the effective administration of this Act, and may in his discretion require a bond of any person handling money or signing checks. The commissioner shall have an official seal which shall be judicially noticed.

(2) The provisions of the Wagner-Peyser Act, as amended, are hereby accepted by this State, and the (State) Department of _____ is hereby designated and constituted the agency of this State for the purposes of said Act. The commissioner shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act and for the purposes of performing such functions as are within the purview of the Wagner-Peyser Act.

(3) No later than _____ of each even-numbered year,1/ the

1/ The requirement for reports should be adjusted to the time and frequency of regular legislative sessions in the State, either annual or biennial.

commissioner shall submit to the Governor a report covering the administration and operation of this Act during the preceding two 1/ calendar years and shall make such recommendations for amendments to this Act as he deems proper.

(b) Research and publication:--(1) The commissioner, with the advice and aid of the advisory council, shall study and make recommendations on the most effective methods of providing economic security through unemployment insurance, employment service, and related programs and shall take appropriate steps to promote the reemployment of unemployed workers throughout the State in every way that may be feasible; and to these ends shall carry on and publish the results of investigations and research studies.

(2) The commissioner shall cause to be printed for distribution to the public the text of this Act, his regulations and general rules, his reports to the Governor, and any other material he deems relevant and suitable, and shall furnish the same to any person upon application.

(c) Adoption, amendment, and rescission of general and special rules and regulations.--General and special rules may be adopted, amended, or rescinded by the commissioner only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten

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1/ The requirement for reports should be adjusted to the time and frequency of regular legislative sessions in the State, either annual or biennial.

days after notification or mailing to the last known address of the individuals or employing units affected thereby. Regulations may be adopted, amended, or rescinded by the commissioner and shall become effective in the manner and at the time prescribed by him.

(First provision)

(d) Merit system and personnel.—(1) The commissioner is authorized and directed to provide a merit system covering all persons employed in the administration of this Act and shall have authority, by regulation, to provide for all matters which are appropriate to the establishment and maintenance of such system on the basis of efficiency and fitness and which may be necessary to meet personnel standards promulgated by the Secretary of Labor pursuant to the Social Security Act and the Wagner-Peyser Act, both as amended. The commissioner may maintain the merit system in conjunction with the merit system of any other agency or agencies of this State if such system meets the personnel standards promulgated by the Secretary of Labor. Pursuant to the authority granted under section 13(a) and in accordance with the provisions of the regulations adopted pursuant to this subsection the commissioner shall appoint, fix the compensation, and prescribe the duties and powers of such officers, employees, and other persons as may be necessary in the performance of his duties under this Act.

(Second provision)

(d) Merit system and personnel.—(1) In accordance with the requirements of the _____ 1/ of this State and on the basis of the

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1/ Insert the title of the State civil service law.

authority granted under section 13(a), the commissioner shall appoint, fix the compensation, and prescribe the duties and powers of such officers, employees, and other persons as may be necessary in the performance of his duties under the Act: Provided, That in cooperation with the _____ 1/ the commissioner may take such action as may be necessary to meet the personnel standards promulgated by the Secretary of Labor pursuant to the Social Security Act and the Wagner-Peyser Act, both as amended.

(2) Notwithstanding any provision of law to the contrary, the commissioner shall have authority to dismiss without notice any person employed in the administration of this Act upon receipt of notice of a determination by the United States Civil Service Commission that such person has violated the provisions of the Act of Congress entitled "An Act to prevent pernicious political activities," as amended (United States Code, title 18, section 61(a)) and that such violation warrants the removal of such person from his employment.

(e) Records and reports of employing units.—(1) Each employing unit shall keep true and accurate work records, for such periods of time and containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his authorized representatives at any reasonable time and as often as may be necessary.

1/ Insert here the name of the State agency which administers the State civil service law.

(2) The commissioner, an appeal tribunal, or the board of review may require from any employing unit, with respect to persons who are performing or have performed service for it, any sworn or unsworn reports which are deemed necessary for the effective administration of this Act.

(f) Preservation and destruction of agency records.—(1) The commissioner may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof as he may deem advisable for the effective and economical preservation of the information contained therein, and such summaries, compilations, photographs, duplications, or reproductions, duly authenticated, shall be admissible in any proceedings under this Act if the original record or records would have been admissible therein.

(2) The commissioner may provide by regulation for the destruction, after reasonable periods, of any records, reports, transcripts, other papers in his custody, or reproductions thereof, the preservation of which is no longer necessary for the establishment of contribution liability or of benefit rights or for any other purpose necessary to the proper administration of this Act, including any required audit thereof.

(g) Authority to administer oaths and issue subpoenas.—(1) In the discharge of the duties imposed by this Act, the commissioner, an appeal tribunal, the board of review, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary

as evidence in connection with a disputed claim or the administration of this Act.

(2) In case of contumacy by any person during a hearing or other investigation under this Act, or in case any person refuses to obey a subpoena which has been issued to him under this Act, the commissioner, an appeal tribunal, the board of review, or any duly authorized representative of any of them, may apply for a court order to be issued to such person. Upon such application, the order may be issued by any court of this State within whose jurisdiction the investigation is being carried on, or within whose jurisdiction the person guilty of contumacy or of refusal to obey the subpoena is found, resides, or transacts business. The order may require such person to appear before the official who is conducting the investigation, to produce records or other evidence if so ordered by such official, and to give testimony there regarding the matter under investigation. Failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commissioner, an appeal tribunal, the board of review, or any duly authorized representative of any of them, or in obedience to the subpoena of any of them or of such representative, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing

concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(h) Representation of agency in court.--(1) In any civil action to enforce the provisions of this Act and in any proceeding for judicial review pursuant to sections 6(i) and 9(g), the commissioner, the board of review, and the State may be represented by any qualified attorney who is employed by the commissioner and is designated by him for this purpose; or, at the commissioner's request, by the attorney general, or if the action is brought in the courts of any other State, by any attorney qualified to appear in the courts of that State.

(2) All criminal actions for violation of any provision of this Act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the State; or, at his request and under his direction, by the prosecuting attorney of any county in which the employing unit concerned has a place of business or the violator resides.

(i) Disclosure of information.--Except as otherwise provided in this Act, information obtained from any employing unit or individual pursuant to the administration of this Act, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or the employing unit's identity. Any

claimant (or his legal representative) shall be supplied with information from the records of the department, to the extent necessary for the proper presentation of his claim in any proceeding under this Act with respect thereto. Subject to such restrictions as the commissioner may by regulation prescribe, (1) information may be made available to any agency of this or any other State, or any Federal agency, charged with the administration of an unemployment insurance program or the maintenance of a system of public employment offices, or for purposes of the Federal Unemployment Tax Act to the Bureau of Internal Revenue of the United States Department of the Treasury, and (2) information obtained in connection with the administration of the employment service may be made available to persons or agencies only for purposes related to the operation of a public employment service. Upon request therefor, the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act. The commissioner may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this Act, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 1606(c) of the Federal Unemployment Tax Act.

(j) Federal-State cooperation.—(1) In the administration of

this Act the commissioner shall cooperate with the Department of Labor to the fullest extent consistent with the provisions of this Act, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this State and its citizens all advantages available under the provisions of the Social Security Act, as amended, section 1601 of the Federal Unemployment Tax Act, and the Wagner-Peyser Act, as amended.

(2) The commissioner shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this State of money granted under any of such acts and shall make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports. The commissioner shall afford reasonable cooperation with every agency of the United States charged with the administration of any employment security law.

(3) The commissioner is authorized to make such investigations, obtain and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the administration of this Act as he deems necessary or appropriate to facilitate the administration of any State or Federal unemployment insurance or public employment service law and in like manner, to accept and utilize information, services, and facilities made available to the State by the agency charged with the administration of any such other unemployment insurance or public employment service law.

Section 14

PENALTIES

SEC. 14(a) Misrepresentation to obtain benefits.--Any person who makes a false statement or representation of a material fact knowing it to be false or knowingly fails to disclose a material fact with intent to defraud by obtaining or increasing any benefit under this Act or under an employment security law of any other State, of the Federal Government, or of a foreign government, either for himself or for any other person, shall be fined not less than $25 nor more than $200, or imprisoned for not longer than sixty days, or both; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense: Provided however, That no such fine or imprisonment shall be imposed in any case in which disqualification has been determined under section 4(b)(7).

(b) Misrepresentation by employing unit.--Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to defraud an individual by preventing or reducing the payment of benefits to which such individual would otherwise be entitled, or to avoid becoming or remaining a subject employer, or to avoid or reduce any contribution or other payment required from an employing unit under this Act or under the employment security law of any other State, of the Federal Government, or of a foreign government, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be fined not less than $25 nor more than $200, or imprisoned for not longer than sixty days, or both; and each such false statement or representation or failure to disclose a material fact, and each day such failure or refusal continues shall constitute a

separate offense.

(c) Noncompliance with subpoena of agency.--Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the commissioner, an appeal tribunal, the board of review, or any duly authorized representative of any of them, shall be fined not less than $25 nor more than $200 or imprisoned for not longer than sixty days, or both; and each day such failure or refusal continues shall constitute a separate offense.

(d) Violation of law, rules, or regulations.--Any person who wilfully violates any provision of this Act or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed in this Act nor provided by any other applicable statute, shall be fined not less than $25 nor more than $200 or imprisoned for not longer than sixty days, or both; and each day such violation continues shall constitute a separate offense.

(e) Unauthorized disclosure of information.--If the commissioner or any employee of the commissioner or any member or employee of the board of review, in violation of the provisions of section 13(i), makes any disclosure of information obtained from any employing unit or individual in the administration of this Act, or if any person who has obtained any list of applicants for work or of claimants or recipients of benefits under this Act uses or permits the use of such list for any purpose not authorized by section 13(i), he shall be fined not less than $25 nor more than $200 or imprisoned for not longer than ninety days, or both.

Section 15

RECIPROCAL ARRANGEMENTS

SEC. 15(a) Interstate benefit payments.--The commissioner is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby potential rights to benefits under this Act may constitute the basis for payment of benefits by another State or by the Federal Government and potential rights to benefits accumulated under the law of another State or of the Federal Government may constitute the basis for the payment of benefits by this State. Such benefits shall be paid under such provisions of this Act or under the provisions of the law of such State or of the Federal Government or under such combination of the provisions of both laws as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provision for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another State or of the Federal Government, and provision for reimbursement from the fund for such benefits as are paid by another State or by the Federal Government on the basis of wages and service subject to this Act. Reimbursements paid from the fund pursuant to this subsection shall be deemed to be benefits for the purposes of this Act.

(b) Combining wage credits.--The commissioner is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or

both, whereby wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another State or of the Federal Government, shall be deemed to be wages for insured work for the purpose of determining his benefits under this Act; and wages for insured work, on the basis of which an individual may become entitled to benefits under this Act shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another State or of the Federal Government. No such arrangement shall be entered into unless it contains provision for reimbursement to the fund for such of the benefits paid under this Act on the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law on the basis of wages for insured work, as the commissioner finds will be fair and reasonable to all affected interests. Reimbursements paid from the fund pursuant to this subsection shall be deemed to be benefits for the purposes of this Act.1/

(c) Reciprocal coverage.—The commissioner is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby, notwithstanding the provisions of section 5(k):

1/ States which provide for charging employer accounts with benefits paid may provide for not charging benefits paid on combined wages by inserting the following language at this point: "except that no charge shall be made to an employer's account under section 8 in excess of the maximum benefits payable under section 3 or when no benefits would have been payable to an individual but for this section, because of the lack of wages for insured work necessary to qualify for benefits."

Section 15(c)(1)

(1) Service performed by an individual for a single employing unit for which service is customarily performed by such individual in more than one State shall be deemed to be service performed entirely within any one of the States in which (A) any part of such individual's service is performed, or (B) such individual has his residence, or (C) the employing unit maintains a place of business: Provided, That there is in effect, as to such service, an approved election by an employing unit with the acquiescence of such individual, pursuant to which service performed by such individual for such employing unit is deemed to be performed entirely within such State; and

(2) Service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employing unit which customarily operates in more than one State shall be deemed to be service performed entirely within the State in which such employing unit maintains the headquarters of its business: Provided, That there is in effect, as to such service, an approved election by an employing unit with the affirmative consent of each such individual, pursuant to which service performed by such individual for such employing unit is deemed to be performed entirely within such State.

(d) Reexamination of reciprocal arrangements.--If after entering into an arrangement provided by section 15(a), (b),or (c) the commissioner finds that the employment security law of any State or of the Federal Government participating in such arrangement has been changed in a material respect, the commissioner shall make a new finding as to whether such arrangement shall be continued with such State or with the Federal Government.

(c) Cooperation with agencies of foreign governments.--To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this Act, and facilities and services provided under the employment security law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of this State or under a similar law of such government; and to enter into arrangements of the character provided in this section with the agency of a foreign government administering an employment security law.

Section 16

SAVING CLAUSE

SEC. 16. The legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this Act at any time.

Section 17

SEPARABILITY OF PROVISIONS

SEC. 17. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Section 18

EFFECTIVE DATE

SEC. 18. This Act shall take effect upon passage.

COMMENTARY
ON
PROVISIONS OF EMPLOYMENT SECURITY ACT

Declaration of State Public Policy

A statement of public policy is of continuing value in the administration and interpretation of an employment security law. It is perhaps more important in periods of high-level employment than in periods of extensive unemployment. During these latter periods the harm resulting from unemployment is recognized and there is general acceptance of the necessity for alleviatory legislation. In periods of high-level employment there is less recognition of this need, partly because the public is inclined to forget and partly because employment security legislation has mitigated the effect of such unemployment as does exist. One difficulty which a program of prevention, such as unemployment insurance, always faces is that it tends to destroy the very evidence which justifies its existence.

The policy statement is a reminder that the legislature found unemployment a menace to the health, morals, and welfare of the people and adopted legislation for the abatement of the menace through the maintenance of a free public employment service and the setting aside of unemployment reserves to be used for the benefit of unemployed persons.

Section 1

SHORT TITLE AND RULE OF STATUTORY CONSTRUCTION

The title "Employment Security Act" suggests the broad scope of the unemployment insurance and placement program. It is short and therefore simplifies reference to the Act.

The rule of statutory construction is designed to assure that the Act will be liberally construed to accomplish its broad social purpose, in a manner consistent with those standards of the Federal laws which must be satisfied if the grants and privileges of the Federal acts are to be available to the State and its citizens.

Commentary - Section 2

DEFINITIONS

Section 2 includes definitions of terms which have special, limited, or purely technical meaning for the purpose of the employment security act. They are arranged in alphabetical order to facilitate reference. Words and terms which are not defined in this or other sections of the Act are used in their usual (dictionary) meaning rather than in any special sense. Terms which are defined in other sections of the Act are listed at the end of the commentary on this section.

(a) American vessel.--A definition of American vessel is needed in the Act because the coverage of maritime service is limited to service performed on American vessels. The definition is similar to that in section 1607(n) of the Federal Unemployment Tax Act. The coverage of service performed on American vessels does not follow the usual localization provisions of section 2(k)(2) and (3), but is based on the authorization in section 1606(f) of the Federal act, as set forth in section 2(k)(1)(C) and as explained in the commentary on that section ("maritime service").

(b) Base period.--All systems of unemployment insurance include some basis for measuring the accumulation of benefit rights and the utilization of those rights. In contrast to the old-age and survivors insurance program, unemployment insurance is a short-term program with rights currently established by workers in the labor force for use in the event of their unemployment in the relatively near future. The State laws identify the period for measuring the accumulation of rights as a base period. It is a period of the claimant's previous employment experience in insured work, which is used as the base for determining insured status, weekly benefit, and maximum annual benefits. The two definitions of this period which are suggested in the draft utilize a one-year base period and relate it to another one-year period, the benefit year, in which benefit rights based on the claimant's base-period employment may be exercised. These definitions provide a base period for each individual related to his individual benefit year, which in turn is ordinarily related to the beginning of his unemployment (see page C - 4).

First definition: Under the first definition, the base period is "the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year." The interval between the end of the base period and the beginning of the benefit year (three to six months) is intended to allow time for the recording of the base-period wages necessary to establish a benefit year, prior to the beginning of such a year. The language of such a provision allows a minimum lag of one quarter but since wage reports are usually received one month after the close of a quarter and wage records should be available at the beginning of the quarter in which they may be needed, the operating time for processing the wage reports is only two months.

Second definition: The second definition differs from the first in providing an interval of four to seven months between the end of the base period and the beginning of the benefit year. Thus it allows one month more for the processing of wage records; it is included in the draft for those States which have found the intervals allowed under the first definition too short for this purpose. Because it allows three months for processing the wage records received each quarter, it makes possible year-round processing of wage records.

A shorter lag between base period and benefit year.--With the high-quarter formulas presented in this Manual, it is essential to have the base period constitute four calendar quarters. If the benefit year begins with the filing of a request for a determination of insured status, and the base period is in terms of calendar quarters, it is impossible to eliminate all lag between the base period and the benefit year. It is possible, however, to eliminate the lag quarter and to reduce the lag to less than a calendar quarter in States in which the industrial pattern and experience with employer compliance with the reporting requirements are such as to permit doing away with quarterly wage reporting and the maintenance of wage-record files. The base period would then be defined as the "four completed calendar quarters immediately preceding the first day of an individual's benefit year." (For a transition provision when the base period and benefit year are changed, see page C - 51.)

The chief advantage of such a system is the elimination of time-consuming procedures involved in obtaining and processing a large number of wage items which will never be used for benefit determinations. Another advantage is that most employers need file only one report for an individual, after a claim is filed combining a report of wages for the base period (by quarter) and a report regarding the reason for the worker's separation.

To assure that benefit payments are not delayed by failure of employers to comply promptly with the request for wage and separation data the law of a State which does not require quarterly wage reports should contain specific authorization to the commissioner to compute and pay benefits on the basis of information furnished by the claimant in cases in which employer reports are delayed beyond a specified time. Such a provision could well be included in section 13(e), concerning records and reports of employing units.

Since such a system places on claimants the responsibility for identifying all base-period employers when they file their claims, each employer should be required, by statute or regulation, to furnish all workers employed by him with written notices bearing the employer's firm name, account number, and reporting address.

Uniform base period.--A uniform base period, with a corresponding uniform benefit year, is not recommended in spite of the simplification involved in using the calendar year as the base year for all claimants who file claims in a benefit year beginning three to six months after the end of the calendar year. Definitions of uniform base period and uniform benefit year have been omitted from this edition of the Manual because it has been found that such a system affects different claimants unevenly, depending

on when their employment began in relation to the base period and/or when their unemployment began in relation to the benefit year. Specifically, (1) many claimants may lose their benefit rights or have them greatly reduced because their earnings in a continuous spell of employment are divided between two base periods; (2) eligibility for benefits of new entrants to the labor force may be unduly delayed; (3) unused wage credits for a considerable period would be available to establish rights for a second benefit year and in some cases a third benefit year without intervening employment. In addition, the majority of claimants draw benefits based on more remote (and therefore less representative) employment and wages than with an individual base period.

Moreover, a uniform base period and benefit year result in an annual concentration of the wage record load and the claim load at the beginning of the benefit year or just prior thereto. In addition to the notices of unemployment of workers just becoming unemployed, the agency receives requests for determination of insured status and claims for benefits from claimants in compensable status at the end of the old benefit year, from those who exhausted their benefit rights in the old benefit year and have remained unemployed, and from those who were not insured in the old benefit year but may be insured in the new benefit year.

(c) Benefits.--Benefits are defined in terms of "money payments payable to an individual, as provided in this Act, with respect to his unemployment" to assure the payment of benefits in money, and to confine the use of the term to such money payments. Thus a claim for benefits is a claim for a money payment; a request for a determination of insured status, or a notice of unemployment, or a certification for waiting-week credit is not a claim for benefits.

(d) Benefit year.--The benefit year is the period for which the determination of insured status is effective for an insured worker. A determination of weekly and maximum annual benefits, once made for an individual, will, in the absence of an error or of additional wage information, remain unchanged throughout the benefit year.

The individual benefit year, used with either of the definitions of base period, is a one-year period which begins with the day as of which an individual first files a request for a determination of his insured status and is found to have sufficient wages to be an insured worker, as defined in section 2(o) of the Act. The Bureau recommends that a determination of insured status may be made, whether or not the individual is unemployed when he requests this determination, for three reasons: First, the determination of unemployment is related to a week and when an individual first appears at the office it is not known whether he will be unemployed for a week. For claimants for benefits for total unemployment, the severance of the employment relationship is often indefinite. Many remain "on call" for their employers. Moreover, partially employed individuals are permitted to file claims when they are claiming partial benefits. Second, there is need for a procedure under which a worker may contest a decision on coverage prior to the

time he is unemployed. The filing of a request for determination of insured status will permit an employed worker to appeal an exclusion from coverage and obtain a hearing, before he becomes unemployed, on an issue vitally affecting his rights. Third, if the agency could not establish a benefit year until a worker had certified to a week of unemployment, many redeterminations of insured status would have to be made when claimants did not report a week of unemployment until a later quarter.

The individual benefit year is defined as a one-year period, rather than a fifty-two-week period which is one or two days short of a full year. In a few instances, a fifty-two-week benefit year could result in the inclusion of the same calendar quarter in the base period for each of two successive benefit years. To illustrate, a benefit year of fifty-two full weeks from January 1, 1950 to December 30, 1950, could be followed by a benefit year from December 31, 1950 to December 29, 1951. Under the first definition, the base period for both those benefit years would then include the calendar quarter July 1 to September 30, 1949.

For a discussion of the allocation to one benefit year of a compensable week which falls within two such years, see comments on section 2(s), page C - 22.

(e) Calendar quarter.--The term calendar quarter is used throughout the Act in the definitions, in the benefit formula, and as the period for contribution collection.

(f) Claimant.--This term covers individuals who are at any stage in the process of establishing their rights to benefits. Claimant as here used includes individuals who have indicated their intention to claim benefits by filing a request for a determination of insured status or a notice of unemployment or a certification for a waiting week as well as individuals who are filing claims for their first week of benefits and beneficiaries who are filing claims for subsequent weeks of unemployment.

(g) Commissioner.--If the title of the responsible official or board in charge of the agency administering the law is defined, the drafting of legislation is facilitated by the use of a short term such as "commissioner," "commission," or "department" and the necessity for full identification with every reference is avoided. Commissioner, for example, may refer to the Commissioner of Labor or the Commissioner of Employment Security. The term to be defined will depend on the administrative organization set up in section 12.

(h) Contributions.--The definition limits the term contributions to payments made by an employer into a State unemployment fund "on account of having individuals performing service for him." Interest and penalties are not contributions since they are payable because of late payments rather than on account of employment. The definition corresponds to, but is broader than, the provisions of section 1600 of the Federal Unemployment Tax Act which impose an employer tax "with respect to having individuals in his employ," because the concept of "employment" is more inclusive than the Federal provision in that it goes beyond a master-servant

relation (see section 2(k)(5)). (Treasury regulations provide that contributions may be credited for tax offset whether or not they are paid with respect to "employment" as defined in section 1607(c).) The definition also corresponds to the provisions of 1601(a)(3) which exclude interest and penalties from consideration for purposes of tax offset.

If a State collects contributions from workers as well as employers (see page C - 84), the definition should be modified appropriately.

(i) Employer.--Throughout the Act it is necessary to distinguish between legal entities (whether persons or types of organizations) which are required to contribute to the unemployment fund and other legal entities which have had some employing experience but are not liable for such payments. The term employing unit (see section 2(j)) is used in the more inclusive sense while the defined term employer is limited to persons and organizations liable for contributions. The distinctions between the two terms should be carefully observed since it is frequently necessary to distinguish between subject and nonsubject employing units for which service is performed.

If significant changes are made in the scope of the definition of employer, it is essential that the date the amendment becomes effective be embodied in the definition. If coverage is extended, the date indicates the time as of which contributions and benefit rights begin to accrue.

In some States only those employing units which employ a specified number of individuals within a specified period are employers. The number of individuals may be approximated in terms of a specified pay roll within a period. Three definitions are included in the draft. The first definition is preferred.

First definition of employer: coverage of one or more at any time.--The most satisfactory definition of employer includes all employing units having any covered service performed for them. With such a definition the only basis for exclusion under the Act is found in the employment exclusions (section 2(k)(6)). The first definition makes subject to the Act any employing unit which had one or more individuals engaged in employment at any time, as does the Social Security Act for the old-age and survivors insurance program. The major advantage of the definition is that it assures all workers engaged in covered employment the opportunity to become insured. There is little justification for limiting that opportunity to workers who happen to work for employers with a given number of employees and denying it to workers engaged by employers with fewer employees. Moreover, for workers whose employment is scattered among a number of employers and employing units, the wages from an employer excluded by a size-of-firm test may make the difference between insured status and lack of status or may substantially increase their weekly benefit amount or total potential benefits.

A secondary advantage, but a very important one, lies in the simplicity

of administration under the definition. The only fact that need be determined is that some one performed service covered by the Act for the employing unit in the year. The unit is not subject in any year unless it engages someone in such service. There is no problem of retroactive coverage for service performed during the first part of a calendar year because there is no pay-roll test (first alternative) and no weeks-of-employment test (second alternative).

For further discussion of this definition see the comments on Provisions to extend coverage, page C - 8.

Section 2(i)(2) includes within the definition of employer, for the effective period of the election, any employing unit which under section 7 of the Act has elected coverage of excluded services.

Second definition of employer in terms of amount of pay roll.--Under this definition employer status is determined by the amount of wages paid in a calendar quarter without regard to the number of workers or the length of their employment. The inclusion of the phrase "in either the current or preceding calendar year" results in continuous coverage from year to year unless liability is terminated; it prevents there being a substantial period at the beginning of each year during which no employing unit is subject to the law.

The extent to which coverage may be broadened or narrowed under this definition will depend on the amount of pay roll selected as a basis of coverage. The amount of wages used to determine coverage should be determined in the light of the coverage desired and the wage levels in the State. States adopting such an approach to coverage should select a figure which will permit the widest possible coverage and eliminate persons only casually attached to the labor market. Pay-roll coverage tests now in State laws vary; most of them can be met by employers of "one or more."

Third definition of employer in terms of number of workers.--The basic pattern of the definition of employer in the Federal Unemployment Tax Act (section 1607(a)) is followed here. Employer coverage is based on employment of a given number of individuals within a given number of weeks in the year. Because the definition is based on service in a number of different calendar weeks within a year, the provision contains a clause for treating as two separate weeks a week which falls partly within one calendar year and partly within the next calendar year.

Under the Federal Unemployment Tax Act, the minimum number of workers specified is eight and the number of days (each day in a different calendar week) is twenty. Many States using this method of coverage have reduced the number of workers below eight or the number of weeks below twenty. A few States supplement definitions of this type with provisions which extend coverage to employers who have extensive operations in the State for periods shorter than the specified number of weeks. For example, supplementary provisions cover employing units

having twenty-five workers in one week or a $10,000 pay roll in any quarter.

The provision in terms of pay roll is easier to administer than that in terms of the number of workers and the number of weeks they worked, since the amount of pay roll by calendar quarters can be obtained more readily than information on weeks of employment.

Provisions to extend coverage, second and third definitions.--Under both the second and third definitions, certain provisions, not necessary when coverage is "one or more," are included to extend coverage.

(1) Service covered by an election in another State.--The proviso clause in paragraph (1) of these alternative definitions has the effect of making an employing unit subject to the State law even though it has elected to have the service performed for it in the State covered under another State law in accordance with an interstate arrangement (see comments on section 15(c)(1), page C - 123). The purpose of this proviso is to make sure that such employment is included in determining the status of such employing unit as an employer. No contributions, however, will be payable on the basis of this service because it is excluded from the definition of employment by section 2(k)(6)(Q).

(2) Successor employers.--Paragraph (2) of the alternative definitions of employer gives the status of employer to an employing unit which acquires substantially all the assets of another employing unit which was an employer at the time of the acquisition. If the acquiring unit purchases only a portion of the business, status is not acquired unless the portion transferred was large enough to have made the transferring employer subject or unless the successor's employment record in combination with that of the predecessor meets the test in paragraph (3). For example, if, in a State which limits coverage to employing units with a pay roll of $200 in a quarter, an employer with a quarterly pay roll of $300 sold half of his business, the portion of the business transferred would not in itself be large enough to have established the subjectivity of the transferring employer; or if, in a State which limits coverage to firms with eight or more employees, an employer with nine employees sold a portion of his business involving the employment of five employees, there would be no transfer of employer status to the successor unit. If, however, the transferring employer had had twenty employees and his sale had involved ten of them, the acquiring unit would automatically become an employer.

(3) Merger of employment records.--In case of the total transfer of a business, the combined employment record, whether pay rolls or number of individuals, of a successor employing unit and the predecessor is the test for determination of employer status. This provision is needed when neither unit prior to the acquisition had enough pay roll or enough employees for a long enough period to qualify as an employer. The provision has no retroactive effect on the predecessor employer but makes the successor subject at the time of the transfer without having to establish his liability on the basis of his own

experience after the transfer. With the second definition of employer, this would delay liability for at least one quarter; with the third definition, for the number of weeks specified in section 2(i)(1).

(4) Common ownership or control provision.--In cases of common control or ownership of a number of nonsubject employing units, each unit is an employer if the total employment of all such units is sufficient to make a single employing unit an employer. The purpose of this provision is to prevent avoidance of coverage by a business enterprise through the device of organizing as a group of separate legal entities.

(5) Coverage based on Federal liability.--Employing units subject to the Federal unemployment tax, by reason of having eight or more employees in the United States, are subject to the State law even though such employing units are not employers under the State law by reason of any other provision of section 2(i). In the absence of such a provision (and in the absence of a voluntary election) the employing units in question would be required to pay the full Federal tax on the service performed within the State and the individuals performing such service would be deprived of any benefit credit for such service. The provision is so drawn that if at any time in the future smaller employers are covered under the Federal Unemployment Tax Act, coverage under the State law will be automatically extended. Since this provision establishes coverage under the State law on the basis of the employing unit's liability for the Federal unemployment tax in either the current or preceding year and continues such coverage until it is terminated in accordance with the provisions of section 7, it will provide continuous coverage.

An employer subject to the Federal Unemployment Tax Act is liable for State contributions not only with respect to service on which he is required to pay the Federal tax but also with respect to any other service performed for him which comes within the State's definition of employment.

The companion provision in the definition of employment (section 2(k)(1)(D)) should be noted. Together these two provisions will permit the State to levy State contributions on any service on which the employing unit is liable for the Federal tax. Automatically, they will enable a State to take immediate advantage of any extension of coverage under the Federal act.

(6) Continued coverage.--Paragraph (6) provides that the coverage of employing units whose coverage has been established shall continue until it is terminated under the provisions of section 7.

(7) Employing units covered by election.--Paragraph (7) includes under the definition of employer employing units which have elected coverage under section 7(e).

(j) Employing unit.--(1) Employing unit is defined in terms of the

types of administrative or business organizations for which one or more individuals performed service subsequent to the beginning of the program, January 1, 1936. In extending coverage care should be taken to make sure that the list includes all types of organization to be covered. If it does not, a new category should be added to the definition. For example, the State government and its political subdivisions and instrumentalities have been added to the list so that these political entities are included whenever there is a reference to employing units.

The provisions on multiple establishments, contractor-tacking, and individuals engaged by an employer or an employing unit are all intended to unify services which are in fact performed for one employing unit. These provisions are needed only in States which limit coverage by size of firm. They have been included in the definition of the employing unit rather than in the definition of employer because employing units reporting on the basis of the definition give all the facts that the agency needs to make a determination whether the employing unit is an employer subject to the Act.

(2) Multiple establishments.--Paragraph (2) of the definition prevents splitting an employing unit having two or more establishments within the State into two or more entities in order to avoid coverage or to reduce tax liability. Individuals performing service in each such establishment are deemed to be performing service for a single employing unit.

(3) Contractor-tacking clause.--Paragraph (3) of the definition is called a contractor-tacking clause because it attributes certain service to an employing unit when the work is performed for it indirectly by contractors or subcontractors who are not themselves subject to the Act. Such service is limited to work which is normally a part of the employing unit's usual trade, occupation, profession, or business.

In determining whether or not an employing unit has sufficient pay roll or workers to qualify as an employer, the service for the contractor or subcontractor is counted as though it was performed directly for the principal. Accordingly, an employing unit cannot avoid coverage by entering into contractual arrangements for the performance of service normally a part of its business. The clause may extend the protection of the law to workers in cases in which the contractor is not a subject employer but the principal using the contractor's service is an employer. It facilitates administration because one, rather than two or more units, submits reports on the service performed for the principal and the contracting units.

(4) Individuals engaged by an employee of an employing unit.--This paragraph also is designed to ensure the inclusion of all service performed by an individual for an employing unit if he was engaged by one of the unit's employees to assist that employee in his work for the employing unit, and it had actual or constructive knowledge of the work.

(k) Employment.--Paragraph (1) of this section describes in positive

terms service which is covered under the Act. It includes service performed as an employee of an employing unit within the State, provided that such service is not exempt under the employment exclusions of section 2(k)(6). In addition to this general description, section 2(k)(1) makes specific reference to five types of service: (1) service performed by an individual as an officer of a corporation, (2) service in interstate commerce, (3) service for the State and its political subdivisions and instrumentalities, (4) service on an American vessel, and (5) service which is subject to the Federal Unemployment Tax Act. These references have been included because each type of service has some special characteristic which might exclude it from the general definition if the intent of the legislature to cover such service was not clearly indicated.

(A) Service of corporate officers.--Reference to the service of corporate officers is made to forestall any question as to their status as employees. The Federal Unemployment Tax Act accomplishes the same purpose by including an officer of a corporation in the definition of the term employee.

Service in interstate commerce.--Reference to service in interstate commerce is desirable to avoid any interpretation which would result in the limitation of coverage to intrastate commerce. Since such a high percentage of each State's economy is interstate in character, such an interpretation would greatly restrict the usefulness of the employment security law. Section 1606(a) of the Federal Unemployment Tax Act specifically allows the States to cover service performed in interstate commerce.

(B) Service for the State and its political subdivisions.--The mere omission of a specific exclusion from the definition of employment, such as service performed for a State or its political subdivisions or instrumentalities, would not necessarily serve to cover such service because State legislation affecting employment in private enterprise is generally not applicable to public employees. Consequently affirmative reference to coverage here and in the definition of employing unit is advisable.

While it may not be feasible to cover all State and local government workers, coverage of such workers under the State law should be as broad as possible. Some progress has been made in the extension of the State employment security laws to cover these groups even though wages for service for State and local governments cannot be made subject to the Federal tax. A few States have provisions which cover only the so-called proprietary functions of government and exclude from coverage employees engaged in purely governmental functions. This narrow coverage has proved unsatisfactory because of the difficulties in arriving at a clear-cut distinction between the two types of functions. Even if the distinctions were clear, the need for protection is not limited to workers engaged in proprietary functions; employees performing purely governmental functions also face the possibility of unemployment. (See also comments on paragraphs (J) and (K) of section 2(k)(6), page C - 17).

(C) Maritime service.--Special reference to maritime service is included because the basis for determining the State of jurisdiction of such service differs from that used in all other cases; the localization tests in paragraphs (2) and (3) of section 2(k) of the definition of employment are not applicable to maritime employment. The clause which introduces the reference, i.e., "notwithstanding any other provisions of this subsection" will exempt maritime employment from the application of these tests. Section 1606(f) of the Federal Unemployment Tax Act authorizes the States to require contributions from maritime employers and from the officers and crews of American vessels. The right to require such contributions for service performed on any vessel is limited to the State in which the employer maintains the operating office from which the operations of the vessel are regularly supervised, managed, directed, and controlled.

(D) Service covered by Federal legislation.--Subject service includes also service covered by the Federal Unemployment Tax Act and the provision is so worded that it would cover service covered by any other Federal legislation imposing a tax against which credit may be taken for contributions required to be paid into a State unemployment fund. The chief value of the provision is that it will result in the automatic extension of coverage under the State law if Congress should delete or narrow the exclusions in section 1607(c) of the Federal Unemployment Tax Act.

(2) and (3) Jurisdiction of coverage of service performed within and without the State.--These paragraphs are drafted to avoid conflicts and overlapping coverage between States with respect to the service of a single individual for a single employer performed in two or more States. Two principles are embodied in the definition: (1) All the employment of an individual for one employer should be allocated to one State and not divided among the several States in which he may perform service, and such State should be solely responsible for benefits payable to him; and (2) the State to which his employment is allocated should be the one in which it is most likely that he will become unemployed and seek work.

These paragraphs provide that all of an individual's service is covered if it is "localized" in the State, i.e., if he performs no service outside the State except that incidental to his employment within the State. If on this basis the work cannot be assigned to any State, it is assigned to the State in which he performs some service and in which is located his base of operations or the place from which his service is directed or controlled; if the base of operations or the place of supervision is not in any State in which he works, his total service is assigned to the State in which he resides, if he performs some service in that State.

Without changing the content of these provisions, the order of the paragraphs is changed to emphasize that it is necessary to determine (1) whether the service of an individual is localized in the State making the determination; and only if it is not localized there, (2) whether it is localized in some other State. The individual's base of operations or the place from which his service is directed or controlled has no bearing on a determination of coverage unless it has been found that the service is not localized in any State.

(4) Service covered by election.--This paragraph includes in the definition of employment service covered by an election under section 7 and service which is covered as a result of a reciprocal arrangement with other States under section 15(c). This arrangement permits the allocation of an individual's service to one State even though it is not localized there. (See also comments on section 15(c), page C - 123.)

(5) Employer-employee relationship.--Unemployment insurance should provide protection to workers who are dependent upon a job relationship for their livelihood. Some basis for the determination of the existence or absence of the employer-employee relationship is therefore essential. Paragraph (5) provides three tests, all of which must be met before it can be said that the individual performing the service is not dependent upon his relationship with an employer: (A) He must be free from control in the performance of his duties; (B) his service must be performed outside the place of business of the principal for whom he performs the service; and (C) he must be customarily engaged in an independently established business of the same nature as the service he performs for the principal.

While all three tests are important, the last is the most important for the purposes of unemployment insurance. When the control test alone is used, methods of supervision may be so arranged that there is an appearance of freedom from control on the part of an employee even though in fact he depends for his livelihood upon his employment relationship with his employer. A narrower provision on employer-employee relationship such as that inherent in the common-law master-servant concept would exclude from insurance protection many persons who are dependent upon their jobs with employers.

If the Federal Unemployment Tax Act is amended to broaden the concept of employee, the State agencies will no doubt wish to amend the provisions on employer-employee relationship to obtain for their employers the offset against the Federal tax and for their workers coverage under the law. The general provision concerning service covered by Federal legislation in section 2(k)(1)(D) is adequate to cover Federal changes in employer-employee relationship as well as changes in excluded employments.

(6) Employment exclusions.--In contrast to section 2(k)(1) which is a positive statement defining employment in broad general terms, section 2(k)(6) describes in detail types of service which are excluded from the definition of employment and the provisions of the Act. If a State amends its law by adopting additional exclusions, the effective date of such exclusions should be included as part of the new provision. Similarly, if a State extends coverage by repealing an exclusion now in its law, the effective date of such extension of coverage should be included as a part of the new provision. The date will prevent such an amendment's being construed either as a waiver of liability for contributions previously required under the law, or as voiding benefit rights accrued prior to the amendment. Federal requirements (section 303(a)(5) of the Social Security Act and 1603(a)(4) of the Federal Unemployment

Tax Act) would not permit refunds of contributions which were due under the law in effect during the period for which they were paid (see also section 9(d) and comments thereon, page C -95).

In a comprehensive program covering all individuals dependent upon their employment relationship, the exclusions would be confined to certain marginal areas such as those (A) where there may be constitutional reasons for exclusions; (B) where coverage would conflict with coverage under another employment security law; (C) where dependence of the employee upon an employer for his livelihood is not clearcut; and (D) where the application of the law does not appear feasible. This draft, however, incorporates exclusions similar to those in the Federal Unemployment Tax Act.

(A) Agricultural labor.--This paragraph provides for the exclusion of agricultural service but narrows the exclusion to service on small farm. While ultimate coverage of all agricultural workers is desirable, a gradual approach to such coverage may be advisable. The desirability of broadening coverage should not be underestimated.

The exclusion of agricultural labor in most State laws follows the definition in section 1607 of the Federal Unemployment Tax Act which exempts agricultural labor from the Federal tax. That definition, however, extends well beyond the general understanding of the term agricultural labor. It extends beyond service directly related to the sowing and reaping of agricultural products to service which is incidental to ordinary farming operations or the preparation of fruits and vegetables for market. It has resulted in the exclusion of service which is not even distantly related to agricultural occupations as commonly conceived. Bookkeepers, carpenters, mechanics, and electricians may perform service on a farm, but theirs is not the type of service to which the man on the street refers when he speaks of agricultural labor. The Federal definition excludes establishments that clean, grade, pack, and prepare any agricultural or horticultural commodity for market or store and transport the products to market or to a carrier, if this service is incidental to ordinary farming operations. In the case of fruits and vegetables, the exemptions are extended to service incidental to preparation of produce for market, whether or not the service is incidental to ordinary farming operations.

Workers on large farms and workers engaged in the processing of food can now be covered under State employment security laws without the adoption of special administrative provisions such as those which might be necessary if coverage were extended to workers on small farms. The employment pattern of workers in food processing and on large farms closely resembles that of industrial workers, and their employers, as a rule, maintain records of their employment. If the narrower exclusion is adopted, the exact size of the farm to be included will vary with the character of farming operations in the State. Under the first provision, size is expressed in terms of the amount of a farmer's pay roll; this basis is simpler to administer. Under the alternative, size is expressed

in terms of a given number of workers in a specified number of weeks. The number of workers need not necessarily be the same as in the general coverage provisions. Thus, a State covering employers of one or more could cover agricultural employers having eight or more workers.

(B) Domestic service in a private home.--As in the case of agricultural workers, all domestic workers should ultimately be covered under the unemployment insurance program; as a step in that direction the exclusion in this subsection is drafted to limit the exclusion and provide coverage for employees in households with several domestic employees. Experimentation with coverage in this limited area in States where such households are numerous would prepare the agency for extension of coverage to all domestic workers.

The size of the household to be covered is expressed in terms of pay roll under the first definition and in terms of the number of employees in a specific number of calendar weeks in the second definition. These provisions are needed only if the State size-of-firm provision includes smaller employing units than it is thought desirable to cover in the case of domestic service.

(C) Casual labor.--This exclusion is made for administrative reasons. In States including employers of one or more at any time, the coverage of incidental or casual employment would result in the liability of individuals who are not engaged in any business enterprise. In other States, coverage of casual service performed for individuals in their private capacity rather than in connection with their trade or business would be difficult to enforce.

The provision follows the exclusion in the Federal Unemployment Tax Act, as amended by the Social Security Act Amendments of 1950, effective with respect to service performed after 1950. It substitutes a cash and regularity-of-employment test for the less specific test of relationship to the employing unit's trade or business. The cash test refers to the cash paid for services performed during a calendar quarter regardless of when paid. Under the regularity-of-employment test, an individual is deemed to be regularly employed during a calendar quarter only if (1) he performs service of the prescribed character for an employing unit during some portion of at least 24 days during the calendar quarter, or (2) he was regularly employed (as determined under (1)) during the preceding calendar quarter.

(D) Service for nonprofit organizations.--Employees in nonprofit organizations are subject to unemployment and need the protection of unemployment insurance. Equity and adequacy of protection can be assured only when all individuals similarly situated are similarly protected. There is no distinction in the work of laundresses, janitors, cooks, elevator operators, or printers employed by business concerns and those who work in similar occupations for nonprofit organizations. For this reason the draft contains no general exclusion of service for nonprofit organizations.

Certain employees whose services with such organizations are only incidental to their major occupations are excluded under the Act. The special relationship of ministers of religion and members of religious orders to the church and the congregation differs from the usual employer-employee relationship and those groups are also excluded. Specifically the subsection limits the exclusion to service which is exempt from income tax under section 101 of the Internal Revenue Code if (i) the remuneration for such service is less than $50 a quarter; or (ii) if the service is in connection with the collection of dues or premiums for a fraternal beneficiary society or order (away from the home office); or (iii) is performed by a student who is regularly attending classes; or (iv) is performed by members of religious orders or duly ordained ministers of any religion. In general, the organizations exempt under section 101 are religious, charitable, scientific, literary, or educational in character; the reference to the code gives the agency a ready-made basis for making determinations whether an organization is a nonprofit organization. The change in the amount of remuneration under (i) from "not to exceed $45 a quarter" to "is less than $50 a quarter" corresponds to the 1950 amendment to section 1607(c)(10)(E), effective with respect to service performed after 1950.

(E) Maritime service directed from another State.--Paragraph (E) excludes maritime service which the State is not authorized to tax under the provisions of section 1606(f) of the Federal Unemployment Tax Act. It supplements paragraph (1)(c) of the definition of employment which describes the maritime service which is subject to the Act.

(F) Service on a foreign vessel.--Paragraph (F) is similar to section 1607(c)(4) of the Federal Unemployment Tax Act which specifically excludes service on a foreign vessel unless the service of the individual is restricted to service within the United States. For example, the service of a seaman sailing under the French flag from New York to Cherbourg would be excluded under this paragraph but the service of a carpenter who was employed to repair the same vessel while it was in New York harbor would not be excluded.

(G) Service on small fishing vessels.--Paragraph (G) is identical with section 1607(c)(17) of the Federal Unemployment Tax Act which excludes the service of officers and members of the crew of fishing vessels if the vessels on which they serve are of ten net tons or less and are not engaged in catching or taking salmon or halibut for commercial purposes. The specific services which are excluded when performed on small vessels are the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal or vegatable life.

(H) Family employment.--Paragraph (H) excludes service performed by an individual for his son, daughter, or spouse and service performed by a child under twenty-one years of age for his parent. Family employment is often informal; both the existence of a clear-cut employer-employee relationship and the severance of the relationship with resulting unemployment are difficult of determination. Minor children may perform

service for parents, wives for their husbands, and parents for their children without necessarily being dependent on that service for their livelihood. The exclusion, however, should not go beyond the listed exemptions; an adult who works for his father may be assumed to be dependent upon such employment for his livelihood.

(I) Federal service.--To meet constitutional difficulties service performed for the Federal Government is excluded but the exemption is limited to service the taxation of which Congress has not specifically authorized.

Section 1606(b) of the Federal Unemployment Tax Act authorizes the States to require contributions to their unemployment funds for instrumentalities of the United States if they are not wholly owned by the United States or are not exempt under the Federal act by virtue of any other legal provision. One of the conditions on which Federal permission to cover instrumentalities depends is that provision be made for the refund of contributions collected from Federal instrumentalities for any year with respect to which the State law may fail to be certified under section 1603(c) of the Federal Unemployment Tax Act. Paragraph (I) contains a provision for such refund.

Section 1606(e) of the Federal Unemployment Tax Act authorizes the taxation of service performed for the Bonneville Power Administration. Paragraph (I) is so worded that it would automatically extend coverage if Congress should, at some future date, extend its authorization to other Federal instrumentalities.

(J) Elected officials.--Paragraph (J) exempts elected public officials and officials performing services for the State or its local subdivisions who are paid on a fee basis. Elected officials are exempted because the system is not designed to compensate unemployment resulting from failure to be reelected or from choosing not to run again. Officers paid on a fee basis are not included because of the difficulty of determining wages both for contribution and for benefit-determination purposes.

(K) Employees on work-relief projects.--Paragraph (K) excludes from coverage service performed on work-relief projects undertaken by the State or any of its subdivisions.

(L) Service performed for another State.--Paragraph (L) excludes service performed for another State, its political subdivisions or instrumentalities.

(M) Service covered by Federal unemployment insurance.--Paragraph (M) serves to exclude workers covered under the Railroad Unemployment Insurance Act, but is stated in general terms applicable to any unemployment insurance system established by Congress so as to exempt any workers who may in the future be brought under any other Federal system.

(N) Service performed by an employee of a foreign government.--Paragraph (N) excludes service performed for a foreign government as a consular or other officer or employee in a nondiplomatic capacity.

(O) Service for an instrumentality of a foreign government.--Paragraph (O) excludes service performed for an instrumentality of a foreign government. Such service is not as readily identifiable as service performed for the government itself. Therefore, the language in the paragraph incorporates the same two conditions upon which exemption is based in the Federal Unemployment Tax Act, (section 1607(c)(12)): (i) the service is similar in character to that performed by employees of the United States Government or any of its instrumentalities in foreign countries; and (ii) the foreign government reciprocates by granting similar exemption for service performed within its territory by the United States employees.

(P) Service for an international organization.--Paragraph (P) exempts service in the employ of an international organization. A similar exclusion was adopted by Congress, effective January 1946, as section 1607(c)(16) of the Federal Unemployment Tax Act. The term international organization is defined in section 3797(a)(18) of the Internal Revenue Code as meaning "a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

(Q) Reciprocal coverage arrangements.--The exclusion from the definition of employment in paragraph (Q) is necessary to give full effect to reciprocal arrangements provided in section 15(c), whereby services of a multistate worker may be allocated to a single State. The implications of the "except" clause are discussed in the comments on section 2(i)(1), alternative definitions of employer, page C - 8.

(7) Service of individuals engaged only partly in insured work.--Paragraph (7) is similar to section 1607(d) of the Federal Unemployment Tax Act. It is designed to simplify the treatment of the service of individuals who, though working for a single employer, split their time between covered and noncovered service. Under the provision all the service of an individual is included in the definition of employment if he spends at least half of his time in any pay period performing service subject to the Act; if he spends less than half of his time in insured work, his total service is excluded. As in the Federal act, the last sentence of the provision makes an exception when the services that are excluded are subject to an unemployment insurance law enacted by Congress. If, for example, an individual performs service in one pay period for one employing unit in both railroad and non-railroad employment, his railroad employment would be reported to the Railroad Retirement Board and his non-railroad employment to the State employment security agency.

(l) Employment office.--Section 1603(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act require provision for the payment of all benefits through public employment offices or such other agencies as the Secretary of Labor may approve. The definition of employment office in this section limits the term to those

operated by governmental units. It includes public employment offices operated by other States to provide for the payment of benefits through the offices of other States under the interstate benefit payment plan, and public employment offices operated by a Federal agency or by an agency of a foreign government.

(m) Fund.--The term fund is defined as "the unemployment fund established by this Act."

(n) Insured work.--The term insured work is included to avoid repetition of the phrase "employment for employers."

(o) Insured worker.--Insured worker is a newly defined term in unemployment insurance. The term is used in the Act whenever it is necessary to specify an individual who has sufficient base-period employment or wages to come within the scope of the benefit provisions of the Act. By its use the Act draws a clear line between the wage-credit determination for a benefit year and a determination on the right to receive benefits for a specific week of unemployment.

In the Manual it is necessary to define the term by reference to the qualifying requirement in section 3(b) because of differing qualifying requirements under the several illustrative benefit formulas in section 3. In some State laws the definition of insured worker could be drafted specifically in terms of the State's qualifying requirement rather than by reference to the appropriate section.

(p) State.--Paragraph (p) corresponds to the definition in section 1607(j) of the Federal Unemployment Tax Act. It defines the word State as including Alaska, Hawaii, and the District of Columbia in addition to the States of the United States. For the purpose of the Act, therefore, the term includes all jurisdictions which have passed employment security laws pursuant to the provisions of the Social Security Act and the Federal Unemployment Tax Act, and simplifies reference to these jurisdictions.

(q) Wages.--(1) In numerous places throughout the Act it is necessary to refer to wages for any work, whether or not insured work. The value of the remuneration to the individual as a wage earner is significant; the name by which the payment is designated, the medium in which it is made, and the basis of payment are all immaterial. The definition, therefore, is in general terms and includes remuneration for insured and noninsured work, regardless of whether it is paid (A) as a wage, salary, bonus, or commission; (B) on a piece work, hourly, daily, weekly, monthly, annual, or other basis; and (C) in cash or in kind, such as lodging, food, or clothing.

The determination of the value of remuneration paid in forms other than cash and the reasonable amount of gratuities is administratively simpler if made in accordance with general rules prescribed by the agency rather than being left to determination in each individual case without any general schedule or guide. Since such determinations will affect substantive rights of workers and employers, schedules established for the purpose of making such determinations should be prescribed by rule published after notice and hearing.

The definition makes specific reference to back-pay awards because of the decision of the United States Supreme Court in the case of the Social Security Board v. Nierotko 1/ which held that back-pay awards under an order of the National Labor Relations Board should be treated as wages.

Before this decision most State agencies considered back-pay awards as liquidated damages rather than payment for service. A few States, however, held that back-pay awards were wages. Since the decision, similar interpretations have been made in many States. The suggested language limits the inclusion of the awards to those which are made after the effective date of the amendment and, for the determination of insured status only, permits the allocation of such awards to the quarters with respect to which they were paid. There is no specific provision in the definition for the recovery of benefits which were paid for weeks with respect to which back pay is later awarded, or for correcting previously made determinations of insured status and benefit payments. The general provision (section 5(g)(2))which permits the State agency to reconsider a determination, within a specified time, when additional wages have become available covers these latter cases.

As drafted, the definition of wages may be used to designate amounts that are either paid or payable. The provisions dealing with contribution liability and benefit rights are drafted on a wages-paid basis. The term wages, when used in certain sections of the law, must, however, designate amounts payable, whether or not contributions are based on wages paid. For example, in defining week of unemployment and in fixing the benefit payment for a week of partial unemployment, wages payable for the week in question must be taken into account. Moreover, when wages are not paid at fixed intervals such as is the case of seamen who are paid at the end of a voyage, it is more equitable to provide that benefits be paid on the same basis as if wages were paid at regular intervals. Consequently provision is made in the text for the allocation of wages, for the purpose of benefit payments, to the period in which they were earned in accordance with regulations to be prescribed by the commissioner.

(2) Exclusions from wages.--The items which are specifically excluded from the definition of wages are somewhat similar to those in the Federal Unemployment Tax Act, section 1607(b) as amended by the 1950 Social Security amendments. The exclusion of remuneration in excess of the amount taxable under the Federal Unemployment Tax Act is not included in this general definition of wages; since it is used only in connection with taxable wages, it is in section 8(c) on contributions. The exclusions incorporated in the draft are:

(A) Group Insurance payments.--This paragraph excludes certain types of group insurance payments which an employer may make on behalf of his employees and their dependents (without deduction from the employees' wages), including provision for retirement, sickness, accident, medical care, hospital expenses, and death benefits. This draft omits the

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1/ Social Security Board v. Nierotko, 66 Sup. Ct. Rep. 637 (1946).

provision found in prior drafts that exclusion of payments for death benefits is not effective if the employee has the option to receive other payments in lieu of the death benefit, and the right to assign the benefits or to withdraw from the plan, because it has been found to be difficult to tell whether an individual had such an option at a given time.

(B) Retirement payments.--This paragraph excludes retirement insurance payments other than group insurance made by an employer for an employee.

(C) Sickness, accident, medical, and hospitalization expenses.--This paragraph excludes from wages any payments made by an employer in connection with sickness and hospitalization expenses of an employee more than six months after the employee performed any services for him.

(D) Payments to or from an employer's trust.--This paragraph excludes payments made by employers to or from a trust fund exempt from section 165(a) of the Internal Revenue Code which exempts from tax certain trust funds established by employers for the exclusive benefit of their employees and their beneficiaries. Payments made to employees as remuneration for service for the trust are not excluded from wages under this paragraph.

(E) Old-age and survivors insurance contributions.--This paragraph is incorporated in the Federal Act and in State laws to enable employers to assume the obligation of paying the contribution imposed on their workers for the purpose of old-age and survivors insurance without having to pay the employment tax on such payments. As amended in 1950, effective with respect to remuneration paid after 1950, the Federal Act excludes also payments by an employer of amounts required from his workers under a State employment security law.

(F) Remuneration other than cash for casual labor.--Paragraph (C) contains an additional exclusion similar to that incorporated by the Social Security Act Amendments of 1950 as section 1607(b)(7) of the Federal Unemployment Tax Act, effective with respect to remuneration paid after 1950. This paragraph excludes any remuneration in any medium other than cash (as, for example, lodging, food, clothing, car tokens, or weekly transportation passes) to an individual for services not in the course of employing unit's trade or business (including domestic service in a private home of the employer).

(G) Remuneration of stand-by workers of over 65.--Another exclusion, which corresponds to the exclusion now contained in section 1607(b)(8) (effective with respect to remuneration paid after 1950), eliminates from the term "wages" the remuneration (other than vacation or sick pay) of a stand-by worker who has attained age sixty-five and whose employment relationship has not terminated, if the individual does no work for the employing unit in the period for which such remuneration is paid.

(H) Dismissal payments.--Dismissal payments which are not legally required have been excluded from the definition of wages in prior drafts of this Manual and in the Federal Unemployment Tax Act. Since, effective with respect to remuneration paid after 1951, dismissal payments will constitute wages under the Federal Act, as amended in 1950, most States will wish to omit the exclusion of dismissal pay with respect to remuneration paid after 1951.

(r) Waiting week.--A waiting period is included in employment security laws for two reasons: (1) to allow time for making determinations and for contesting them prior to the end of a compensable week; and (2) to preserve the fund by not paying for very short periods of unemployment.

The experience of the two States which have repealed the waiting-week provision indicates that there is not necessarily an administrative need for a waiting week. Preservation of the fund alone does not justify the retention of the waiting week.

Because some States may have administrative reasons for a waiting week, a definition of waiting week is included in the text in terms that simplify the drafting of eligibility requirements in section 4. A waiting period of just one week is provided as being adequate to meet all needs. With the definition of waiting period as a week of unemployment, the waiting week may be a week of either total or partial unemployment.

The waiting week usually is the first week of unemployment occurring in a benefit year. When there is a series of benefit payments in a period of unemployment occurring at the close of the benefit year and extending into a new benefit year, no waiting week is required (see section 4(a)). A claimant may also carry credit for a waiting week into the succeeding benefit year if he completes a waiting week before the end of the year but cannot complete a compensable week within the same year solely because the end of the benefit year occurs before another week has elapsed. The period within which waiting-period credit may be carried forward should be sufficient to include all such cases; the definition of benefit year and of week must be taken into account. If more than one type of week is used for benefit purposes (e.g., flexible week for total unemployment and employer's pay-roll week for partial unemployment), the period should be so set that it covers all cases.

According to section 4(a)(3) no benefits are payable for the waiting week or any prior week of unemployment in a benefit year. The claimant who certifies for a waiting week must meet all the requirements of section 4; the waiting period therefore cannot be served until after a period of disqualification.

(s) Week.--Week is defined in terms of seven consecutive days so that the period used may be a flexible week beginning with any day a notice of unemployment is filed or a pay-roll or calendar week. Regulations must be adopted to define the type of week to be used for purposes of benefit payments and periods of ineligibility. The regulations should provide also for the allocation of a compensable week which falls within two benefit years to one of such years.

The flexible week has advantages. Its use permits the individual's week of unemployment to begin with the first day of his unemployment. This ensures that all workers need serve only the waiting period required by law. In contrast, the calendar week has the effect of imposing a seven-day waiting period on claimants who lose their jobs on Saturday or Sunday and a longer period on others whose unemployment begins on any other day of the week.

(t) Week of unemployment.--The term "unemployment" is not defined since it is used in its generally accepted meaning as having reference to the condition of an individual who, though usually dependent upon employment for his livelihood, is out of work. However, an employment security law must define the character and degree of unemployment to be compensated and the time unit for measuring it. The definition in this section establishes a week as the period for measuring the existence of unemployment and for paying benefits for unemployment. Any longer period delays the payment of benefits and reduces the amount of benefits payable for less than total unemployment.

An individual is not unemployed in any week unless he meets certain tests: (1) He must either have no work or less than full-time work for an employing unit; and (2) any wages that are payable to him for less than full-time work must be less than his weekly benefit amount. The restriction of the word work to "work performed for any employing unit" is intended to protect workers who, though dependent upon an employment relationship for income, and available for work, may perform various tasks around the home or on a self-owned farm when out of work.

In combination the tests of unemployment serve equally well for the individual who is totally unemployed without earnings (or with only such incidental earnings as he can pick up through odd-job or self-employment) and the individual who has not been separated from his regular employment but who has had his hours cut and his wages radically reduced.

Since the distinction between total and partial unemployment is one of degree, one definition can serve all purposes and the law need not differentiate between criteria for the determination of total and of partial unemployment. Different requirements as to filing claims and registration for work may be necessary in cases of claimants partially unemployed, totally unemployed, or totally unemployed except for odd jobs. These, however, are matters of administrative detail, in which discretion and flexibility are desirable. Matters of this kind are handled more readily by regulation than by statute. The authority to promulgate such regulations is to be found in the provisions concerning the filing of claims and registration and reporting requirements.

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Definitions or explanations of other terms are included in the sections where they are used. See, for example, the following in the sections of the law indicated:

Administration fund	11(a)
Augmented benefit amount	3(a)
Basic benefit amount	3(a)
Computation date (experience rating)	8(d)
Dependent	3(e)
Maximum potential benefits	3(c)
Pay roll (experience rating)	8(d)
Qualifying period (experience rating)	8(d)
Qualifying wages	3(b)
Reserve percentage (experience rating)	8(d)
Suitable work	4(c)
Weekly benefit amount	3(a)

Commentary - Section 3

BENEFIT FORMULA

The commentary on section 3 is organized as follows: (1) a general discussion of policies and principles underlying the benefit formula; (2) an explanation of the five benefit formulas which are included in the text; (3) some suggested transitional provisions applicable when benefit formulas are amended; and (4) some comments on types of formulas which are not recommended. The following definitions included in section 2 are integral parts of the formulas: benefits, base period, benefit year, insured work, insured worker, wages, waiting week, and week of unemployment. See also section 4, Conditions for Receipt of Benefits, and section 5, Determinations, Notices, and Payment of Benefits.

In outlining the policies and principles which must be considered in constructing a benefit formula, the various elements of the benefit formula are presented separately but the interrelationship of weekly benefit amount, qualifying wages, and duration of benefits should be kept in mind.

The five formulas in the text are presented to illustrate different techniques, though all use high-quarter wages as the base for computing wage loss and, in part, for determining insured status. Such formulas are in use in the great majority of the States. Each formula has certain advantages and disadvantages which should be carefully weighed. Some of the techniques used in one formula could be used with others of the formulas, as will be pointed out where pertinent. All the formulas require reports of wages by calendar quarters, though the reports may be required quarterly, annually (with a uniform base period and benefit year), or on a request basis after claims are filed.

High-quarter formulas have certain basic weaknesses, however, some of which are pointed out in the discussion below. The Bureau is exploring other formulas which may be used without wage records accumulated in advance of need.

Since the amount of benefits payable under a State law is a matter for State determination, no figures are included in the schedules outlined in the draft language. However, illustrative figures are included in the tables in the commentary on this section. In view of the changes which occur in wage and employment patterns, it is wise for any State to review periodically the various elements in the benefit formula and to make necessary adjustments in the light of experience.

Weekly Benefit Amount

An unemployment insurance system which relates benefits to individual claimants' prior wages should provide a differential between the worker's income while working and his benefits while unemployed in order to preserve the incentive to work. The definition of week of unemployment (section 2(t)) sets the stage for the measurement and compensation of unemployment in weeks. The unit of payment is the weekly benefit amount for a week of total unemployment.

Wage base for computing weekly benefits.--One of the most difficult problems in drafting a benefit formula is the selection of the wage base which will fairly reflect workers' earning capacity in terms of weekly wages. The wage base should minimize the effect of previous unemployment upon the amount of the benefit; otherwise the formula will require irregularly employed claimants to absorb a higher proportion of wages lost through unemployment than regularly employed claimants. It was in recognition of this fact that early unemployment insurance laws in this country based the weekly benefit amount on full-time earnings or on an approximation of earnings for full employment. Later, formulas were developed by which the weekly benefit is computed directly from the total high-quarter or annual wages without the necessity for determination of a weekly wage. The use of an annual wage base is not recommended for reasons included in the discussion of annual wage formulas on page C - 52.

The unit of a calendar quarter as a base for determining the weekly benefit amount was selected largely because it permitted reporting for unemployment-insurance purposes according to the pattern of wage reporting adopted for the old-age and survivors insurance program. The high-quarter formula represented a simplification, compared with the full-time weekly wage formulas formerly used, and it afforded for most workers a reasonable approximation of a benefit based on full-time weekly wages because "that quarter of the base period in which such wages were highest" generally represents more than fragmentary employment. In a period of reasonably good employment, the high quarter is a quarter of full or nearly full employment for most insured workers. The resulting benefit amount, therefore, reflects for these workers, a fraction of average earnings during a period of relatively full employment.

Even in a calendar quarter, however, many workers experience some unemployment. The proportion for whom this will be the case varies with general economic conditions and with conditions in given industries and geographical areas. This fact of unemployment within the high quarter must be given consideration in determining what fraction of high-quarter wages should be compensated. The weekly benefit amount should not be determined on the assumption that all workers have had full employment during their high quarter; i.e., the average weekly wage should not necessarily be assumed to be 1/13 of high-quarter wages.

Proportion of wage loss to be compensated.--If the benefits payable are to provide real security against the hazard of unemployment, the benefit amount should cover the basic necessities of most claimants and their families without requiring them to resort to relief or to reduce substantially their level of living while drawing benefits. Budgetary items which must be met, whether or not a worker is employed, are food and rent, including light and fuel. Over short periods, purchase of clothing for adults may be deferred and, in the case of growing children, curtailed. Claimants cannot be expected to move to less expensive quarters or to reduce major food costs

during periods of temporary unemployment. The proportion of wages spent for these items is, of course, higher for workers with low earnings and for workers with dependents than for high-paid workers and for workers without dependents. These facts may be reflected in a weighted schedule of high-quarter wages which gives low-paid workers a higher proportion of their wages, as in formulas A and D and in the provision of additional allowances for dependents (see page C - 28) as in formulas A, B, and C.

The fraction or fractions used in the formula should depend upon the wage levels in the State, the proportion of wages that is usually spent for basic necessities, and the provisions for dependents' allowances, if any.

Minimum weekly benefit amount.--The application of the high-quarter fraction to the minimum amount of high-quarter wages required for benefits (see page C - 30) would ordinarily produce a weekly amount of benefits so inconsequential that its payment cannot be justified in terms of meeting the needs of unemployed workers or in terms of the administrative expense involved in processing claims and payments. For that reason the lowest amount of weekly benefits for total unemployment that any claimant may draw is specified; even in a formula which uses the same fraction of high-quarter wages throughout the schedule, the minimum weekly benefit represents a higher proportion of the high-quarter wages of the claimant who barely qualifies for benefits than for other claimants. If the qualifying amount is a multiple of the weekly benefit, increasing the minimum weekly benefit will increase the minimum qualifying wages; this may automatically result in the exclusion of workers who have a bona fide attachment to the labor force. If maximum potential benefits are limited to a fraction of base-period wages, (see page C - 33) raising the minimum weekly benefit without increasing the minimum qualifying amount or the duration fraction may decrease the weeks of benefits for those who barely qualify.

Because of the wide variation in average wages in the various sections of the country, it is not practicable to recommend a minimum weekly benefit amount which would be reasonable for all States. A minimum of $7 which may be appropriate for the lower-wage States would not be appropriate in a highly industrialized high-wage State.

Maximum weekly benefit amount.--The maximum weekly benefit amount paid to any individual under the benefit formula puts a ceiling on benefits so that high-paid workers will not draw an undue proportion of available funds. The ceiling should be fixed so that benefits for a relatively high percentage of claimants represent the normal percentage of wage loss which it is intended should be compensated under the benefit formula. The maximum weekly benefit should, therefore, be set so that not all claimants earning more than the average wage in covered employment in the State would be cut off by the maximum.

If all other elements of the benefit formula were equal, a relatively high maximum would be equitable for all workers with the same earnings experience, regardless of the State in which they worked. Since benefits are related to earnings, the low-paid worker would not receive the

maximum. A high maximum, therefore, would be paid to only a few high-paid workers in a low-wage State and to many workers in a high-wage State. In either State, the maximum would be paid only to those who had earned weekly wages well in excess of the maximum weekly benefit.

Rounding of weekly benefit amounts.--Benefits which represent an approximation of the percentage of wage loss to be compensated can be provided in a formula which rounds computed weekly benefit amounts to certain even amounts. Such rounding makes it possible to set up tables of weekly benefit amounts by brackets of high-quarter wages and minimum qualifying wages which simplify administrative determinations on claims, reduce the number of amounts for which payments must be made, and make the formulas easier for workers to understand.

The rounding of basic benefit amounts is to one-dollar intervals. Intervals of less than one dollar do not permit the agency to achieve the maximum administrative advantages of rounding. Intervals of more than a dollar are not desirable since they accentuate wide differences in weekly benefits payable to workers with only slight differences in their earnings. If the intervals between benefit amounts do not exceed one dollar, such differences (which are inevitably associated with rounding) are confined to fairly narrow limits.

Ordinarily rounding the computed weekly benefit amount to the next higher dollar instead of the next lower or the nearest dollar is desirable for then no claimant has his computed benefit amount reduced by the rounding. Formulas A, B,D, and E follow this principle. However, formula C rounds to the nearest dollar because the emphasis in that formula is on average weekly wage. (See page C - 43).

Dependents' allowances.--Increasing the weekly benefit amount by the addition of dependents' allowances will distribute an additional amount of benefits to claimants with the greatest proportion of non-deferrable expenditures.

There should be some limitation on the categories of dependents on whose behalf allowances will be paid and on the number of dependents for whom any one claimant can receive such allowances. Restricting compensable dependents to nonworking wives and unmarried children under 18 years of age would cover the largest group of dependents. However, such a limitation would discriminate against other claimants who carry heavy obligations for the support of invalids and persons advanced in years. Many sons and daughters support parents and wives support invalid husbands.

The dependents' allowances may be expressed as a flat amount for each dependent or as a percentage of the basic weekly benefit or of average weekly wage or of high-quarter wages. A flat amount added to the basic amount for each dependent will result in a greater proportional augmentation of low benefit amounts than of high amounts. The percentages give a higher allowance per dependent for higher-paid workers, who as a group have more dependents, than they give lower-paid workers.

If a narrow definition of dependent is used, it may be desirable to increase the allowance for the first dependent. If dependents are limited to children, such an increase is particularly desirable since most claimants with one dependent child have also a dependent wife.

If the allowance for each dependent is a flat amount, it will probably be necessary to put an over-all limit on the maximum amount of dependents' allowances which may be paid to any claimant in terms of a percentage of basic benefits or of high-quarter or of average weekly wages. To avoid the contradictions of a formula which is stated in such terms as "$3 for each of three dependents but augmented benefits shall not exceed ____ percent of ____," formulas A, B, and C present dependents' allowances in a table.

The number of dependents which any claimant supports may change in a benefit year. However, agency procedures would be greatly complicated if it were necessary to check on the number of dependents for each compensable week. To avoid the necessity for repeated checks, the legislation should establish the period for which the initial finding on the number of dependents is deemed valid. It is recommended that the determination of the number of dependents made at the time of a determination of insured status should remain in effect throughout the benefit year, thus ignoring any changes in the number of a claimant's dependents. If the number of dependents is not fixed for the benefit year it is not possible, at the time of the initial determination, to state the maximum potential benefits payable to a claimant during a benefit year.

It is possible that both a working father and a working mother, with the same benefit year or with overlapping benefit years, could claim an allowance concurrently for the same child if they are both unemployed during the same week, unless there is a provision similar to that found in the second proviso in section 3(a). This proviso can be omitted by States which do not object to such duplicate allowances.

If a State which does not fix the number of dependents for the benefit year wishes to prevent the payment of concurrent allowances for the same dependent to more than one claimant, the statutory limitation with respect to any week should be in terms of the parent actually having custody of the child or actually providing sole or principal support rather than an automatic award of the allowance to the father. If, however, the number of dependents in a family is greater than the number for whom dependents' allowances may be paid, provision should be made to permit a second claimant in the family to claim additional dependents.

The addition of dependents' allowances necessitates consideration of all elements of the benefit formula. Care must be taken that the qualifying requirements and duration of benefits do not operate to the disadvantage of claimants with dependents. Qualifying requirements, if a multiple of the weekly benefit, should be in terms of basic, not augmented, weekly benefit amounts. Moreover, provision for dependents' allowances should not reduce the number of weeks of potential benefits payable to claimants who have dependents; instead the potential annual benefits should be computed in terms of a multiple of the augmented benefit, or the dependents' allowances should be outside the duration formula, and should be added to the basic benefit whenever a claimant has a week of compensable total or partial unemployment. At the same time care must be taken that the total amount payable in a benefit year to claimants with dependents is not so great, in relation to the qualifying amount, as to lead to public criticism of the program.

The partial earnings limit for determining the existence of partial unemployment should be expressed as the weekly benefit amount, excluding the dependents' allowance. To use the augmented payment as the partial earnings limit would permit a claimant with dependents who had only a slight drop in hours of work to qualify for partial benefits. This does not appear to be equitable or reasonable. Also it would make it difficult for employers to participate in initiating claims for partial benefits. Of course, when benefits are paid to partially unemployed workers with dependents, the full allowance for dependents is added to the partial benefit.

It is generally agreed that payments made on behalf of a claimant's dependents should not be charged against an employer's account where the experience-rating formula provides for benefit charging. Provision in a State law for exclusion of these payments from the charges to employers' experience-rating accounts would not conflict with the requirements of section 1602(a)(1) and (3) of the Federal Unemployment Tax Act.

Qualifying Wages or Employment Requirement

Since unemployment insurance is intended to provide benefits for workers who have been recently attached to the covered labor force and are suffering a wage loss by reason of their unemployment, no benefits should be paid to individuals whose service in covered employment is inconsequential. Other forms of social security will more satisfactorily meet the needs of persons who have had only fragmentary wages or employment.

Form of qualifying requirement.--The statutory form of the requirement for a minimum amount of previous covered employment or wages in a specified prior period to demonstrate attachment to the labor force varies. It may be expressed as a number of weeks of employment in the base period, a flat dollar amount of wages, an amount of wages varying with the individual's weekly benefit amount, a specified distribution of earnings over the quarters of the base period, or a combination of these requirements. For example, a qualifying requirement in terms of weeks of employment usually

includes a requirement of minimum wages per week of employment or of total wages in the weeks of employment or in the base period. Since time is the best measure of prior attachment to the covered labor force, the qualifying formulas in terms of wages attempt to approximate the desired length of employment which will indicate attachment to the labor force.

Because the draft provisions included here, like most State laws, use wages as a test of claimants' attachment to the labor force, the discussion here is principally in terms of qualifying wages rather than of weeks of employment. Because the draft provisions emphasize uniform duration of benefits for all eligible claimants (see page C - 33), a flat qualifying requirement, which would entitle any covered worker who earned at least a minimum amount of wages in his base period to some benefits, has not been included. Even with variable duration, a flat qualifying amount is undesirable in that it is inequitable as between low-wage and high-wage claimants, since it may require only a few weeks of employment for high-paid workers and many weeks of employment for low-paid workers.

Multiple of the weekly benefit amount.--A qualifying wage requirement in terms of a multiple of the claimant's weekly benefit, used with a high-quarter benefit formula in many States, is incorporated in formula E. For claimants with more than one quarter's employment in the base period, the high quarter is ordinarily a quarter of substantial employment; the multiple of a benefit amount based on that quarter serves as a fair test of length of employment. If the multiple that qualifies is larger than the high-quarter fraction that determines the weekly benefit amount, all insured workers except those at the maximum will have had some base-period employment outside the quarter of highest wages. To ensure that no claimant qualifies by earning in only one quarter the required amount for the maximum weekly benefit, the draft requires that all insured workers must have earned wages in at least two quarters of the base period.

Multiple of high-quarter wages.--Another method of requiring some distribution of employment is a qualifying formula in terms of a multiple of the high-quarter wages. Formulas A,B,C, and D provide for 1-1/2 times the high-quarter wages at the midpoint or top of a claimant's wage bracket. To require 1-1/2 times each claimant's high-quarter wages would be administratively more complicated.

A multiple of high-quarter wages is best adapted to a weighted formula; it automatically extends the weighting of the high-quarter fraction to the qualifying requirement. In contrast with a weighted formula, a multiple of the weekly benefit amount would require a larger proportion of high-quarter wages outside that quarter for claimants at low benefit levels than for those at the higher benefit levels.

Amount of qualifying wages.--In setting the minimum amount of qualifying wages required in any State, the number and proportion of covered workers who would be excluded by any proposed minimum qualifying requirement and the occupations and industries in which they work should be taken into consideration. The interaction of the various parts of the benefit

formula and the type of base period and the inclusiveness of the coverage provisions should also be considered. It is generally accepted that the qualifying provisions should screen out seasonal workers and other workers who do not have employment in more than one calendar quarter. It is recognized too that criticism of the program can be avoided by making certain that the minimum qualifying requirement exceeds the maximum potential benefits of the claimant with minimum qualifying wages and with maximum compensable dependents. In comparing minimum qualifying wages and maximum potential benefits, however, it should be remembered that most insured workers have base-period wages in excess of the minimum qualifying amount.

Step-down provisions.--The rigidities arising from the division of earnings into calendar quarters may result in making some workers eligible and others ineligible with the same amount of base-period employment and wages. If the quarter of highest wages includes unusual wage payments such as annual bonuses or extensive overtime, a qualifying requirement based on high-quarter wages directly or indirectly (through a multiple of the weekly benefit amount) may be high in relation to normal earnings and may exclude from benefits individuals with considerable employment outside the high quarter.

Accordingly, all the formulas incorporate a corrective device that has been adopted by some States to permit individuals to qualify when their high-quarter wages are disproportionately high or when the accident of rounding raises the qualifying amount to a level which makes them ineligible. An individual who is found ineligible under the normal qualifying provision may be found eligible for a lower benefit amount if his base-period earnings equal or exceed those required for the lower benefit. A claimant who has not earned, for example, 30 times his rounded benefit amount may be found to have earned 30 times the next lower benefit amount. Usually this special step-down provision permits dropping back only one benefit amount. Under some circumstances further step-down might be desirable; in such cases, the qualifying requirement should be so correlated with the weekly benefit formula, that all claimants have to have some employment outside the high quarter.

Since a weighted high-quarter formula gives lower-paid workers higher weekly benefits in proportion to earnings, the use of a uniform multiple of the weekly benefit amount will require lower-paid workers to have more weeks of employment outside the high quarter to qualify than higher-paid workers. With such a formula, a step-down provision is especially needed.

Maximum Potential Benefits in a Benefit Year

The total amount of benefits payable to any claimant in a benefit year is limited for actuarial reasons and for reasons of policy. An insurance program could not carry the burden of the full duration of each insured worker's unemployment in a major depression; other and more drastic remedies are needed at such a time. Moreover, unemployment benefits are not a satisfactory solution of the problems of the individual worker whose unemployment in normal times continues for long periods.

Within the maximum limitation of the law, the number of weeks of total unemployment which are compensable should be uniform for all insured workers. Although a claimant's weekly benefit varies in relation to his prior earnings, the number of weeks for which he may receive benefits need not depend upon those earnings. Duration of unemployment does not necessarily vary directly with wage levels and the duration provisions in a social insurance program should not favor high-paid or steadily employed workers. Indeed, an individual who has less steady employment in his base period is likely to be unemployed as long as, or longer than, the individual who had little or no unemployment in his base period. Uniform duration favors the eligible workers who are currently in greatest need of the protection of the program, regardless of the extent of their past employment.

The potential duration should not only be uniform; under reasonably normal conditions it should be long enough to permit the payment of benefits to a high proportion of claimants for the full duration of their unemployment. Twenty-six weeks of benefits is generally accepted as a long enough period to satisfy this goal. The present State funds make the 26 weeks an actuarial possibility in practically all States. In ordinary times benefit costs do not increase proportionately as statutory duration is increased. The first few weeks of benefits cause the greatest drain on the fund since most workers are unemployed for short rather than for long periods of time. As the statutory duration is increased, each added week results in the addition of a smaller proportion of total benefit costs.

Since the total dollar amount payable to claimants varies with the weekly benefit amount, the amount is usually expressed in terms of the number of weeks of total unemployment during which a worker can continue to draw benefits if he remains unemployed and otherwise eligible, i.e., the individual's maximum potential benefits in a benefit year represent a specified multiple of his weekly benefit amount. The multiple used in the illustrative tables is 26. Actually the amount represented by the multiple may be spread over more weeks of unemployment if the claimant is partially unemployed for some weeks.

A State, which is interested in keeping qualifying wages low and making benefits available for workers who would not meet the requirements in the formulas for uniform duration, may wish to retain duration varying with base-period wages. Such a formula would provide maximum potential benefits equal to a specified proportion of base-period wages up to a specified maximum number of weeks of benefits. It could be formalized into a schedule of specified amounts of maximum annual benefits for specified amounts of base-period wages.

In devising a formula for variable duration, attention should be given to the following principles. The minimum duration provided for any eligible claimant should be substantial, to justify bringing claimants into the system. Substantial minimum duration may be achieved by giving each claimant a reasonable fraction of his base-period wages--1/2 or 2/3--if the minimum qualifying wages are set in appropriate relation to the wage levels in the State and to the minimum weekly benefit. Formulas B,

D, and E yield a minimum duration of 15 weeks or more. If the formula does not automatically yield an adequate minimum duration, a substantial minimum number of weeks may be provided by statute. Formulas A and C provide for raising minimum computed duration to 15 weeks. It is very important that the maximum potential number of weeks should be attainable by claimants at every benefit level. A duration fraction so illiberal that only some claimants in the highest benefit brackets can receive the maximum weeks of benefits--i.e., claimants who earn in a base period more than four times the high-quarter wages required for the maximum weekly benefit amount--would defeat the purposes of the program.

Payment for a Week of Unemployment

The payment of benefits for weeks of unemployment (defined in section 2(t) in terms of earnings of less than the weekly benefit amount) includes what have been called total and partial unemployment. No allowance of earnings in excess of the weekly benefit amount is provided in determining when a worker is partially unemployed. To consider workers "partially unemployed" when they earn more than their weekly benefit amounts would result in the anomaly of having partially unemployed workers unable to qualify for partial benefits when their partial earnings minus the earnings bonus are no less than the weekly benefit amount. For example, if the partial earnings limit were set as the weekly benefit plus $4, a worker with a $10 benefit would be "partially unemployed" when he earned $14 or less in a week of less than full-time work. His benefit, however, for a week in which he earned more than $13 would be $10 - ($14-$4) or 0.

All formulas, however, provide an earnings allowance in the computation of benefits for a week of partial unemployment. The "bonus" for accepting part-time work should be great enough to provide an incentive to work, and should cover the normal additional expenses of lunch and carfare. This allowance is $5 in wages for covered or non-covered work. All the formulas provide for rounding to the next higher dollar if the computed benefit for a week of partial unemployment is not in dollar amounts. The provision results in a minimum payment of $6 for a week of partial unemployment for a claimant without dependents and $6 plus the dependents' allowance for a worker with dependents.

An alternative method of rounding which has been used in a few States has been found to have administrative advantages. Under these formulas, earnings of less than half the weekly benefit amount are disregarded and claimants with such earnings receive a full weekly benefit; earnings of less than the weekly benefit amount but more than half of it are rounded down to one-half the weekly benefit amount and claimants with such earnings receive one-half the weekly benefit amount. These formulas simplify control on total benefits payable and charging benefits for experience-rating purposes. The following language substituted for section 3(d) would accomplish the purpose:

"3(d) Benefit for a week of unemployment.--Any insured worker who is unemployed in any week as defined in section 2(t) and who meets the conditions of eligibility for benefits of section 4 shall be paid with respect to such week an amount equal to his basic weekly benefit amount (plus his dependents' allowance if he has dependents) if the wages payable to him with respect to such week are less than one-half of his weekly benefit amount; if the wages payable to him with respect to such week are one-half or more than half of his weekly benefit amount, he shall be paid a benefit equal to one-half his basic weekly benefit amount (plus his dependents' allowance, if he has dependents). Such benefit, if not a multiple of $1, shall be computed to the next higher multiple of $1."

The Five Formulas

These general principles are illustrated in the five benefit formulas of section 3. While the formulas differ, they have certain features in common. All five formulas use high-quarter wages as the base for computing wage loss; all include a minimum and maximum weekly benefit amount. Three of the formulas augment the basic benefit with dependents' allowances. All the formulas round the basic amounts between the minimum and the maximum in flat dollar amounts and the tables in formulas A, B, and C follow the same procedure with augmented benefits.

All five formulas include a qualifying wage requirement incorporated in the definition of insured worker which is intended to admit to benefits only individuals who have been attached to the covered labor force. If the formula includes dependents' allowances, the allowances are outside the qualifying formula so that claimants with dependents may qualify on the same basis as claimants without dependents. All formulas require a substantial amount of wages in more than one quarter of the base period in order to justify the recommended uniform substantial duration of benefits for all eligible claimants. None requires an arbitrary amount of wages in the high quarter, in any one quarter outside the high quarter, or in any recent quarters; such provisions introduce into the test of attachment to the labor force rigidities which may affect certain groups of workers inequitably. All five formulas include a step-down provision under which an individual who is found not to be an insured worker under the normal qualifying provision may be found to be insured for the next lower benefit amount if his base-period wages equal or exceed those required for the lower benefit.

All five formulas include uniform potential duration for all eligible claimants equal to 26 times the basic weekly benefit amount, i.e., for a maximum amount of benefits equal to 26 weeks of benefits for total unemployment. For individuals whose unemployment includes weeks of less than total unemployment, the actual weeks of benefits may be more than 26. The formulas with dependents' allowances keep the allowance outside the duration formula either by providing for 26 times the augmented benefit amount or for the payment of dependents' allowances

for each week for which benefits are payable for total or partial unemployment. Each of the formulas includes also an alternative formula for duration varying with base-period wages with a minimum duration for claimants who barely qualify equal to at least 15 weeks of benefits for total unemployment.

All five formulas include provisions for payment of benefits for weeks of unemployment, defined to include weeks of partial as well as weeks of total unemployment.

The formulas in the draft bill which are discussed below are illustrative of different principles as follows:

Formula A. A weighted high-quarter schedule with a schedule of dependents' allowances expressed in terms of augmented benefits.

Formula B. A uniform fraction of high-quarter wages with dependents' allowances of $3 per dependent within desired limits on augmented benefits; dependents' allowances additional to basic weekly and annual benefits.

Formula C. A uniform fraction of high-quarter wages with augmented benefits equal to 60-70 percent of average weekly wages, according to the number of dependents; emphasis on augmented dependents' allowances as in formula A but with basic and augmented benefits on same percentage basis at all wage levels, and with consistently larger allowances for the first dependent.

Formula D. A weighted high-quarter schedule.

Formula E. A uniform fraction of high-quarter wages.

(Benefit formula A: weighted high-quarter schedule with schedule of dependents' allowances)

This formula emphasizes the augmented benefit, i.e., the basic benefit plus dependents' allowance for claimants with dependents. The basic benefit is paid to the claimant without dependents and is used in the determination of the existence of partial unemployment. It would be used also if a State which charges benefits paid to employers' accounts had a provision to omit charges for dependents' allowances. Since both the basic weekly benefit amount and the dependents' allowances are weighted, the formula requires tabular presentation.

(a) Weekly benefit amount.--Formula A recognizes the facts that, as earnings increase, a smaller proportion of income goes for living expenses which cannot be deferred during a period of unemployment and as the number of dependents increases, a larger proportion of income is required to pay for food and living quarters and to maintain an adequate standard of living.

Commentary - Section 3(a) (Benefit formula A)

In the illustrative schedule (table 1), the basic benefit payment for the claimant without dependents varies from $7 to $30, from 5 percent of minimum high-quarter wages ($160) for the claimant with the $8 basic benefit to 3.8 percent of high-quarter wages for the claimant with the minimum earnings ($781.50) required for the maximum $30 benefit. The wage-class interval varies by fifty-cent intervals from $23 in the $8 basic-benefit bracket to $33.50 in the $29 basic-benefit bracket. The higher the wage level, the larger the amount of high-quarter wages required to qualify for $1 more in basic weekly benefits. The lowest bracket is not comparable because the minimum high-quarter wages are one-fourth of the base-period qualifying wages; the highest bracket is not comparable because it is open-end.

Table 1

Weekly benefit amount, weighted schedule of high-quarter wages with schedule of augmented benefits for claimant with one, two, and three or more dependents, and qualifying wages computed as one and one-half times high-quarter wages 1/

High-quarter wages (Column A)	Basic weekly benefit (Column B)	Augmented weekly benefit amount			Minimum qualifying wages (Column F)
		1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)	
$ 60.00-159.99...	$ 7	$ 9	$ 9	$ 9	$ 240
160.00-182.99...	8	10	10	10	274
183.00-206.49...	9	11	11	11	310
206.50-230.49...	10	12	13	13	346
230.50-254.99...	11	13	14	14	382
255.00-279.99...	12	14	15	16	420
280.00-305.49...	13	15	16	17	458
305.50-331.49...	14	16	17	18	497
331.50-357.99...	15	17	19	20	537
358.00-384.99...	16	18	20	22	577
385.00-412.49...	17	19	21	23	619
412.50-440.49...	18	21	23	25	661
440.50-468.99...	19	22	24	26	703
469.00-497.99...	20	23	26	28	747
498.00-527.49...	21	24	27	30	791
527.50-557.49...	22	26	29	32	836
557.50-587.99...	23	27	30	33	882
588.00-618.99...	24	28	31	34	928
619.00-650.49...	25	29	33	36	976
650.50-682.49...	26	30	34	38	1,024
682.50-714.99...	27	32	36	40	1,072
715.00-747.99...	28	33	38	42	1,122
748.00-781.49...	29	34	39	43	1,172
781.50 or more..	30	35	40	45	1,223

1/ One and one-half times upper limit of high-quarter wage bracket, rounded to the nearest dollar; step-down provision included in formula.

In table 1, dependents' allowances vary from $2 to $5 for the claimant with one dependent, from $2 to $10 for the claimant with two dependents, and from $2 to $15 for the claimant with three or more dependents. Because the basic benefit is weighted in favor of workers in the lower wage brackets and the highest augmented benefit is less than the average weekly wage in the high quarter (at all wage levels except the minimum), the dependents' allowance is small in the lower wage brackets. It is only $2 for those with basic benefits of $7 to $9 regardless of the number of dependents. Only beneficiaries entitled to a weekly basic benefit of $12 or more receive any allowance for the third dependent.

Augmented benefits for claimants with one dependent vary from $9 to $35, those for claimants with two dependents, from $9 to $40 and those for claimants with three or more dependents, from $9 to $45. The augmented benefits range from 81 percent of the minimum average weekly wage in the high-quarter required for the $10 augmented benefit ($12.31) to 75 percent of the minimum average weekly wage required for the $45 augmented benefit ($60.11).

(b) Qualifying wages.--With a weighted schedule of high-quarter wages and uniform potential duration, the qualifying wages must be set in consideration of the maximum augmented annual benefits at each wage level. The formula suggested here is one and one-half times the upper limit of the high-quarter wage bracket ($240 for the $7 basic benefit up to $1,223 for the $30 basic benefit; for this purpose a normal interval is assumed for the open-end maximum bracket), with a provision that a claimant who cannot meet that requirement but can qualify for the next lower limit shall be eligible for the lower amount. A qualifying wage requirement in terms of a multiple of the basic weekly benefit is not appropriate with a weighted formula; it would offset the advantages given to the low-wage claimants by the weighted schedule and a high multiple would have to be used to justify 26 weeks of duration at many of the higher levels. A flat qualifying wage which would permit claimants with earnings above the minimum to qualify on one quarter's wage credits would not justify 26 weeks duration of benefits. With variable duration, a flat qualifying amount would cancel out the objectives of the weighted schedule and would reduce minimum potential weeks of benefits payable at the higher wage levels.

(c) Maximum potential benefits; uniform duration.--Uniform potential duration of benefits for all eligible claimants is provided in the formula. Table 2 indicates the maximum augmented benefits at each benefit level for claimants with specified numbers of dependents. The 26 weeks of potential benefits for totally unemployed workers amount to a total of $182 to $780 for the claimant without dependents, $234 to $910 for those with one dependent, $234 to $1,040 for those with two dependents, and $234 to $1,170 for those with three or more dependents. Such a provision of 26 times the individual's weekly benefit may be expressed also in a simple text statement comparable to that in formula E.

The provision of 26 times the basic benefit for all claimants, with dependents' allowances in addition for each week of unemployment, illustrated in the second formula, could be used with a weighted formula if desired. In that case the emphasis would be shifted from augmented benefits to dependents' allowances; table 1, for instance, would present dependents' allowances rather than augmented benefits in columns C, D, and E and it would be impossible to present table 2 or to make any definite statement concerning maximum potential benefits for claimants with dependents (see page C - 42).

Table 2

Maximum potential benefits in a benefit year, 1/ weighted schedule with dependents' allowances, by number of dependents and basic weekly benefit amount

Basic weekly benefit (Column A)	Maximum potential benefits for claimant with			
	No dependents (Column B)	1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)
$ 7.....	$182	$234	$ 234	$ 234
8.....	208	260	260	260
9.....	234	286	286	286
10.....	260	312	338	338
11.....	286	338	364	364
12.....	312	364	390	416
13.....	338	390	416	442
14.....	364	416	442	468
15.....	390	442	494	520
16.....	416	468	520	572
17.....	442	494	546	598
18.....	468	546	598	650
19.....	494	572	624	676
20.....	520	598	676	728
21.....	546	624	702	780
22.....	572	676	754	832
23.....	598	702	780	858
24.....	624	728	806	884
25.....	650	754	858	936
26.....	676	780	884	988
27.....	702	832	936	1,040
28.....	728	858	988	1,092
29.....	754	884	1,014	1,118
30.....	780	910	1,040	1,170

1/ Computed as 26 times the basic and augmented weekly benefit amounts.

(c) Maximum potential benefits: variable duration.--An alternative provision for maximum potential benefits varying with base-period wages is included for States which believe that uniform potential duration is too liberal in terms of the minimum qualifying wages for each benefit level. The fraction used is one-half base-period wages, one of the most

liberal fractions used in the States, and the total amount of benefits is rounded in terms of the individual claimant's weekly benefit amount with an over-all limit of 26 times his augmented weekly benefit amount. A statutory minimum duration of 15 times the individual's benefit amount is provided since the arithmetic of the illustrative table would produce computed benefits of less than 14 weeks for all claimants with maximum dependents who barely qualify for their weekly benefit amounts.

If variable duration is used, the augmented weekly benefit amounts could be increased somewhat, particularly for the lower wage brackets, because variable duration would eliminate any possibility that the potential annual benefits would exceed the qualifying amount. The effective limitation on the augmented benefit amounts would then be the maximum percentage of the average high-quarter weekly wage that is considered to allow an incentive to work.

(d) Benefit for a week of unemployment.--With week of unemployment defined (section 2(t)) as a week in which the wages payable to a claimant are less than his basic weekly benefit amount, all claimants with the same base-period wages will have the same partial earnings limit, regardless of the number of their dependents. The amount of their benefits for a week of partial unemployment will, however, vary as do payments for a week of total unemployment because earnings for the week (in excess of $5) are subtracted from the augmented benefit amount. This provision means that all payments for a week of less-than-total unemployment will include the full dependents' allowance.

(e) Definition of dependent.--The definition of dependent is drafted to include the family members most commonly dependent upon the income of covered workers. It is important that it be drafted in terms of the responsibility for the support of others which many claimants, whether men or women, must meet.

The definition includes unmarried children under eighteen, living with the claimant or receiving regular support from him; a nonworking wife living with or receiving regular support from the claimant; a working woman's husband, if wholly or mainly supported by her; a child eighteen or over or a married child, or a parent or parent-in-law, if wholly or mainly supported by the claimant; and any other person who is living with the claimant and wholly supported by him. Stepchildren and stepparents are included within the definition. The definition lists dependents in descending order of the claimant's responsibility for their support, so that if a State wishes to adopt a less comprehensive definition, it could conveniently cut it off at any semicolon.

As drafted, the determination of the number of dependents as of the effective day of a notice of insured status remains in effect throughout the benefit year, thus ignoring any changes in the number of a claimant's dependents. Since most claimants draw benefits during only one spell of unemployment in the benefit year and duration is limited, it is reasonable to anticipate that relatively few changes in the number of dependents will occur in the period in which benefits are payable. Accordingly, the inequities which will arise because of this policy will

be limited. With emphasis on the augmented benefit in this formula and maximum potential benefits in a benefit year computed as a multiple of the augmented benefit, it would be difficult to incorporate weekly changes in the number of dependents.

(Benefit formula B: a uniform fraction of high-quarter wages with dependents' allowances additional)

This formula emphasizes dependents' allowances additional to basic benefits for purposes of weekly benefit and maximum annual benefits.

(a) Weekly benefit amount.--Formula B computes the basic benefit for all workers between the minimum and the maximum as one twenty-fourth of high-quarter wages rounded to the next higher dollar, and adds dependents' allowances within the desired limits on augmented weekly benefits (in relation to average weekly wages) and on maximum annual benefits (in relation to qualifying wages). It is presented in a table because of these limitations on dependents' allowances and because the qualifying wage is computed for each wage bracket rather than for each claimant. The basic benefit in the illustrative schedule (table 3) varies from $7 to $30. All claimants with one or more dependents get at least a $3 allowance; those with basic weekly benefits of $11 or more get something for the second dependent and those with basic weekly benefits of $16 or more, a full $3 allowance for the second; those with basic weekly benefits of $19 or more get something for the third dependent and those with $24 or more, the full $3 allowance for the third. Dependents' allowances for the claimant with one dependent are always $3 per week; for the claimant with two dependents they vary from $3 to $6; for the claimant with three or more dependents, from $3 to $9. Augmented benefits for the claimant with one dependent thus vary from $10 to $33; for those with two dependents, from $10 to $36; and for those with three or more dependents, from $10 to $39.

This formula includes a schedule which is simpler in construction than the first formula and a minimum dependents' allowance which is more than a token allowance. It provides less adequately, however, for the claimant without dependents in the lower half of the schedule; in a State in which claimants in the lower brackets ordinarily have no dependents, the weighted schedule of the first formula would work to the advantage of the majority of them.

As in the first formula, the maximum augmented benefit is less than the average weekly wage in the high quarter at all wage levels except the minimum. It varies from 85 percent of the minimum average weekly wage required for the $11 augmented benefit ($12.92) to 73 percent of the minimum average weekly wage required for the $39 augmented benefit ($53.54).

(b) Qualifying wages.---Under this formula also, a flat qualifying wage would preclude substantial uniform potential duration of augmented benefits. A fixed multiple of the weekly benefit amount could be applied at all wage levels but it would require close to 40 times the basic weekly benefit if 26 weeks of augmented benefits is not to exceed qualifying wages. Therefore one and one-half times the upper limit of the high-quarter wage bracket is used in this formula also and a step-down provision is included.

Commentary - Section 3(b) (Benefit formula B)

Table 3

Basic weekly benefit amount figured as one twenty-fourth 1/ of high-quarter wages with schedule of dependents' allowances for claimant with one, two, and three or more dependents, and qualifying wages computed as one and one-half times high-quarter wages 2/

High-quarter wages (Column A)	Basic weekly benefit (Column B)	Dependents' allowance for 1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)	Minimum qualifying wages (Column F)
$ 63.00-168.00...	$ 7	$3	$3	$3	$ 252
168.01-192.00...	8	3	3	3	288
192.01-216.00...	9	3	3	3	324
216.01-240.00...	10	3	3	3	360
240.01-264.00...	11	3	4	4	396
264.01-288.00...	12	3	4	4	432
288.01-312.00...	13	3	4	4	468
312.01-336.00...	14	3	5	5	504
336.01-360.00...	15	3	5	5	540
360.01-384.00...	16	3	6	6	576
384.01-408.00...	17	3	6	6	612
408.01-432.00...	18	3	6	6	648
432.01-456.00...	19	3	6	7	684
456.01-480.00...	20	3	6	7	720
480.01-504.00...	21	3	6	8	756
504.01-528.00...	22	3	6	8	792
528.01-552.00...	23	3	6	8	828
552.01-576.00...	24	3	6	9	864
576.01-600.00...	25	3	6	9	900
600.01-624.00...	26	3	6	9	936
624.01-648.00...	27	3	6	9	972
648.01-672.00...	28	3	6	9	1,008
672.01-696.00...	29	3	6	9	1,044
696.01 or more..	30	3	6	9	1,080

1/ Rounded to next higher dollar.
2/ One and one-half times upper limit of high-quarter wage bracket; step-down provision included in formula.

(c) Maximum potential benefits: uniform duration.--The uniform potential amount of benefits in a benefit year included in this formula is 26 times the claimant's basic benefit with the dependents' allowance additional for each week of benefits whether for total or partial unemployment. For most claimants who experience only total unemployment in a benefit year, the maximum potential benefits are 26 times the augmented benefit. However, the benefit balance due any claimant is kept in terms of the basic amount payable. When partial benefits are paid, the total basic benefits may cover more than 26 weeks, with the full dependents' allowance being paid for each such week. For a worker who exhausts his

benefits after having had weeks of partial unemployment, maximum potential benefits would exceed 26 times the augmented benefit. This formula has the disadvantage of making it impossible to state the maximum potential benefits in a benefit year for a partially unemployed claimant at the time of the determination of his benefit rights. If this seems important, the uniform duration formula in the first benefit formula could, of course, be substituted.

(c) Maximum potential benefits: variable duration.--In keeping with the idea of this formula that dependents' allowances are always additional to basic benefits, the formula for variable duration computes the total amount of basic benefits as a fraction of base-period wages up to 26 weeks of benefits and adds dependents' allowances for each week of unemployment, total or partial. With this provision it is not necessary to specify a minimum duration since the qualifying wages suggested will automatically yield 18 weeks of benefits.

It would, of course, be possible to use in this formula the variable duration provision of the first benefit formula which includes dependents' allowances in the duration formula. If augmented annual benefits were a fraction of base-period wages, the qualifying wage could be reduced to 30 or 36 (or some figure between) times the basic benefit amount. Particular attention would have to be given to the minimum duration. Potential benefits equal to one-half base-period wages with 30 times the basic benefit as qualifying wages would yield a minimum duration of 15 weeks for the claimant without dependents but only 11 weeks for the claimant with the maximum dependents' allowance at his wage level.

(d) Benefit for a week of unemployment.--The provision is the same as for formula A and the comments made on page C - 39 apply here also.

(e) Definition of dependent.--The same considerations apply as with formula A. Inasmuch as under this formula the dependents' allowance is a more substantial proportion and the basic benefit a smaller proportion of the augmented benefit for the lower wage levels, it is even more important to include as dependents the types of persons who are in fact dependent on the wages of women, who are more likely than men to be eligible for the lower benefit amounts.

(Benefit formula C: a uniform fraction of high-quarter wages with augmented benefits generally equal to 60, 65, and 70 percent of average weekly wages)

This formula, like formula A, emphasizes the augmented benefit amount. The basic benefit is a uniform proportion of high-quarter wages but a smaller proportion than in formula B--one twenty-sixth of high-quarter wages rounded to the nearest dollar. This smaller basic benefit makes possible more liberal dependents' allowances than formula B within the over-all limits on benefits in relation to qualifying wages. At all levels the dependents' allowances are the same proportion of the average weekly wage (assumed to be one-thirteenth of high-quarter wages rounded to the nearest dollar).

(a) Weekly benefit amount.--The illustrative table 4 provides basic benefits of $7 to $30, and dependents' allowances varying from $1 to $6 for one dependent, $2 to $9 for two dependents, and $3 to $12 for three or more dependents. Thus the augmented benefits are $8 to $36 for claimants with one dependent, $9 to $39 for claimants with two dependents, and $10 to $42 for claimants with three or more dependents.

Table 4

Basic weekly benefit amount figured as one twenty-sixth of high-quarter wages, with augmented benefits equal to 60 percent of average high-quarter weekly wage 1/ for claimant with 1 dependent; 65 percent, with 2 dependents; and 70 percent, with 3 or more dependents

High-quarter wages (Column A)	Basic weekly benefit 2/ (Column B)	Augmented weekly benefit amount 2/ 1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)	Minimum qualifying wages 3/ (Column F)
$ 68.75-194.99...	$ 7	$ 8	$ 9	$10	$ 273
195.00-220.99...	8	10	10	11	312
221.00-246.99...	9	11	12	13	351
247.00-272.99...	10	12	13	14	390
273.00-298.99...	11	13	14	15	429
299.00-324.99...	12	14	16	17	468
325.00-350.99...	13	16	17	18	507
351.00-376.99...	14	17	18	20	546
377.00-402.99...	15	18	20	21	585
403.00-428.99...	16	19	21	22	624
429.00-454.99...	17	20	22	24	663
455.00-480.99...	18	22	23	25	702
481.00-506.99...	19	23	25	27	741
507.00-532.99...	20	24	26	28	780
533.00-558.99...	21	25	27	29	819
559.00-584.99...	22	26	29	31	858
585.00-610.99...	23	28	30	32	897
611.00-636.99...	24	29	31	34	936
637.00-662.99...	25	30	33	35	975
663.00-688.99...	26	31	34	36	1,014
689.00-714.99...	27	32	35	38	1,053
715.00-740.99...	28	34	36	39	1,092
741.00-766.99...	29	35	38	41	1,131
767.00 or more..	30	36	39	42	1,170

1/ One-thirteenth of midpoint of high-quarter wage bracket.
2/ Rounded to nearest dollar.
3/ One and one-half times the midpoint of high-quarter wage bracket; step-down provision included in formula.

(b) Qualifying wages.--The qualifying wage of one and one-half times high-quarter wages is used in this formula also, for reasons which have been pointed out in the discussion of formula B. Because the basic benefit has been rounded to the nearest dollar, qualifying earnings have been figured on the midpoint (rather than the upper limit of the high-quarter bracket used in formulas A and B) and rounded where necessary to the nearest dollar. A step-down provision is included for reasons explained on page C - 32.

(c) Maximum potential benefits: uniform duration.--Uniform potential benefits for all eligible claimants are provided in the draft. As in benefit formula A, potential annual benefits are equal to 26 times the claimant's basic weekly benefit if he has no dependents or 26 times the augmented benefit appropriate for the number of his dependents as determined when he files a request for a determination of insured status.

A table similar to table 2 can be worked out by multiplying by 26 each amount in columns B to E in table 4; see dummy table 5 below. Maximum potential benefits in a benefit year would vary from $182 to $780 for a claimant without dependents, $208 to $936 for claimants with one dependent, $234 to $1,014 for those with two dependents, and $260 to $1,092 for those with three or more dependents.

Table 5

Maximum potential benefits in a benefit year, by basic weekly benefit and number of dependents, augmented benefits figured as percentage of average weekly wage in the high quarter

Basic weekly benefit (Column A)	Maximum potential benefits for claimant with			
	No dependents (Column B)	1 dependent (Column C)	2 dependents (Column D)	3 or more dependents (Column E)

The table would be worked out by multiplying by 26 the amounts in columns B, C, D, and E of table 4.

(c) Maximum potential benefits: variable duration.--The alternative provision for maximum potential benefits varying with base-period wages includes a minimum duration of fifteen weeks because a one-half-base-period-wages formula applied to the illustrative table would produce benefits of 12, 13, or 14 weeks at most wage levels, depending on the rounding of the weekly benefit amount.

(d) Benefit for a week of unemployment.--The provision is the same as for formula A and the comments made on page C - 40 apply here also.

(e) Definition of dependent.--The same definition is suggested as for benefit formulas A and B.

Commentary - Section 3 (Benefit formula D)

Formulas without Dependents' Allowances

For States which wish to continue to use schedules without dependents' allowances, two illustrative benefit formulas are presented. The proportion of wage loss compensated is higher than for the claimant without dependents under the first two formulas, and lower than for the claimant with the maximum number of dependents. Since most claimants with dependents are at or near the maximum weekly benefit amount, the higher benefits paid these workers may be assumed to cover their dependents as their wages do. The weekly benefit amount is based on high-quarter wages with a weighted schedule (formula D) or a one-twentieth fraction (formula E). The commentary is limited mainly to items which differ from those in the formulas discussed earlier.

(Benefit formula D: weighted high-quarter schedule)

(a) Weekly benefit amount.--The illustrative weighted schedule (table 6) provides weekly benefits of $7 to $30 varying from 5.7 percent to 4.4 percent (or approximately one-eighteenth to one twenty-third) of the upper limit of the high-quarter wage brackets. The weekly benefit is a larger proportion of the average weekly wage in the lower brackets than in the higher, in recognition of the fact that at the lower wage levels, a larger proportion of the wages is spent for nondeferrable items. The schedule requires $29 additional base-period wages to get $1 more in benefits at the $29 to $30 levels but only $19 more for an additional $1 weekly at the $8 to $9 levels.

If the wage level in a State is such that the $30 maximum in table 6 would result in the concentration of an unduly high proportion of claimants at the maximum, the table can be extended upward.

(b) Qualifying wages.--Because this is a weighted schedule, the qualifying wage in table 6 is based on the high-quarter wages rather than the weekly benefit. At all levels the minimum qualifying wages exceed the maximum potential benefits in the benefit year, 26 times the weekly benefit for total unemployment.

(c) Maximum potential benefits.--Uniform duration is, of course, recommended. However a formula for variable duration is suggested, a weighted schedule (table 7). A simple fraction such as is suggested in the other formulas would offset the advantage given the low-wage earners in the weekly benefit amount and the qualifying wages. For instance, if maximum potential benefits are one-half base-period wages, the claimant who barely qualifies for a $7 benefit would have a computed duration of thirteen and one-seventh weeks while a claimant who barely qualifies for $30 would have a duration of over 17 weeks. If one fraction is used, a minimum duration should be provided as in formula B.

Table 6

Weekly benefit amount figured from weighted schedule of high-quarter wages and qualifying wages computed as one and one-half times high-quarter wages, and maximum potential benefits in benefit year

High-quarter wages (Column A)	Weekly benefit amount (Column B)	Minimum qualifying wages 1/ (Column C)	Maximum potential benefits (26 weeks) (Column D)
$ 46.00-123.00.....	$ 7	$ 184	$182
123.01-142.00.....	8	213	208
142.01-161.00.....	9	241	234
161.01-181.00.....	10	271	260
181.01-201.00.....	11	301	286
201.01-222.00.....	12	333	312
222.01-243.00.....	13	364	338
243.01-265.00.....	14	397	364
265.01-287.00.....	15	430	390
287.01-310.00.....	16	465	416
310.01-333.00.....	17	499	442
333.01-357.00.....	18	535	468
357.01-381.00.....	19	571	494
381.01-406.00.....	20	609	520
406.01-431.00.....	21	646	546
431.01-457.00.....	22	685	572
457.01-483.00.....	23	724	598
483.01-510.00.....	24	765	624
510.01-537.00.....	25	805	650
537.01-565.00.....	26	847	676
565.01-593.00.....	27	889	702
593.01-622.00.....	28	933	728
622.01-651.00.....	29	976	754
651.01 or more.....	30	1,021	780

1/ One and one-half times upper limit of high-quarter wage bracket, rounded to next lower dollar; step-down provision included in formula.

Table 7

Weighted high-quarter formula with duration categories, 15-26 weeks

(Part A)	(Part B)	(Part C)											
High-quarter wages	Weekly benefit amount	Base-period wages required for weeks of benefits below and weekly benefit specified in Part B 1/ — Weeks of benefits for total unemployment											
		15	16	17	18	19	20	21	22	23	24	25	26
$ 46.00-123.00...	$ 7	$ 184	$ 200	$ 216	$ 233	$ 250	$ 267	$ 284	$ 301	$ 318	$ 335	$ 352	$ 369
123.01-142.00...	8	213	232	251	270	289	308	327	346	366	386	406	426
142.01-161.00...	9	241	263	285	307	329	351	373	395	417	439	461	483
161.01-181.00...	10	271	295	319	343	368	393	418	443	468	493	518	543
181.01-201.00...	11	301	328	355	382	409	436	463	491	519	547	575	603
201.01-222.00...	12	333	363	393	423	453	483	513	543	573	604	635	666
222.01-243.00...	13	364	397	430	463	496	529	562	595	628	661	695	729
243.01-265.00...	14	397	433	469	505	541	577	613	649	685	721	758	795
265.01-287.00...	15	430	469	508	547	586	625	664	703	742	781	821	861
287.01-310.00...	16	465	507	549	591	633	675	717	759	801	844	887	930
310.01-333.00...	17	499	544	589	634	679	724	769	815	861	907	953	999
333.01-357.00...	18	535	583	631	679	728	777	826	875	924	973	1,022	1,071
357.01-381.00...	19	571	623	675	727	779	831	883	935	987	1,039	1,091	1,143
381.01-406.00...	20	609	664	719	774	829	884	939	994	1,050	1,106	1,162	1,218
406.01-431.00...	21	646	704	762	821	880	939	998	1,057	1,116	1,175	1,234	1,293
431.01-457.00...	22	685	747	809	871	933	995	1,057	1,119	1,182	1,245	1,308	1,371
457.01-483.00...	23	724	789	855	921	987	1,053	1,119	1,185	1,251	1,317	1,383	1,449
483.01-510.00...	24	765	834	903	972	1,041	1,110	1,180	1,250	1,320	1,390	1,460	1,530
510.01-537.00...	25	805	878	951	1,024	1,097	1,170	1,243	1,316	1,389	1,463	1,537	1,611
537.01-565.00...	26	847	924	1,001	1,078	1,155	1,232	1,309	1,386	1,463	1,540	1,617	1,695
565.01-593.00...	27	889	969	1,050	1,131	1,212	1,293	1,374	1,455	1,536	1,617	1,698	1,779
593.01-622.00...	28	933	1,017	1,101	1,186	1,271	1,356	1,441	1,526	1,618	1,696	1,781	1,866
622.01-651.00...	29	976	1,064	1,152	1,241	1,330	1,419	1,508	1,597	1,686	1,775	1,864	1,953
651.01 or more..	30	1,021	1,113	1,206	1,299	1,392	1,485	1,578	1,671	1,764	1,857	1,950	2,042

1/ Only lower limit of each base-period wage bracket is shown; upper limit of bracket is one cent less than lower limit of next higher bracket.

(Benefit formula E: uniform fraction of high-quarter wages)

The weekly benefit of one-twentieth of high-quarter wages gives claimants between the minimum and maximum the same percentage of their high-quarter wages. In terms of weekly wages, this means that the weekly benefit amount equals 50 percent of the high-quarter average wage for claimants who had 10 weeks of work in that quarter, 65 percent for those who had 13 weeks of work. The qualifying wage of 30 times the weekly benefit assures qualifying wages in excess of the 26 weeks uniform potential duration. If variable duration is provided with maximum potential benefits equal to one-half base-period wages, the minimum potential duration would be 15 weeks. The minimum and maximum weekly amounts should be set in relation to the wage levels of the State; see page C - 27.

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Transition Provisions

Legislative changes in the benefit formula require decision as to the effective date of the amendments for all claimants. If the amendments increase the benefit rights of claimants, it is sound social policy to make the amendments effective for all claimants simultaneously and as soon as possible after their enactment. In States with a uniform benefit year, the first purpose is accomplished by having the amendments apply only to claims filed in the next benefit year. In States with an individual benefit year (and in States with a uniform benefit year enacting legislation early in a uniform benefit year) it seems desirable to give claimants having a benefit year in progress, including those who have already exhausted benefits, the prompt advantage of the liberalization of the formula, for any unemployment occurring after the effective date. Such a policy obviously involves redetermination of weekly benefits, the new amount to apply for the remainder of the benefit year. The maximum potential weeks of benefits (for total unemployment) might well be that of the new formula; the maximum potential amount of benefits would vary with the number of weeks of total unemployment already drawn at the old amount and the potential number at the new amount. By setting the effective date at some reasonable time after the date of enactment, the State agency can absorb the extra work involved in making the necessary redeterminations without delaying all payments.

Provision should be made, however, that no claimant will have his rights reduced during a benefit year by redetermination in accordance with a new benefit formula. If the wages necessary to qualify under the new law are greater than under the old, no claimant who has established rights under the old law should have his original rights

reduced or cancelled by reason of the new requirements.

If the revisions are made to apply only to individuals establishing a new benefit year after the effective date, the administrative burden of redetermining benefit rights for all workers for whom a benefit determination is current is avoided. However, such a timing involves a considerable delay in putting the changes into full effect, since for practically a year some claimants will be drawing benefits under the old formula and others under the new formula. A difference of a few days in the date of filing a request for a determination of insured status may make a great difference in the potential benefits of claimants with the same wage credits. In the interest of claimants' understanding of the law and of good public relations, such inequities should be avoided.

Draft language cannot be provided to fit all transition situations because such provisions must be written in specific terms to fit both the old and the new benefit formulas. The following examples illustrate the problems involved.

Transition provisions for separate items.--A transition provision such as the following could be added at the end of 3(a), 3(b), 3(c), 3(d), or 3(e), depending on the items which are changed by the amendments.

> "This provision shall apply to all benefit years beginning after (insert the date of the day before the amendment becomes effective), and the insured status of all claimants who have a benefit year current on and after (insert the date as of which the amendment becomes effective) shall be redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision."

General transition provision.--A transition provision of the following type can be used when there is a change in the formula for determining weekly benefit amount --i.e., high-quarter fraction, and/or maximum weekly benefit amount--and/or the maximum weeks of uniform potential duration or the maximum weeks of variable duration and/or the formula for determining individual duration, and/or the qualifying wages.

> "3(f) Transition provision.--The provisions of this section as amended shall apply to all benefit years beginning on or after (insert the date as of which the amendments to the benefit provisions become effective) and to the unexpired portions of any benefit years current as of such date. Redeterminations of insured status shall be made where necessary to effectuate this result; Provided, That no insured worker in a current benefit year which has not expired prior to (insert same date) shall have his weekly or annual benefits reduced as a result of the application of this section as amended. In recomputing the maximum potential benefits of any insured worker, the number of

weeks of benefits for total unemployment to which he would be entitled under this section, as amended, shall be reduced by the number of weeks obtained by dividing the amount of benefits paid or payable to him for weeks of unemployment prior to (insert same date) by his benefit amount for a week of total unemployment under the law in effect prior to this amendment."

Safeguards when qualifying amounts are changed.--When minimum qualifying wages and/or high-quarter wages for any benefit level and/or wages required for any weeks of benefits are increased, it is essential that the transition provision provide that no claimant shall have his benefit rights reduced as a result of a redetermination. This can be assured by a definite statement to that effect as in the transition provisions above or by a requirement that a redetermination shall be made for claimants in benefit status and the claimant shall receive whichever is the greater, the amount provided in the old or the new determination.

Transition when benefit years are changed.--If the framework of the formula--i.e., the base period and benefit year--is changed, the transition is more complicated. In a change from uniform to individual benefit years the agency must decide whether to terminate the benefit years of claimants in benefit status at the end of the uniform benefit year or to establish some method for staggering the dates of the beginning of new benefit years. It seems desirable to avoid a peak-load of redeterminations at the end of a uniform benefit year so far as possible and to get claimants on an individual benefit year as soon as possible. The following language suggests one method of staggering the beginning of benefit years:

"Notwithstanding any other provision of this Act, the benefit year of any claimant who has certified for a waiting week or filed a claim for benefits for the week prior to (insert the date of the day following the end of the old uniform benefit year) shall terminate upon the earlier of the following:

(1) The expiration of 1 year from the day as of which the claimant filed a request for a determination of insured status in the old benefit year, or

(2) The exhaustion of benefits payable under a determination of insured status for the old benefit year."

Without any special provision, a claimant who had exhausted his benefits at any time in the old benefit year could start a new benefit year whenever he requested a determination of insured status after the effective date of the new provision.

Annual-wage Formula

An annual-wage formula basing benefits on aggregate annual earnings rather than on weekly wage levels is not recommended. Only for workers with steady employment throughout the year do annual wages reflect weekly wage levels. Using an annual-wage base for determining weekly benefit amounts without information on the number of weeks worked in the year yields benefits which bear only a chance relation to average wages in weeks worked. Because most workers experience a considerable amount of unemployment or underemployment in a period as long as a year, assumptions have to be made concerning the number of weeks worked in a year, if the formula is to give claimants a stated proportion of their weekly wages. The annual-wage formulas used in a few States give a larger percentage of annual wages as weekly benefits in the lower wage brackets in recognition of the fact that usually workers receiving lower annual wages are less regularly employed than those with higher annual wages. Obviously, not all workers who earn $1,000 in a year work the same number of weeks but workers with $300 base-period wages average fewer weeks of work than those who receive $2,500 or more. The formulas may be said to assume for individual claimants base-period employment of varying duration, increasing in length as total annual wages increase. Since the determination of the existence of partial unemployment and the payment of partial benefits are in terms of the weekly benefit amounts, and the annual-wage base may yield weekly benefits which have no relation to the claimant's recent wage, the formula may result in partial benefits which are too low or too high.

Per-employer Determinations

In all high-quarter and annual-wage formulas in use, all wages and employment in covered work with all base-period employers are included in determining whether a claimant is an insured worker and, if so, his weekly benefit amount and maximum potential benefits in the benefit year. Although an average-weekly-wage formula does not require such a system, in some average-weekly-wage formulas, a claimant's weekly benefit and weeks of benefits are determined successively on the basis of his employment and wages with each employer, in the inverse order of employment, subject to an over-all limit in a benefit year. This latter system of per-employer determinations may be considered appropriate with an employer-reserve type law under which the emphasis is on stimulating employers to stabilize employment by making the individual employer responsible for compensating, from his own account, unemployment suffered by his former workers. This type of law contemplates the retention of a close relation between the employer and the worker even after the worker becomes unemployed. In practice, however, there remain no employer-reserve laws under which a claimant's rights to benefits cease when his employer's reserve account ceases to be solvent. The two employer-reserve laws remaining provide for a partial pool for the payment of benefits when an employer's reserve account is exhausted and both provide methods of assuring that the pool will be adequate.

A per-employer system, however, has no place under a pooled-fund type of law under which the emphasis is on providing equal protection from loss of wages due to unemployment for all workers by spreading the risks of unemployment over a large group of employers and by making the fund available to any insured worker irrespective of his employer. Under a pooled-fund law an individual's unemployment is considered due to the state of the labor market rather than to the failure of his employer to stabilize employment and the employment relationship is deemed to be terminated when the individual becomes unemployed. The unemployment fund rather than an individual employer is therefore held responsible for the benefits paid.

The Bureau believes that per-employer determinations are inappropriate under pooled-fund laws because they are contrary to the philosophy on which such laws are based, as reflected in provisions under which (1) all money in the unemployment fund must be commingled and undivided; (2) nothing in the Act is to be construed as granting any employer or individuals performing services for him prior claims or rights to amounts paid into the fund; (3) benefits are paid a claimant who had the required amount of prior employment and wages in covered employment, regardless of any delinquency of his employer in paying contributions on these wages; and (4) benefits are paid so long as there is money in the State fund, regardless of the balance in any particular employer's account (for experience-rating purposes).

Obviously a system of per-employer determinations raises no special problems for claimants who had only one employer in the base period. For claimants with two or more employers, the following disadvantages may be cited:

(1) Benefit rights for each claimant who had employment with more than one base-period employer must be recomputed each time the claimant exhausts his credits from a base-period employer (until he has drawn the maximum potential benefits). Some claimants may have two or more different weekly benefit amounts during a benefit year, depending on their average weekly wages with each employer against whose account they successively draw benefits. Some of these rates may not be representative of the claimant's customary earning ability. In a State where claimants have been accustomed to a weekly benefit amount fixed for a benefit year, such changes are hard to explain, particularly if the weekly benefit at the beginning of a benefit year is reduced by later computations.

(2) Under a system of per-employer determinations, uniform potential duration which the Bureau considers the most appropriate duration provision for any social insurance program is illogical and difficult to devise and administer. Though base-period employment and wages are aggregated to determine whether a claimant meets the qualifying wages, weeks of benefits and total amount of benefits payable are determined for each employer separately, up to a specified maximum aggregate number of weeks. Only when that number of weeks has been reached in successive

determinations can a claimant know how much benefits he is entitled to during a benefit year.

(3) Maintaining the close relationship between a worker and a former employer as is done when determinations are on a per-employer basis, even though there has been intervening employment with another employer, leads to the imposition of disqualifications in connection with separations from work from former employers even though such separations did not result in the unemployment which is being compensated.

CONDITIONS FOR RECEIPT OF BENEFITS

This section on Conditions for Receipt of Benefits combines the non-monetary provisions of the former section 4, Benefit Eligibility Provisions, and the provisions of section 5 on Disqualification from Benefits. The monetary provisions of the former section 4 are included in the definition of insured worker and incorporated, as qualifying wages, in the benefit formula in section 3. Only an insured worker can receive benefits but insured workers do not automatically receive benefits when unemployed. To receive waiting-week credit or benefits for any week, they must not be disqualified in terms of the circumstances of their leaving work or of remaining unemployed and must follow a prescribed procedure to establish eligibility for benefits.

(a) Eligibility for benefits.—Section 4(a) combines all the requirements for eligibility to receive benefits. Thus eligibility as used here is broader than the old term eligibility. If an insured worker has taken the proper procedural action to establish his claim, he is eligible for waiting-week credit or benefits for any week of his unemployment unless he has been determined to be disqualified under section 4(b). As an insured worker he meets the monetary requirements for benefits; he has filed a request for a statement of insured status and has received information concerning his benefit year, his weekly benefit amount, and his maximum annual benefits. He must take the initiative in filing a notice of his unemployment, registering for work and, after a week of unemployment has elapsed, certifying for waiting-week credit or filing a claim for benefits. Unless the State law has no waiting-period requirement (see comments on section 2, page C - 22), he must have served the waiting week before he can file a claim for benefits for a week of unemployment. No benefits are payable for the waiting week or for any week of unemployment prior to it within a benefit year. However, an exception is made so that no individual who is in compensable status at the end of a benefit year will have to serve a waiting period if his unemployment continues into the new benefit year. The draft language means not only that the waiting period should not interrupt the payment of benefits in a continuous period of unemployment, but also that such individuals should not be required to serve a waiting period if they have a second period of unemployment in the new benefit year. The requirement of a waiting period following a compensable period in a benefit year has been found, in some States, to be too complicated and expensive to administer to justify its retention.

For the unemployed individual who is not in compensable status at the end of a benefit year and whose unemployment continues into the new benefit year, provision is made in section 2(r) for serving the waiting week in the period just prior to the beginning of a new benefit year.

The registration for work distinguishes unemployment insurance from other types of social insurance—from disability insurance, from work-

workmen's compensation, which is a specialized type of disability insurance, and from old-age (retirement) insurance. It is the claimant's affirmation that he is in the labor force and wishes to remain there.

(b) Disqualification from waiting-week credit or benefits.--Under unemployment insurance laws certain types of unemployment are not insured. If a man quits his job voluntarily without good cause or is discharged for misconduct, his resulting unemployment is not insured; if he refuses to accept suitable work without good cause, he will not be paid benefits for his unemployment. If, because of these reasons, it is found that the unemployment is not insured, the worker is disqualified and is not eligible for benefits. The different causes of disqualification are outlined below and the period of disqualification for the three major causes is discussed on page C - 58. Inability to work and unavailability for suitable work are counted as causes of disqualification but the existence of such cause must ordinarily be determined from week to week. It will be seen that an individual worker may be affected by more than one cause with respect to a week of unemployment.

(1) Inability to work and unavailability for work.--The commissioner must make a determination concerning ability to work and availability for work for each completed week of unemployment. A person who is ill or unavailable for work is not currently attached to the labor force. The requirement that such attachment must exist is necessary to carry out the function of the unemployment insurance program to provide cash payments to individuals who have been working and currently lack the opportunity to work. When an individual is physically or mentally incapacitated for work, he is deemed unable to work. When he cannot accept work because of personal or other circumstances or prefers not to work, he is deemed unavailable for work. Under these circumstances, benefits are not payable because the cause of unemployment is not lack of suitable work.

The availability provision is written in broad terms because it must be applied under changing labor market conditions and to individual claimants seeking work under varied circumstances, including variations in the types of work which they are capable of performing. The requirement is in terms of availability for suitable work as the term is defined in section 4(c). The purpose of the Act would be defeated if the laws required an unemployed worker to be available for any work regardless of his fitness or its suitability.

With a broad availability provision, the agency is free to use such special tests of availability as are deemed necessary for each claimant or under special circumstances. It permits a requirement by the agency that a claimant expend reasonable effort on his own initiative to obtain suitable work and recognition of the possible futility of such efforts under other conditions. The inclusion of a specific "actively seeking work" test is not recommended because the agency would find itself under

the necessity of imposing the requirement when its fulfilment is an empty gesture, demoralizing to the claimant and a nuisance to employers. While workers should be active candidates for jobs as a condition for receiving benefits, the test should be realistic, taking into consideration such factors as business conditions, the hiring methods of the industry in which the claimant is seeking work, and his individual circumstances. Similarly, other specific statutory restrictions, such as those which limit the type of work for which a claimant must hold himself available or the locality in which he must be willing to accept work, are not recommended because they would hamper administration and sometimes produce unintended and undesired results.

A finding of inability to work or unavailability for work applies only to the week of unemployment with respect to which it is made. If, however, a worker refuses suitable work without good cause, his refusal disqualifies him for a period of unemployment longer than a week under section 4(b)(4), and there is no need of a finding concerning availability until this period of disqualification has expired.

(2) Voluntarily leaving suitable work.--Section 4(b)(2) excludes from insurance protection the unemployment that immediately follows voluntary separation from suitable work unless "good cause" exists for the separation. After a period, the continued unemployment of a claimant who is able to work and available for work is attributable to economic factors rather than to his voluntarily leaving work. Such subsequent unemployment is therefore an insured risk; see discussion of the period of disqualification below.

Unemployment that immediately follows a voluntary separation may be insured, however, if good cause exists for the separation. "Good cause" in this provision includes reasons personal to the claimant as well as cause attributable to the employer or the employment. To restrict good cause, as some laws do, to good cause attributable to the employer or connected with the work conflicts with the social purpose of the law, and with the underlying basis of our free-enterprise system.

Examples of good cause for leaving work are unsafe working conditions, a better job, and illness in the worker's family. Some claimants who have left work voluntarily for good cause cannot receive benefits immediately because they are not available for work; for example, a woman who left because arrangements for the care of her children had broken down and who has been unable to work out substitute arrangements while employed. Until she can again make adequate provision for her children, she cannot be considered available for work and eligible for benefits.

(3) Discharge for misconduct.--Unemployment immediately following a discharge or suspension for misconduct connected with the work is another type of unemployment which is not insured. The paragraph specifically limits misconduct to misconduct connected with the work.

The period of disqualification immediately following such discharge or suspension should be fixed by statute so that the commissioner will not have to make a determination concerning the seriousness of the misconduct and set the period accordingly. If the facts presented by the claimant and his employer are considered by the agency to prove a deliberate act or omission by the worker which constitutes a material breach of his obligations under his contract of employment in disregard of his employer's interest, he should receive no benefits for the period specified in the law; however, if the agency makes no such finding, the claimant, if otherwise eligible, should receive benefits.

If State law provides a more severe penalty for gross misconduct, it should apply only to an individual who was discharged from his last work for an act which has resulted in a criminal conviction.

(2) Refusal of suitable work.--The provision of disqualification for a period after refusing suitable work reinforces the provision on unavailability for work. To justify the commissioner's finding of disqualification, the work refused must be suitable as defined in section 4(c) and the refusal must be without good cause. Moreover, the paragraph should be limited in application, as it is in most States, to refusals of work by individuals in claimant status.

In some States, however, if an individual who is not a claimant registers at an employment office he may find later that his action in discussing possible job referrals or in refusing a referral has the effect of cancelling his insurance protection under the employment security law. When he claims benefits for a subsequent period, this discussion of job opportunities or refusal of a referral may bar him from benefits. If the period of ineligibility or refusal of suitable work is limited as recommended, the refusal of a referral while not in claimant status will be of only temporary influence. If the period of disqualification is long or if benefit rights are cancelled, the effect may be a complete denial of benefits. In such States the following language is recommended, to be added at the end of section 4(b)(4):

> "Provided, That this paragraph shall not apply unless he filed a notice of unemployment, certified for waiting-week credit, or filed a claim for benefits on or within _____ days prior to the day on which such refusal occurred."

The period specified should cover the claim period, the filing period, and the period of grace for late filing. This language, which in effect defines "claimant status" in terms of an easily determined time period, would avoid the more complex determination whether or not a worker was a claimant at the time of a refusal of work.

Period of disqualification.--A determination of disqualification because of inability to work or unavailability for work applies only to the completed week of unemployment with respect to which it is made. The period during which unemployment resulting from a voluntary quit, discharge for misconduct, or refusal of suitable work is not compensable, is longer than one week, as specified in the Act, for each of these causes of disqualification.

The period of disqualification for these three causes is stated in terms of a period of continuous unemployment; the weeks of disqualification start with the week in which the claimant quit work voluntarily, was discharged for misconduct, or refused suitable work, and continue for the four consecutive weeks of unemployment which immediately follow. This provision means that the disqualification will not apply to unemployment occurring long after the act which brought about the claimant's disqualification, when his continued unemployment is due to economic causes, or when, after reemployment, he has another period of unemployment because of lack of work. Tying the period of disqualification to the date of the claimant's act is recommended because it simplifies claim determinations; the agency is required to look only to the cause of the current separation or suspension or refusal of work offers.

Limiting the disqualification to a period of continuous unemployment immediately following the act means that the period of disqualification terminates for any claimant who obtains bona fide work before the end of the specified period. If the worker's new employment terminates for reasons beyond his control before the end of the original period of his disqualification, he may receive benefits during the new period of unemployment.

The length of any period of disqualification should be reasonably limited to the period during which the unemployment originating from the claimant's own action continues to be due to that action. It should be fixed by statute in accordance with the average length of time ordinarily required for an employable worker to find suitable work in a normal labor market. A period of four weeks is suggested as an appropriate period for disqualification due to voluntary leaving, discharge for misconduct, and refusal of suitable work. If the maximum period differs for each of these causes, there can be no assurance that the insurance protection given workers will be equitable. For example, it is frequently difficult to determine whether a given separation is a quit or a discharge. If a more prolonged period of disqualification is imposed for a discharge, the worker will normally try to prove that he left his job of his own volition. The employer, in turn, may maintain that the separation was due to a discharge for misconduct. The task of the agency is simplified and equity is achieved in such cases, if such conflicting pressures on the agency are removed by provision for uniform periods of disqualification for the two causes. Similarly, the situations which lead to a voluntary separation and a refusal of suitable work are frequently identical; accordingly, the period of disqualification for these two causes should be the same.

Variable periods of disqualification for any one of these three causes are not recommended, because they are difficult to apply uniformly throughout the State and because they tend to assume the character of penalties. Some States have failed to use the flexibility which variable provisions permit and have tended to set the period of disqualification at the maximum or near the midpoint of the range provided in the law. Moreover, in doubtful or borderline cases, there may be

the temptation to impose at least the minimum period to make certain that no claimant receives unjustified benefits. Flat periods of disqualification are more consistent than variable periods with the function of the conditions for the receipt of benefits--to delineate the risk insured. They represent a practical decision as to the point at which continued unemployment, in the absence of facts to the contrary, is considered involuntary. Fixed periods of disqualification ensure the uniform treatment of all disqualified claimants throughout the jurisdiction and eliminate one issue which must be decided by the agency or the appeal body. Once it is established that the reason for the separation or refusal of work is a disqualifying one, the length of the period of disqualification is automatically determined.

No provision for cancellation of benefit rights.--Provisions for reducing benefit rights as if they had been paid during a period of disqualification or cancelling benefit credits earned with the separating employer or with all employers prior to a voluntary quit or a discharge for misconduct may result in a denial of benefits for extremely long periods, extending in some cases to the end of a benefit year or even longer. Such harsh results seem contrary to the purposes of the program as expressed in the Declaration of State Public Policy in the preamble to the Act.

Some State legislatures have adopted provisions of this type to protect the experience-rating accounts of employers from charges for benefits paid workers who left jobs for good personal cause or who continued unemployed after a period of disqualification imposed for voluntary quitting or discharge for misconduct. Since omission of charges for benefits in such circumstances has been found consistent with the provisions of section 1602(a)(1) and (3) of the Federal Unemployment Tax Act, such restrictive disqualification provisions are not necessary to prevent the charging of benefits when charging benefits to a specific employer does not appear reasonable under the theory of employer responsibility for an individual's unemployment.

As an alternative to such restriction of the workers' rights, some States may wish to consider the suggestions on the omission of charges contained in section 3521, Part V, of the Employment Security Manual, originally issued in Unemployment Compensation Program Letter No. 78 (December 29, 1944) and in Unemployment Compensation Program Letter No. 85 (April 16, 1945). These documents point out that sections 1602(a)(1) and (3) of the Internal Revenue Code do not require that all benefits be charged as part of employers' experience provided that the benefits which are charged assure a reasonable measure of their experience. The test is one of reasonableness in the measurement of each employer's experience in relation to other employers and to the purposes of experience rating. In determining the circumstances under which there would be no charging of employers' accounts, it is important to consider the potential quantitative effect of such omissions upon employers' contribution rates, to the end that the ability of the State's unemployment fund to finance the payment of benefits over a reasonable period of time will not be impaired.

(5) Benefits under other employment security laws.--Section 4(b)(5) prevents an insured worker from drawing unemployment benefits under more than one employment security law with respect to the same week of unemployment. However, if he is denied benefits under one law, the limitation under the second law is withdrawn. This language eliminates overlapping between various State and Federal employment security programs.

No disqualification for receipt of benefits under other social insurance systems.--No provision is recommended for disqualifying claimants or for reducing unemployment benefits by reason of receipt of benefits under other social insurance programs, such as old-age insurance under title II of the Social Security Act or workmen's compensation. In general, the character of the risks insured and the requirements for payment of benefits under the various systems are such as to eliminate the payment of more than one type of benef[illegible] for a given period, but there may be exceptions.

Older workers who have withdrawn from the labor force are not available for work and hence are not eligible for benefits. However, if an older worker who continues in the labor force after "retirement" loses a job, and is able to work and available for work and satisfies all the other requirements of the law, there is no sound social reason for denying him any part of his unemployment benefits solely because he is simultaneously eligible for or receiving old-age benefits. It is recommended that income from employer annuities and benefits under title II and similar Federal acts be ignored in determining benefits.

Workers receiving workmen's compensation for temporary total disability are generally not eligible for unemployment benefits because they are not able to work. Workmen's compensation for partial disability is intended to compensate impairment of earning power according to the degree of loss in the worker's earning capacity prior to an accident. If an insured worker who is receiving such an award becomes unemployed and loses such wages as he has been able to earn in spite of his disability, the loss of such wages due to inability to obtain work represents an additional contingency for which he should be compensated.

(6) Labor disputes.--This provision of disqualification for unemployment due to a stoppage of work because of a labor dispute is so drafted as to confine its operation to the workers who are actually concerned in the dispute, and to protect other workers from loss of benefits due to a strike that affects their work indirectly. It does not apply for any week unless all of the following conditions obtain during the week: (1) a stoppage of work exists at the premises at which the individual is or was last employed; (2) the stoppage is due to a labor dispute at such premises; (3) the individual's unemployment is due to the stoppage; and (4) the individual is not relieved of disqualification under the "escape clause" discussed below. Consideration has been given to an alternative provision of ineligibility for unemployment due to a "labor dispute in active progress" rather than to a "stoppage of work which is

due to a labor dispute." Whether a stoppage of work exists can be determined by objective standards. The "dispute in active progress" provision is not recommended because it is difficult of precise determination.

The so-called "escape clauses" protect workers who are employed in the establishment in which the dispute occurs but are not taking part in the dispute and are not directly interested in it, and they do not belong to a grade or class of workers which is participating in or interested in the dispute. A provision which would result in disqualifying individuals who are financing a labor dispute is not recommended since it may operate to deny benefits to individuals whose only concern with the dispute is their payment of dues to the union that is conducting the strike.

(7) Administrative disqualification for fraudulent misrepresentation.--No provision for administrative disqualification for fraudulent misrepresentation has been included in previous issues of the Manual because the provision for recovery or recoupment in section 5(j) and the provision for fine and imprisonment in the penalty section 14 were deemed to be adequate to deal with the problem of fraud. Experience has indicated, however, that these provisions are not always adequate because of the difficulty of obtaining prosecution under section 14, particularly in cases in which no benefits were paid or in which the amount of benefits fraudulently obtained was negligible. An administrative disqualification for fraud is therefore recommended where criminal action under section 14 is deemed inadvisable. However, a State which does not wish to include an administrative disqualification for fraud should omit (1) section 4(b)(7) in its entirety and (2) the words "or (7)" from section 6(f).

A provision for an administrative disqualification for fraud should be drafted and applied with great care. No person should be disqualified from receiving benefits under such a provision unless there is clear-cut evidence that he has knowingly made a false statement or representation of a material fact or has knowingly failed to disclose a material fact with the intent to defraud. Every word in the provision in the text is important. There must be evidence of intention to defraud, the act must be wilful and knowing, and must involve material facts before a determination of fraudulent misrepresentation or non-disclosure can be made. In order to provide adequate protection of claimant's rights, a provision is included in section 6(f) to permit claimants to appeal a referee determination that fraud has been committed to the board of review as a matter of right.

It should be noted also that it is not necessary for a claimant to have received any benefits under fraudulent conditions to be disqualified for fraud. If the commissioner finds that a claimant intended to obtain benefits through fraudulent means, the disqualification is applicable whether or not any payments were made as a result of the fraud.

There are several differences between a disqualification for fraudulent misrepresentation and the disqualifications discussed on pages C - 56-65. The principal difference is in the philosophy on which the disqualifications are based. Other differences, in the nature of the disqualifications, the starting date of the disqualification period, and the length of the period stem from the difference in philosophy. The disqualifications for voluntary leaving, discharge for misconduct, and refusal of suitable work are designed to prevent payment of benefits for unemployment which is not insured (see commentary on section 4(b), page C - 56). These disqualifications are not penalties, but are designed to limit the payment of benefits to the involuntary unemployment of claimants who are able to work, available for work, and willing to work. Consequently, these disqualifications, which take the form of a postponement of benefits for a stated number of weeks, begin with the date of the disqualifying act and are removed when it may be considered that continuing unemployment is no longer due to that act.

A disqualification for fraud, however, is not connected with the reason for unemployment and is, in effect, a punishment for wrongdoing. Because there are various degrees of fraudulent misrepresentation the penalty suggested is of variable duration, so that the severity of the penalty may be varied in accordance with the severity of the offense. Though a flat disqualification period is recommended for the ordinary causes of disqualification, the same period is not appropriate for a claimant who knowingly fails to disclose a few dollars of earnings in one week and one who connives to draw full benefits for a benefit year while employed. Although the length of the period is not indicated in the text, it is suggested that the period be in terms of not more than a stated maximum number of weeks. Cancellation of wage credits is not recommended (see page C - 60).

Since the fraudulent act is not the cause of the claimant's unemployment, and since the existence of the fraud is generally not discovered until some time after the act was committed, the period of disqualification should not begin either with the date when the claimant became unemployed or with the date the fraud was committed. A disqualification beginning with either of these dates could be wiped out by the passage of time before the fraud is discovered. It is more appropriate that the disqualification begin with the date of the final determination that fraud has been committed. Such a provision is also more analogous to the method of applying criminal penalties. The text therefore provides that the period of disqualification begin with the determination that fraud has been committed and continue for a period of consecutive weeks thereafter.

The text also limits the time within which the disqualification may be applied to two years (24 months) after the week in which the fraudulent act was committed. Such limitation is necessary because a longer period would put a claimant in a doubtful case at a very great disadvantage in obtaining evidence and witnesses to the facts involved in proving that he had not committed a fraud upon the unemployment insurance system. Moreover, it is not practical for administrative reasons to go back to the records of the past for more than two years.

(c) Suitable work criteria.--The term "suitable work" is used in paragraphs (1), (2), and (4) of section 4(b) to make the provisions concerning availability for work, voluntarily leaving work, and refusal of work consistent in terms of suitable work. Section 4(c) explains what constitutes suitable work.

Paragraph (1) lists the standards required by section 1603(a)(5) of the Federal Unemployment Tax Act. The standards are designed to protect a claimant from a denial of benefits for refusing to accept new work (A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; and (C) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Paragraph (2) lists additional criteria to be considered in any determination whether work is suitable for any individual. It includes the degree of risk to the claimant's health, safety, and morals; his physical fitness for the work; his prior training and experience; his prior earnings; the length of his unemployment; his prospects for obtaining work at his highest skill; his prospects for obtaining local work; and the distance of available work from his residence. The nature of the criteria is a recognition of the fact that suitable work has meaning only in relation to a particular individual and a particular job. Work which may be suitable for claimant A may be utterly unsuited to B's skill or circumstances.

No special eligibility provisions for special groups of workers.--Legislative enactments holding students unavailable for work, or pregnant women unable to work, or women who leave work to marry ineligible for benefits, or cancelling the benefit rights of such claimants are generally unnecessary. These circumstances can all be dealt with equitably by administrative determinations under the general disqualification provisions, taking into account the facts in each case. Such special provisions lump together all individuals similarly circumstanced in one respect and fail to recognize that not

all of them are unavailable or outside the intended scope of the program. Moreover, these provisions limit the agency in its administration of the law. If a claimant technically falls within the scope of such a provision, the sanctions must be applied regardless of other facts to the contrary. Yet the provisions do not eliminate the individual consideration of the circumstances of these claimants by the local office personnel to determine whether the special provisions are applicable. A State is generally in a better position to handle equitably the questions of availability if it relies upon the general tests of eligibility, implemented by guiding principles issued to the agency personnel who make the availability determinations.

Presumptions concerning ability of pregnant women to work.--If a State feels compelled to include a provision on eligibility of pregnant women, such a provision should be drafted in terms of a rebuttable presumption of unavailability during a stated period. It could specify that a woman would be considered unable to work for a specified period, such as from four weeks before the anticipated date of childbirth to four weeks after childbirth, unless it is shown that she is able to work during such period; for example, by a doctor's certificate or by her record of work during previous pregnancies. Under such a provision during the period specified, the burden of proof of availability would be placed upon the woman claiming benefits. Before and after this period, the agency would continue to determine ability to work under the normal provision, judging each claimant upon the particular facts presented. The period during which a pregnant woman who claims benefits is responsible for proving her ability to work should be set in relation to the State labor laws or regulations dealing with the employment of pregnant women.

DETERMINATIONS, NOTICES, AND PAYMENTS OF BENEFITS

If benefits are to serve the purpose for which they are intended, they should be paid currently during the period of the worker's unemployment when he needs them to meet his living expenses. To encourage prompt payment, title III of the Social Security Act includes, as one of the conditions for administrative grants, a requirement that the State law make provision for such methods of administration as are reasonably calculated to insure full payment of benefits when due. This requirement includes not only the prompt payment of benefits but also the prompt determination that benefits are due or are not due.

Section 5 is intended to provide a statutory basis for the procedures essential to prompt and accurate determinations and payments. It includes (1) provisions relating to benefit payments, determinations, redeterminations, and notices which, for the most part, were formerly combined with appeals in section 6, entitled Claims for Benefits and (2) the provisions of the former section 15 which relate to the waiver and assignment of rights to benefits. While the language on determinations and notice of determinations differs quite markedly from the language of earlier legislative manuals, the changes are designed mainly to provide the basis for procedures, now in general use in processing benefit payments, which have been developed by the States to facilitate determinations and payments.

(a) Payment of benefits.--Section 5(a) provides that benefits shall be paid through public employment offices, in accordance with regulations prescribed by the commissioner. Payment "through public employment offices" does not mean actual disbursement in employment offices but, rather, that claimants will have some contact with employment offices before a benefit is paid. Payment of benefits through such offices brings unemployed workers to a central point where information on employment opportunities is available and the possibility of finding new jobs is enhanced. In addition, such offices are in a position to supply information about the claimants' availability, skills, and prospects for work which may be needed in the benefit determination. The advantages of payment through employment offices are recognized in the Federal acts by the requirement for payment through public employment offices in section 303(a)(2) of the Social Security Act and section 1603(a)(1) of the Federal Unemployment Tax Act.

Regulations on establishing rights to benefits should cover the time and place for filing notices of unemployment and claims for waiting-week credit or benefits, and for registering for work and thereafter reporting at the employment office. The commissioner may establish by regulation different requirements for partially unemployed and for totally unemployed workers. In some circumstances, as in the case of persons living in sparsely populated areas or in times of mass unemployment, it is desirable to permit workers to meet the requirements without weekly appearance at the local office.

(b) Information to workers on benefit rights.--It is important that workers be properly informed of the procedures for establishing rights to benefits so that they are not deprived of benefits through misinformation or lack of knowledge. The most effective method by which the agency can inform workers of their rights under the law is to send material to them through their employers. Section 5(b) directs the commissioner to supply employers, without cost, with printed information on the regulations which govern benefit rights and other facts on the administration of the Act. The employer is directed to post and maintain the statements in places readily accessible to his workers and to supply the workers with copies.

(c) Notice by employing unit.--An employing unit has knowledge concerning a worker's separation from work or other facts which are pertinent to the agency's determination of his eligibility for waiting-week credit or benefits. Section 5(c) directs employing units having knowledge of such facts to notify the commissioner in accordance with his regulations. The Bureau recommends regulations which require employers to furnish separation information about a claimant only upon request by the agency after the receipt of the claimant's notice of unemployment.

(d) Determinations.--The making of determinations is crucial to prompt payment. However, making determinations promptly is not a simple matter because the conditions which must be examined in making the determination of eligibility for benefits are numerous and some of the necessary facts cannot be known until the claimant has certified to a complete week of unemployment. In the interest of speeding up determinations, State agencies have developed procedures under which determinations are made as the facts relating to any condition prerequisite to eligibility become available. The determination procedure provided in this section specifically sets forth these step-by-step determinations and clarifies the determination process for agency personnel, the public, and the courts.

The new term "insured status" is used in describing that step in the determination process which is usually referred to as the monetary determination. The term "notice of unemployment" is used to describe the form which an unemployed worker files when he becomes unemployed but before he can certify to a week of unemployment. No final determination that a claimant is eligible is made until he has met all eligibility conditions and waiting-week credit or benefits are due him under the Act.

(1) Determination of insured status.--The facts which are available when a worker makes his first contact with the agency as a possible claimant are those in the wage-record files. On the basis of these facts the agency takes its first step in the determination process. If the worker has not enough wage credits to qualify for benefits under the benefit formula, he is not an insured worker, and no further determination is necessary until he acquires new wage credits and again requests a determination of insured status or files a notice of his unemployment. If he has sufficient wage credits, he is an insured worker; his weekly and maximum annual benefits are determined immediately and his benefit

year is established. In the case of an employed worker who has filed a request for determination of insured status, a benefit year may be established while he is not unemployed. As indicated in the comments on the first definition of an individual benefit year (page C - 3), there are administrative advantages in having the benefit year begin with a finding that a worker is an insured worker. In recognition of these advantages, section 5(d)(1) directs the agency to make the determination at the time a worker requests it (whether or not he is unemployed) or upon the filing of a notice of his unemployment, if no determination of insured status has been made for a current benefit year. For a worker who is found to be insured, the determination is final for the benefit year unless it is modified upon reconsideration or appeal.

(2) Preliminary determination on disqualification.--If the worker is an insured worker, the next step in the determination is to decide, on the basis of the facts existing at the time that he files his notice of unemployment, whether his unemployment is of a type for which benefits are payable under the law. Paragraph (2) specifies that at the time that an insured worker files a notice of unemployment, the agency shall make a determination whether he is disqualified for any of the reasons specified in section 4(b) except those relating to ability to work and availability for work. If he is disqualified, no further determination need be made until the period of disqualification has run. If he is not disqualified, his eligibility for any future weeks of unemployment will depend on the facts which develop in each of those weeks.

(3) Current determinations.--Paragraph (3) provides such current determinations as may be necessary because new facts arise and the agency needs to determine whether they warrant disqualification. For example, in any week a claimant may refuse work and the agency has to determine if it is suitable. This paragraph provides also the final determination which must be made for each week of unemployment for which a claimant certifies for a waiting week or claims benefits. All the facts are available at the time this determination is made. The agency determines whether the claimant (1) has complied with the filing and registration requirements of section 4(a), (2) has been able to work and available for work during the week, and (3) is not disqualified under section 4(b)(5).

(4) Determination in labor disputes.--Determinations in labor dispute cases may affect a large number of workers. They involve grave and complicated issues of employer-employee relationships which need the seasoned judgment which appeal tribunals have developed. Under section 5(d)(4), the commissioner may turn the responsibility for the determination on the labor dispute issues over to the board of review for a complete hearing and decision. Delegation of such responsibility does not, however, affect the obligation of the commissioner for making determinations of insured status for the claimants concerned.

(e) Written notice of determination.--Notices of determinations play a large part in protecting a claimant's rights. Unless he knows what his rights are and unless he has knowledge of an adverse determination in time to appeal, he has not been given an opportunity for a fair hearing. Section 5(e) specifies the notices which should be sent to employing units and to workers in specific circumstances.

(1) Notice of insured status.--Paragraph (1) provides that a notice of determination of insured status shall be furnished to all claimants promptly. The notice states whether the worker is insured, the amount of wages paid him by each base-period employer, and the names of the employers. For the insured worker, the notice includes also his weekly benefit amount, his augmented benefit amount if he has dependents, his maximum annual benefits, and his benefit year. If he is not insured, the notice should explain that he does not have enough wage credits and it should indicate when the worker may request a determination of insured status on the basis of newly available wage credits. All notices should include a statement of the right to appeal. Since the determination is purely monetary and not dependent upon facts surrounding the cause of the individual's unemployment, no notice of insured status need be sent to the employer.

(2) Notice to an ineligible insured claimant.--Paragraph (2) requires the agency to notify any claimant who is found ineligible for waiting-week credit or benefits. The notice should give the reasons for the determination and its effective period and the claimant's right to appeal from the determination.

A determination of disqualification because of voluntarily leaving work without good cause, discharge for misconduct, or refusal of suitable work runs for a period of continuous unemployment specified in section 4, and only one notice of such disqualification is given the claimant. A determination of disqualification because of inability to work or unavailability for work can be made only for completed weeks of unemployment. However, the same facts may disqualify a claimant for successive weeks of unemployment; for example, a broken leg may make a claimant unable to work for a considerable period. Since the period of disqualification for a labor dispute runs as long as there is a stoppage of work at the establishment where the claimant was last employed, no determination of the length of such disqualification can be made in advance. Section 5(e)(2) provides that in all such cases, written notice of disqualification should be given promptly for the first of such weeks, and later only upon request or at four-week intervals, so long as the facts on which the original determination was made remain unchanged.

(3) Notice to employing units.--Under paragraph (3) a notice of a determination is given to a worker's last employing unit only when, prior to the determination, it has submitted information concerning the circumstances of the worker's separation or of his continued unemployment. Thus, the employing units which are deemed parties to determinations of rights are limited to those which have informed the agency of facts which may provide a basis for the determination. If an employing unit

has not submitted such information before the determination is made, there is no reason why it should have the right to appeal. Obviously, when it has submitted potentially disqualifying information, it should be notified of the determination whether it is for or against the claimant, or if the claimant is not an insured worker, the employing unit should be notified of that fact. In case benefits are allowed after an employing unit has submitted potentially disqualifying information, the claimant who otherwise would receive notice of eligibility only through payment of benefits should receive notice of the determination allowing payments, a copy of which has been sent to his last employing unit.

(4) Notices and appeal rights.--One of the chief purposes served by the notice of determination is to inform a claimant and his most recent employing unit of an agency decision in sufficient time to allow an appeal. Paragraph (4) provides that the notice be given promptly, by delivery or by mailing to the interested party's last known address, and requires that a clear statement of appeal rights be included in every notice of determination.

(5) Notice of payment.--In most instances the only notice of determination which the eligible claimant receives for any week of his unemployment is his benefit check. Paragraph 5, therefore, includes a new provision that a benefit payment shall be considered a determination and also a notice to the claimant that he is eligible to receive the payment. The date of payment is thus established as the beginning of the period within which reconsideration or appeal may be requested. No copies of the checks need be sent to employers since checks are not issued until after all questions relating to the separation of the worker from his last employer have been determined.

(f) Finality of determination.--A determination of insured status or of eligibility becomes final with respect to any interested party seven days after notice is mailed or handed to him, unless within that period he files an application for reconsideration or an appeal. An additional period is allowed for good cause, such as failure to receive the notice on time through error or the longer mailing time required for claimants in isolated areas or for distant interstate claimants.

(g) Reconsideration of determination.--Provision for reconsideration of determination permits the commissioner to revise a determination of insured status or of eligibility without the formality of the appeal procedure when he receives facts which would warrant such a revision. The power to reconsider a determination is in addition to the appeal process, but it is not necessary for an individual to apply for a reconsideration before he may take an appeal. The right to take an appeal from a redetermination is, of course, permitted. The reconsideration granted on the application of an interested party provided in paragraph (1) is not limited in scope, but it can be made only if the application is filed within the appeal period. Applications for reconsideration of determinations involving the labor dispute provision which were referred to

an appeal tribunal under the provisions of section 5(d)(4) are handled by the board of review.

Under paragraph (2), the commissioner may reconsider a determination of insured status at any time within a year if he finds that there has been an error in computation, identity, or the amount of wages credited to the worker; that additional wages have been discovered; or that non-disclosure or misrepresentation is involved. A year should give sufficient time for the correction of mistakes of the usual type that may occur in connection with the determination.

Under paragraph (3), however, the commissioner has 2 years to reconsider, on his own motion, a determination of eligibility for waiting-week credit or benefits, which was based on a failure by the claimant or his employer to disclose a material fact or on misrepresentation by either one or both of them. Following such reconsideration the commissioner may issue a redetermination. In this instance the 2-year period is suggested so that the agency will have time to correct its records.

Paragraph (4) describes the procedure to be followed by the commissioner when jurisdiction of the determination has passed from him. Whenever he discovers information which would provide the basis for reopening an appealed determination, he is directed to request the body or court which rendered the final decision to issue a revised decision.

Notification of a redetermination, as provided in paragraph (5), must be given in the same manner that written notice of a determination is given. Since a redetermination may cover some period for which benefits have been paid, it may include a finding that such benefits must be repaid to the agency. In these instances the notice to the claimant must indicate the liability for repayment as provided in section 5(j)(2).

Paragraph (6) on finality of a redetermination of insured status parallels the provisions of section 5(f).

(h) Prompt payment of claims.--Section 5(h)(1) provides for prompt payment of benefits. Because of the provisions for reconsideration and appeal of determinations, the question of just when a claimant should be paid is not a simple one. An agency's decision that a claimant meets all eligibility conditions and should receive benefits may be reversed. Therefore, the practical solution is to pay immediately any claims for weeks of unemployment on which no question of disqualification has been raised and to hold, until the appeal period has run, every claim for weeks on which a disqualification has been alleged but which has been allowed by the agency because it found no disqualification. If there is no appeal, the claim can be paid at the close of that period.

If payments on all claims for weeks of benefits filed by an individual were held up because a question of possible disqualification or ineligibility has been raised on some of his claims, benefits which are due without question would not be paid promptly. Delay in payments should

be avoided when the final decision on some claims has not been made by the end of the period for which the claimant would be ineligible should the decision go against him, and he continues to be unemployed and to claim benefits for weeks of unemployment about which there is no question. Regardless of the decision on the appeal, the claimant's benefits for these latter weeks of unemployment can be paid promptly if he is available for work in each of these weeks and eligible for benefits in every other respect. If the claimant questions the exact amount of benefits to be paid, the amount awarded by the commissioner can be paid immediately regardless of the outcome of the reconsideration or appeal; if an increase is awarded, it can be made in a supplementary payment; if no increase is awarded, the payment stands. If there is some question concerning dependents' allowances, the basic benefits can be paid promptly.

Paragraph (2) provides that payments should not be delayed because proceedings for judicial review have commenced, unless the board of review specifically orders delay.

Paragraph (3) provides that appealed claims be paid promptly following a second decision which awards benefits. For example, if the commissioner's award of benefits is upheld by an appeal tribunal, benefits should be paid immediately, regardless of any further appeal. If the appeal tribunal reverses the commissioner's determination but the board of review upholds it, benefits should be paid on the basis of the board's decision. A reversal by the board of review or a court would, of course, bar benefits for any future weeks of unemployment, but, under this double affirmance provision, the benefits which the claimant has already received were due and he would not have to refund any amount which he had received prior to the reversal.

(i) Payment of benefits due deceased or mentally incompetent persons.—Under section 5(i), the commissioner is authorized to adopt regulations for the payment of benefits in cases in which a claimant dies or has been declared insane or mentally incompetent before he has received benefits which have become due. While the number of claimants who die or are declared incompetent before they receive benefits due them is not large, the few cases which do arise create administrative complications disproportionate to the amounts involved, if the employment security law gives no direction for handling them. Such payments should not be restricted by the usual inheritance and guardianship laws since the amounts are usually small. Therefore, the commissioner's regulations on payment in these cases need not conform to the statutes governing decedent estates. The final sentence of the subsection protects the agency from further liability after payment to the individual designated by the commissioner.

(j) Recovery and recoupment.—Section 5(j) should be read in conjunction with section 14(a) which provides criminal penalties of fines or

imprisonment for claimants who fraudulently withhold or misrepresent facts in connection with claims.

The power to recoup erroneous payments is limited to cases in which the payment was the result of the action of a claimant who, knowingly, alone or in collusion with another person, failed to disclose some important fact which had a bearing on his eligibility or misrepresented the facts and who was not acting in good faith in accepting the benefits. The agency must decide that an erroneous payment was due to the claimant's own misrepresentation or nondisclosure and not to his misunderstanding of the agency's procedures and questions or to misrepresentation of someone else without his knowledge. In order to simplify administration the power to recoup is also limited to 2 years after the finding of nondisclosure or misrepresentation.

When recovery of benefits is authorized, the notice to the individual must state that he is liable for the amount erroneously paid to him, the nature of the nondisclosure or misrepresentation, the amount to be repaid, and the weeks for which it was paid. Otherwise, the benefits are not recoverable. This provision is needed to give a claimant notice that a repayment is due so that he may avail himself of the opportunity to protest the redetermination or decision even if he is no longer unemployed.

The commissioner is given discretion to require restitution or to deduct unwarranted payments from future benefits. This discretion is essential. While some claimants are in a position to make repayment, others may find it impossible to do so. Given discretion, the commissioner can give relief in these cases. Amounts to be repaid to the fund are made collectible without interest by civil action in the name of the commissioner.

(k) Waiver of rights void.--Sections 5(k) and (l) were formerly included in a separate section 15, "Protection of Rights and Benefits." Both provisions are important to the protection of employees' rights under the Act. Obstructing the claiming of benefits by intimidation or otherwise is made a punishable offense. The general penalty provision of section 14(d) applies.

(l) No assignment of benefits.--Protection against assignment of benefits is important to carry out the main purpose of the Act, which is to furnish maintenance during periods of unemployment, and not to furnish relief for creditors. However, it is consistent with the aims of the Act to permit legal action to collect debts incurred for necessities during periods of unemployment, so that the individual may, when unemployed and in need, obtain credit on the strength of his unemployment benefits.

APPEALS

Section 6 is designed to meet the requirement of title III of the Social Security Act that a State law contain provision for an opportunity for a fair hearing to all individuals whose claims for unemployment benefits are denied. Two stages of appeal are provided: the first to an appeal tribunal, and the second to a board of review. Appointment of the board of review is provided in section 12(b). The board is given general power over the conduct of appeals at both levels, including the appointment of the appeal tribunals, assignment of cases to the tribunals, and adoption of appeal rules or regulations which prescribe the manner of filing appeals and the conduct of appeal hearings.

(a) Appeal tribunals.--Ordinarily the issues in an appeal on the lower level do not warrant a multi-member tribunal. A single member appeal tribunal, often called a "referee," is therefore provided. The board of review is given authority to appoint a tripartite tribunal to hear and decide cases of more than routine importance, particularly labor dispute cases, cases involving the labor standards of section 4(c)(1), or consolidated appeals. The tripartite tribunal may be helpful in reconciling employer and employee interests in difficult cases, and may also serve a public relations function by assuring both groups that their particular interests will receive consideration by the tribunal, and that an unfavorable decision is not a result of prejudice or arbitrary action. The employer and employee representatives should be chosen on the basis of their experience and prestige in their respective groups. While each should bring to the tribunal the point of view of the group from which he is chosen, his duty is not to convince the referee chairman, but rather to help reach the fairest decision consonant with the law under which he is acting in cooperation with both other members. The referee as chairman of the tripartite body and as the impartial member concerned solely with the public interest contributes a familiarity with policy and precedents. It is most important that the referee be appointed on a merit basis. The impartial character of the tribunal necessitates that, if either the employer or employee representative or his alternate is absent or disqualified, the other representative or alternate take no part in the proceeding, and that the referee act alone. Provision for appointment of alternates should, however, avoid such situations.

(b) Review by appeal tribunal.--A claimant or employer entitled to notice of the commissioner's determination under section 5(e) may file an appeal to an appeal tribunal. The commissioner is a party to all appeals. In cases involving a question of insured work, the employing unit where the service in question was performed receives notice of the appeal and becomes a party, regardless of whether it was entitled to receive notice of the commissioner's determination under section 5(e)(3). The act contains no provision specifying all the notices that might be given to the parties; such details are proper subjects for regulations. A decision that work performed by a claimant for an employing unit was insured work is conclusive on the issue for all other workers similarly situated in that employing unit, and the decision is not subject to collateral attack either by the commissioner or by the employing unit.

If the commissioner, under section 5(g), reconsiders a determination from which an appeal is pending, the redetermination supersedes the earlier determination and the appeal, unless withdrawn, becomes an appeal from the redetermination.

If a party wishes to withdraw an appeal, he must request permission of the tribunal. The tribunal retains jurisdiction of the appeal until it determines that the record shows no obvious error and that no suspicion of fraud or coercion is indicated by the request. This provision, consistent with the non-adversary nature of the appeal proceedings, is designed to protect parties, often unrepresented by counsel, from fraud or undue pressure and to make certain that the withdrawal of an appeal does not allow an obviously erroneous or unsupported determination to become final.

The last sentence is intended to settle questions that have arisen regularly concerning the jurisdiction of appeal tribunals to go beyond the immediate and obvious issues involved in the appealed determination and pass upon related issues and issues that have arisen in the interval between the determination and the hearing. The language proposed will avoid such questions and reconcile the full scope of tribunal jurisdiction with the requirements of fair hearing.

(c) Hearing procedure and record.--An opportunity for a fair hearing not only includes the right to present arguments and confront and examine witnesses before an impartial referee, but also requires timely notice of the hearing and scheduling of hearings at a time and place reasonably convenient to the parties. The elements of a fair hearing should be provided by regulation.

A hearing before an appeal tribunal should be so conducted as to bring out all testimony and evidence which may be helpful in ascertaining facts relevant to the review of the determination. Rigidity or formality is to be avoided, and the proceeding should be understandable to a claimant not represented by counsel. Courtroom techniques and rules as to order of proof, type of evidence admitted, and "burden of proof" are not appropriate to the non-adversary type of proceeding contemplated in unemployment insurance administration. Narrative testimony is often most useful in adducing the complete factual picture. Interruptions because of occasional irrelevancies or because of nonconformance with a prescribed order of proof may hamper the fact-finding process. Moreover, what appears to be irrelevant at one stage of the hearing may later prove germane to the issue. Common-law or statutory rules as to "competence" or relevancy which are appropriate for lay juries are not justified in their application to a fact-finding authority which both elicits and weighs evidence as an expert in a specialized field. Instead of excluding evidence of doubtful reliability or relevance, the tribunal should admit such evidence into the record and when arriving at a determination give it only such weight as seems warranted. The tribunal should, moreover, bring forth on its own initiative any testimony or evidence on relevant issues which the parties fail to cover. A record of the appeal proceedings is necessary to provide a basis for review. This record may be in the form of stenographic notes or recordings and need not be transcribed unless further appeal is taken.

(d) Consolidated appeals.--Often a single fact situation gives rise to questions involving large numbers of claimants. This is particularly true where a labor dispute is involved or where coverage of an employing unit is the principal issue in the determination of benefit rights. Consolidation of such appeals avoids unnecessary repetition, expense, and delay. However, a party may have a separate hearing if the tribunal finds that consolidation would be prejudicial to his rights.

(e) Notice of decision of appeal tribunal and time for appeal.--The decision of the appeal tribunal should be issued promptly, and a copy of the decision including the findings and conclusions mailed or delivered to the parties. The findings and conclusions should be simple statements of the reasons for the decision. It is not necessary for the findings of fact to be distinct from the conclusions of law. The main purpose will be served if the findings and conclusions make the basis of the decision understandable to lay parties and agency personnel and are sufficiently explicit to form a basis for review. A party has seven days from the date of mailing or delivery of the decision in which to start an appeal. More time may be allowed for good cause, as for example, in the case of a party who is an interstate claimant, or who lives in a remote rural area where receipt of notice of decision may be delayed, or who has misunderstood the instructions of agency personnel.

(f) Review by the board of review.--The board of review serves as a second stage of appellate authority except in cases involving labor dispute questions under section 4(b)(6) and appeals which it removes to itself. A party is entitled to a review by the board of review of a decision if the appeal tribunal did not affirm the commissioner's determination and in cases involving fraud under section 4(b)(7), if a State law includes a provision for administrative disqualification for fraud. The board may in its discretion grant review of an appeal tribunal's decision which affirms the commissioner's determination. In the exercise of its function of coordinating decisions of various appeal tribunals, the board itself may initiate a review of an appeal tribunal's decision within the same time as provided for an appeal by a party. The board may review an appeal tribunal's decision on the basis of evidence already submitted since a fair hearing has already been afforded the parties. The board may, however, order more evidence to be taken before itself or before the tribunal to complete the record.

(g) Labor disputes: determinations and appeals.--Labor dispute cases arising under section 4(b)(6) may be referred by the commissioner to the board of review for determination pursuant to section 5(d)(4). The board of review may appoint a tripartite tribunal to hear the case and issue a determination which may then be appealed to the board of review as of right. The board may in its discretion hear the case itself, in which event the parties must receive a full hearing as would ordinarily be afforded by an appeal tribunal; the determination may be appealed to the appropriate court in the same manner as any other decision of the board of review.

(h) Removal to the board of review.--In its discretion, the board of review may hear an appeal involving an important issue, in the first instance, and may remove to itself any such appeal pending before an appeal tribunal. When an appeal is so removed, the board must give all parties a fair hearing as would otherwise have been afforded by an appeal tribunal.

(i) Notice of decision of board of review and judicial review.--Paragraph (1) provides that any party may appeal to the appropriate court from a decision of the board of review within fifteen days after the mailing or delivery of the decision. More time is allowed than for an appeal from an appeal tribunal's decision since more formalities are ordinarily involved in perfecting court appeals; this additional time removes the necessity of provision for extension for good cause as contained in sections 5(f), 5(g)(6), and 6(e). Where the board has, in its discretion, refused to hear an appeal from an appeal tribunal's decision, the time for initiating judicial review runs from the date the notice of denial was mailed or delivered, since only then would a party have exhausted the administrative remedies provided.

The first step in the court appeal is the filing of a petition for review which states the grounds of appeal. Verification of the petition, and the taking of exceptions are not necessary to judicial review nor is the posting of bond necessary to obtain judicial review of determination of benefit rights. The court does, however, have discretion to require posting of bond by an employing unit in cases involving review of determinations of coverage and of contribution liability.

(2) An appellant other than the commissioner need not himself serve every party to the appeal. He need only deliver to the commissioner or his designated representative as many copies of the petition as there are parties to the appeal. The commissioner has the responsibility of serving all other parties, and of filing with the court certified copies of the record together with his petition for review if he is the appellant or with his answer if he is an appellee. The parties to the judicial review include all the parties to the administrative proceedings as well as the board of review which has an interest in defending its position.

(3) The court review is limited to questions of law and the findings of fact by the board of review are conclusive unless the court finds them to be unsupported by substantial evidence in the record. A review of the facts de novo or a re-evaluation of the evidence applying exclusionary rules applicable in law courts would result in undue duplication and would further negate the effect of the informal hearing by specialist fact-finders. If the court wishes a more complete record, evidence should be taken and findings and conclusions made by the board of review.

Since speed in adjudicating claims is of prime importance, the court appeal should be heard summarily and given precedence on the court calendar over all except workmen's compensation cases.

(j) Conclusiveness of final determinations and decisions.--Provision for conclusiveness of final determinations and decisions makes those redetermination and appeal procedures expressly provided in the Act the exclusive means for upsetting determinations and decisions. This section is intended to prevent indirect reopening or possibly contradictory disposition of matters already decided. A determination, redetermination, or decision, if not appealed within the time provided, becomes final and conclusive on the claimant, the commissioner, and employing units with notice. A determination of benefit rights may not be collaterally attacked by an employing unit even if it did not receive notice. Thus when wages are taken into account in determining the insured status of a worker, the coverage of work performed for those wages is conclusively determined and the employing unit which had notice of the determination under section 5(e)(3) or of the decision under section 6(e) and (i) may not later raise a coverage question as to the same work in connection with its liability for contributions. In no case involving its experience rating may an employing unit contest benefit rights already awarded as a result of a decision or determination which has become final.

A case may be reopened because of fraud or coercion if the commissioner, appeal tribunal, or board of review is notified within the period of sixty days from the time the person claiming fraud realizes that he has been defrauded, or if coercion is involved, from the time he becomes free of the coercion. An appeal permitted to be withdrawn may similarly be reinstated because of fraud or coercion within the same time limit. This provision is not essential in States which recognize the right of an administrative agency to set aside decisions or reinstate appeals when a decision or permission to withdraw was procured by fraud or coercion.

(k) Rule of decision and certification to board of review.--The rule of decision provision is intended to achieve uniformity and predictability in policy interpretation and in the application of legal principles, and at the same time to provide for sufficient flexibility to allow for improvement and re-evaluation. Certification, by the commissioner or an appeal tribunal, of a question of law and findings of fact to the board of review provides a method for discarding incorrect or obsolete interpretations. The board of review either may hold a hearing and certify an answer to a question of law or may remove the entire case to itself. Certification is also an expedient method for the disposition of an important question for which there is no precedent, where the case would probably be appealed to the board of review in the normal course of events.

(l) Limitation of fees.--If the opportunity for fair hearing under this section is to have reality for claimants, the limitation of fees is essential. Charging of fees by an appeal tribunal, or by the board of review would greatly impair, if not nullify, the opportunity for a fair hearing and would result in the abandonment of many cases involving important issues on which precedents should be established. The right to take an issue to court after the administrative appeals processes

have been exhausted requires that there should be a similar limitation of fees and costs in connection with a court proceeding. It is recommended, however, that the courts be given authority to curb unwarranted actions for judicial review by assessing against the claimant costs in cases where proceedings are instituted or continued without reasonable grounds.

(m) Representation of claimant.--While administrative proceedings on claims are to be conducted in such a manner that the claimant will not need representation, it is important to provide that a claimant may be represented by counsel or by another representative of his choosing, for example, a worker by a union official or an employer by a personnel officer. The control over fees which an attorney or authorized agent may charge can be used to discourage any offer of counsel when it is not needed; it will also protect claimants from excessive charges when counsel is needed. It is advisable that no rigid limitation be placed on the fees to be allowed attorneys or agents. Accordingly the board of review is given discretion as to the amount allowable.

(n) Fees of attorneys for claimants on appeals to courts.--A claimant's right of appeal to the court may be ineffective unless provision is made for the payment of his attorney and necessary court and printing costs when appropriate because few claimants have technical legal competence and few are able to pay for such services. Payment of such costs is authorized from the administration fund when the claimant is on the defensive and does not initiate the appeal, when the decision being appealed by the claimant reverses a decision favorable to him, when the claimant is appealing from a decision which reduced or denied benefits awarded under a prior administrative or judicial decision, when benefits are awarded as a result of the appeal, when the decision being appealed was not the unanimous decision of the tribunal, board of review, or court which rendered the decision, or when the claimant appeals in other types of cases unless the court finds that there was no reasonable basis for the appeal. Limits to be set on the amount which may be paid in fees will necessarily depend upon customary fees in the State.

COVERAGE

The principal coverage provisions in this Act are found in the definitions of employer and employment in section 2(i) and (k). Section 7 directs the commissioner to make coverage determinations, and protects the rights of persons affected by those determinations by prescribing procedures for administrative reconsideration, for appeal to the board of review, and for judicial review of these determinations. The section also provides elective coverage and prescribes the period during which such coverage is effective and the methods by which both mandatory and elective coverage may be terminated. Taken together, section 2(i) and (k), section 7, and reciprocal coverage arrangements adopted under section 15(c) determine which groups of the working population come within the scope of any State unemployment insurance program.

(a) Coverage determination.—The authority of the commissioner to determine whether an employing unit constitutes an employer and whether service constitutes employment is implied from the necessity for making decisions under the definitions of employer and employment. Section 7(a)(1) specifically directs the commissioner to make findings of fact and to arrive at a determination on the basis of the findings. Coverage determinations, unless made as a part of a determination of insured status, fall within this provision. In practice the status and contribution reports furnish all the facts necessary in the majority of determinations.

Reconsideration of coverage determinations.—Section 7(a)(2) gives the commissioner an opportunity for administrative reconsideration of a coverage determination within a year, in the light of additional evidence. Paragraphs (3) and (4) provide that an employing unit be given notice of a determination or redetermination and an opportunity for an informal hearing before the commissioner or his representative. These administrative hearings are particularly useful to the commissioner in making determinations in borderline cases such as those presented by questions of the existence of an employer-employee relationship through the application of the ABC tests of section 2(k)(5).

Appeal from coverage determination and judicial review.—Section 7(a)(5) allows an appeal to the board of review on a coverage determination or redetermination. The appeal must be taken within fifteen days following the mailing or delivery of a notice of the commissioner's determination. Proceedings before the board of review are held in the same manner as proceedings before the board of review on benefit appeals (section 6). Paragraph (5) provides also for judicial review of coverage decisions in accordance with the provisions of section 6(i). In this type of case the court may require an appellant employing unit to file an approved bond or other appropriate security for the payment of any contributions and interest which may finally be determined to be due and of the court costs.

(b) Conclusiveness of determination.--Section 7(b) makes the determination of coverage by the commissioner or the board of review, together with the records of proceedings, admissible under certain conditions as evidence in subsequent proceedings under the Act. The determination of the commissioner is admissible only if it has not been appealed. If the determination is supported by substantial evidence and if there has been no fraud, it becomes conclusive and binding (except for errors of law) upon any employing units which participated in the proceedings. It is not made conclusive for other persons affected by the determination, since such persons did not have notice of the hearing and an opportunity to be heard. This does not mean that evidence submitted or testimony taken in connection with a coverage determination may not be considered in subsequent benefit proceedings; it means only that the determination must be reexamined in relation to the benefit issue.

(c) Period of coverage.--This section specifies the period during which mandatory coverage is effective. It provides coverage from the first day of the calendar year in which the employing unit first meets the conditions which establish its liability and until terminated as provided in section 7(d), (e), and (f).

(d) Termination of coverage.--Section 7(d) specifies the conditions under which an employing unit ceases to be an employer subject to the Act. This section is not needed with coverage of one or more at any time. Alternative provisions are presented for use with the definition of employer in terms of pay rolls and in terms of number of workers in a specified period. The State should insert in the blanks in the text the figures which are consistent with its definition of employer. An employing unit may have its coverage terminated for any calendar year if it files an application not later than March 15 of that year and if the commissioner finds that during the prior year the unit did not have sufficient pay roll or enough employees to fall within the definition of employer in section 2(i). A full year must elapse in which the unit does not meet the conditions specified in the definition of employer before the liability of the unit can be terminated.

If the employing unit does not file an application for coverage termination, the commissioner may terminate coverage on his own motion. This clause is important from an administrative point of view since many units go out of business without filing applications to terminate coverage; the agency must be able to purge its files of records pertaining to units which are no longer engaged in business within the State.

(e) Elective coverage for employing units.--(1) This section permits an employing unit to elect coverage if the service performed for it is not exempt under the definition of employment but it is not subject because of the limited size of its pay roll or the small number of its employees. The provision serves a particularly useful purpose if the State law does not contain a provision like that in section 2(i)(5)

which makes all employing units, subject to the Federal Unemployment Tax Act, subject to the State law. The provision is, of course, not necessary with coverage of employers of one or more or if the size-of-pay-roll limitation on coverage is so small that it results in coverage equivalent to coverage of one or more.

If an employer is subject to the Federal act but not to the State law, an elective provision enables him to extend unemployment insurance to his workers without additional cost. The provision may be useful also to contractors who prefer to carry the cost of unemployment insurance rather than run the risk of losing contracts. There is always the possibility that employers making use of the type of service provided by such contractors may let their contracts to other employers subject under the compulsory provisions of the law, rather than carry the insurance costs of nonsubject contractors as required under the contractor-tacking clause (section 2(j)(3)).

Any employer who elects coverage under a provision of this type becomes subject "to the same extent as all other employers." That is to say, his coverage is limited to workers who are engaged in employment as defined in the law. The election for a period shorter than two years does not seem worthwhile; some States may wish to consider a longer minimum period. The effective date of the election is the date stated in the commissioner's approval, which may not be the same as the effective date under the compulsory provisions of the law. Many employing units might hesitate to elect to be covered if they had to pay contributions for a period prior to the election.

(2) The termination of elective coverage depends upon the request of the employing unit or the action of the commissioner at any time subsequent to the two calendar years for which the election was made.

(f) Elective coverage of excluded service.--(1) This section permits an employing unit to elect coverage of service which is excluded under the definition of employment, (section 2(k)). An employing unit may select a certain type of service which it wishes to cover and may limit the election to one or more establishments even though it operates several establishments in the State. However, it would have to extend coverage to all individuals performing the specified type of service in the establishments concerned. Here, as in the case of an employer who elects coverage under section 7(e)(1), the election must be for a minimum period of two years. The effective date of the election in this case also is the date stated in the commissioner's approval because of possible objection to retroactive contributions.

(2) As is provided in section 7(e)(2) concerning elective coverage of employing units, termination of elective coverage of service depends on the request of the employing unit or the action of the commissioner at any time subsequent to the two calendar years for which the election was made.

CONTRIBUTIONS

This section provides funds for financing the payment of benefits by requiring contributions from employers on the wages of their workers who are engaged in employment as defined in section 2(k) of the Act.

This reliance upon employer contributions to finance the program is the natural outgrowth of the Federal Unemployment Tax Act with its credit provision for employer taxes. Those provisions had the practical effect of inducing States to impose at first a flat rate on employers' pay rolls equal to the maximum credit allowance: 0.9 percent in 1936, 1.8 percent in 1937, and 2.7 percent beginning in 1938; and later to impose rates varied in accordance with the employers' experience with unemployment. As a result of negligible unemployment and high pay rolls in the war years and early post-war years, these methods provided more revenue than was currently needed to finance the program. In the immediate future, therefore, and possibly as long as the Federal Unemployment Tax Act remains unchanged, most of the States will continue to depend on employer contributions to finance their unemployment insurance programs.

Early draft bills provided also for employee contributions. Such contributions were collected at one time or another in nine States but the trend has been away from workers' contributions. They are presently effective in only two States, Alabama and New Jersey. In most States the revenue from employers has been more than sufficient to finance the program. While the theory of responsibility for the program inherent in the payment of contributions by employees is sound, so long as the funds are so much greater than the yearly payments for benefits and so long as the State laws provide for experience rating, employee contributions are not justified.

The additional credit provisions in the Federal act and the experience-rating provisions of State laws were based on two theories: (1) that reduced rates for employers whose workers experienced little unemployment would be an incentive to the prevention of unemployment and (2) that the costs of benefits should be allocated among employers in accordance with their responsibility in causing unemployment. Obviously, these theories do not apply to workers' contributions.

(a) Payment of contributions.--Section 8(a) establishes for each calendar year the liability of employers for contributions on the wages of workers engaged in employment, prohibits the employer from deducting the payments from the wages of his workers, and authorizes the commissioner to prescribe regulations on payments. The calendar year as the period of liability ties this provision in with the period of coverage (section 7) and with the Federal credit provisions. Regulations adopted under the authorization should cover such points as the maintenance of the necessary pay roll records, the filing of returns, the place of payment, and the dates upon which payments are due (including the date as of which a payment by mail is deemed to have been received and special due dates for employing units becoming subject during the year).

(b) Rate of contributions.--Section 8(b) fixes the normal rate of contributions as 90 percent of the 3-percent Federal unemployment tax. Except as rates are more or less than 2.7 percent because of the experience-rating provisions of the law, employers pay a 2.7 percent rate on a "wages paid" basis for calendar years subsequent to about 1940. Before that time contributions in most States were collected on a "wages payable" basis. It does not seem necessary to include the former wording in the State laws, although the earlier provision must still be applied with respect to contributions for the periods during which it was in effect. Any change to a "wages paid" basis with respect to those earlier years would raise questions as to the retroactive effect of the amendment on employer liability for contributions based on wages payable but not paid within those years. Refunds made on the basis of a retroactive amendment would violate the requirements of section 303(a)(4) and (5) of the Social Security Act and section 1603(a)(3) and (4) of the Federal Unemployment Tax Act limiting refunds to amounts erroneously collected.

Some State laws include the rates for the early years of the program because of the possibility that questions of liability for those years may arise and may have to be resolved. At this time it does not seem necessary to include in the text the rates for 1936, 0.9 percent, or for 1937, 1.8 percent, in each case 90 percent of the Federal unemployment tax for those years.

(c) Base of contributions.--Section 8(c) limits the contribution liability of the employer to the first $3,000 paid to an individual in a calendar year regardless of when the wages were earned, the States in which they were paid, or whether they were paid by an employer or his predecessor.

The language is drafted to include all remuneration for service which is taxable under the Federal Unemployment Tax Act if credit may be taken against the Federal tax for contributions required to be paid into a State unemployment fund. This language is recommended because it will result in the automatic extension of the $3,000 limit of section 8(c) if Congress should broaden the Federal tax base for unemployment insurance as it has done recently for old-age and survivors insurance by increasing the tax base to $3,600.

Prior to its amendment in 1946, section 1607(b)(1) of the Federal Unemployment Tax Act and the State laws excluded from taxation that part of an individual's wages in excess of $3,000 per year which were payable by one employer for service performed during the year. This meant that wages in excess of $3,000 frequently had to be reported on a "wages payable" basis in contrast with the "wages paid" basis generally used for reporting all other wages. The suggested language follows the Federal amendment in placing the limitation on a paid basis.

The provision also limits the tax to the first $3,000 per year regardless of the State in which paid. It carries out the recommendation of the Interstate Conference of Employment Security Agencies that an employer who pays a tax on the first $3,000 paid to an individual in one State need not pay an additional tax if the individual's services for that employer

are transferred to another State.

Including wages paid by a predecessor in the limitation on the amount of taxable wages is a new provision in this edition of the Manual which conforms with an amendment to the definition of "wages" in section 1607(b) of the Federal Unemployment Tax Act in the Social Security Amendments of 1950. Heretofore the successor employer was required to pay contributions on the first $3,000 he paid an individual, without any advantage to the worker.

(d) Experience rating.--Section 8(d) provides a system for the determination of employers' contribution rates on the basis of their experience with quarterly pay-roll declines. The use of quarterly pay-roll declines as a measure of unemployment risk is based on the assumption that the hazard of unemployment exists if an employer is unable to offer as much employment in one quarter as he offered in the immediately preceding quarter. As employment rises, pay rolls rise, and as the volume of work offered by employers falls, pay rolls fall; i.e., a pay-roll decline usually means that workers have lost their jobs.

The plan included here uses quarterly declines in total pay rolls (not total taxable pay rolls) as the measure of each employer's experience with unemployment and adjusts the amount of revenue which is to be raised in any year to the needs of the program as measured by current reserves. Each employer's rate is based on his experience with declines in pay roll, from quarter to quarter, over a three- to five-year period. The extent of each quarterly decline, i.e., the difference between the total pay roll in one quarter and in the preceding quarter, is reduced to a percentage basis which is termed the "quarterly percentage decline." If the pay roll for the quarter ending on September 30 was $100,000 and the pay roll for the quarter ending on December 31 was $90,000, the percentage decline would be 10 percent. The average of an employer's percentage declines during the experience period is the experience index which establishes his relative experience as compared with other employers.

Obviously, pay-roll declines do not reflect the extent of the unemployment experienced by individual workers. Some workers whose separations are reflected by a declining pay roll immediately obtain other employment. In other cases when workers are separated and experience unemployment, there is no decline in the employer's pay roll because he immediately replaces the separated workers. There is, however, a distinct advantage in not attempting to measure such unemployment. Under the charging provisions of laws using benefits or benefit derivatives, an effort is made to identify the employer who should be held responsible for a particular period of unemployment of a particular individual. No one solution has been found to answer this problem of identification. The reason is simple; the unemployment of the individual does not ordinarily occur until after the employer-employee relationship has been broken. Except in cases of partial or temporary unemployment individual workers are unemployed only when they have severed their connections with all employers. In consequence, the methods of charging

benefits cannot result in an exact measurement of the experience of any one employer. In contrast, with the use of pay-roll declines, there can be no question that the employer's experience measured by quarterly pay-roll declines is his experience and not that of some other employer. Moreover, the whole ticklish problem of charging employers for particular periods of unemployment of given individuals is avoided.

While pay-roll declines do not reflect all separations due to turnover, it is assumed that separations due to turnover are rarely caused by lack of work; as a rule high turnover occurs in periods of full employment and is due to voluntary leaving and to discharge for misconduct. It is an open question whether such unemployment should be reflected in an individual employer index. The removal, from the rate determination process, of questions of disqualification arising because of turnover eliminates one of the inherent weaknesses of rates based on benefits or benefit derivatives.

The use of the quarter immediately preceding the quarter in which there is a decline as a base for weighting the decline represents a gain over other measures of the significance of an employer's experience, such as the relation of benefits to a past yearly pay roll or an average three- or five-year pay roll. While the plan takes account of unemployment due to an employer's failure to maintain an employment level over a short period of time, it does not hold him continuously responsible for the maintenance of that level. It gives weight to the trend of employment offered by an employer and the trend is important in relation to unemployment risk. Since the declines represent changes over a short period, i.e., from quarter to quarter, and are reduced to percentages, inflation or deflation will have little effect on rates. The effect of changes in wage levels will be minimized because comparisons are made only with the most recent quarter rather than with a more remote period.

The plan has the additional advantage of administrative simplicity. Few procedures are necessary. The necessary records are on file and the machinery for contribution collection should assure the accuracy of the figures. There is no need for a procedure for charging benefits paid; no need for notices to employers on charges or for procedures for appealing charges.

Another decided advantage of the plan is that eliminates the close relationship which exists under most experience-rating systems between each benefit payment and some employer's rate. This relationship inevitably leads to contests on payments; in some States it has led to legislative enactments to curtail the workers' rights to benefits in a manner not consistent with the purposes of the program.

(1) Definitions.--Because certain terms have limited meaning for the contribution section, language defining them has been incorporated in the section. Paragraph (1) provides definitions of "computation date," "pay roll," "qualifying period," and "reserve percentage."

(A) Computation date.--The definition is drafted to permit a three-month period for rate computation. Since the process is simple, this should give the agency time to announce rates well in advance of the due date in a new rate year. The definition assumes that rates will be fixed for a calendar year because credit against the Federal unemployment tax is allowed with respect to a calendar year and employers' reporting problems are simplified if the State and Federal tax years are identical.

(B) Pay roll.--The definition of pay roll is phrased in terms of remuneration rather than taxable wages so that the experience of an employer prior to the time that he became subject may be used in rate determinations and that apparent declines in quarterly pay rolls which would result from the $3,000 annual limitation on taxable wages will be eliminated. The proviso clause in the definition of pay roll states that for the purpose of determining the rate of a newly subject employer the definition of employment in force at the time that he becomes subject shall apply to service performed for him prior to the date on which he becomes subject. This implements the provision in section 8(d)(3) which permits newly subject employers to have their rates determined under experience-rating provisions if as employing units prior to coverage they maintained records which can be used as a basis of the determination. For example, if service for nonprofit organizations should be brought under a State law in 1951, a hospital with its pay-roll records in order could have the immediate benefit of experience rating. Without the proviso, however, those records could not be used for years prior to 1951. It should be noted that the proviso is limited to rate determination purposes and cannot be interpreted as imposing retroactive contributions.

(C) Qualifying period.--The qualifying period is the period in which the employer accumulates the pay-roll experience which is used as a basis for his rate determination. The experience may be accumulated before or after an employing unit becomes an employer. Because pay-roll declines averaged over five years are more representative than those averaged over three years, the definition of qualifying period is drafted in terms of five years for employers who have employed individuals over a period of five or more years. In the case of newly established employers, the definition permits a qualifying period of not less than three years for employers who do not have five years experience. Three years experience is the minimum which can be used under the requirements of section 1602(a)(1) of the Federal Unemployment Tax Act.

(D) Reserve percentage.--Reserve percentage is defined for use in the rate schedule as a short cut for the ratio of the total amount available for benefits in the unemployment fund to the total amount of pay rolls subject to contribution.

(2) Standard rate.--Paragraph (2) limits the operation of the experience-rating provisions to years in which the reserve in the State unemployment fund equals or exceeds 6 percent of the State-wide pay roll for the year immediately preceding the computation date. It sets the standard rate (from which the rates are varied on the basis of each employer's experience

with unemployment) at 2.7 percent, the equivalent of the full 90 percent credit against the 3 percent tax required under section 1601 of the Federal Unemployment Tax Act, and thus the most practical rate for a State to use as a standard.

Making the standard rate applicable to all employers when the reserves in the fund fall to a specified level and basing the variable rate schedule to be used in any particular year on the condition of the fund are methods of adjusting income to outgo. Using the ratio of reserve to pay roll for the preceding year as the control for determining when no reduced rates should be allowed and for the selection of the schedule to be used in any given year has the advantage of adjusting the level of rates automatically to the potential liability, i.e., to the wage credits of individuals covered by the program. It gives a flexible rate structure. The use of the ratio of the amount in the fund to last year's pay roll is more desirable than the use of a dollar amount in the reserve for the purpose of adjusting rate levels. The ratio changes as contributions change and thus has current significance. No matter how carefully a dollar requirement is determined in the first place, increases in wage levels or in employment levels and changes in the benefit formula or in the coverage provisions may quickly outmode a dollar requirement. Moreover, a fund-to-pay-roll ratio will not result in a reserve which is frozen because of the necessity of maintaining it at the required level.

The figure in the text is illustrative. Former drafts suggested a reserve balance of 7.5 percent of one year's pay rolls, derived from the Federal standards for reduced rates under reserve-account laws in section 1602(a)(3)(C) of the Internal Revenue Code (2.5 percent of three years' pay rolls). A lower balance is appropriate with a pooled fund law. Recent experience shows that costs over a period of years may average 2.5 percent or more of pay rolls in only a few States. The draft suggests a reserve requirement of 6 percent of taxable payrolls because this level approximates 3 times the estimated long-range benefit costs for the country as a whole. The reserve percentage required for any reduced rates under a State law should have a definite relationship also to benefit costs in the State, averaged over a period of years; in States in which benefit costs in relation to taxable pay rolls have been low, a safe reserve requirement might be even lower than 6 percent while in high-cost States, 8 percent or more might be more realistic.

If a State wishes to use a single rate schedule, the safety factor might well be set as the greater of (1) three times the average annual benefit payments in the last five years or (2) 6 percent of the State-wide pay roll subject to contributions for the year immediately preceding the computation date. Such a provision gives consideration to the relationship of the reserve both to the benefit costs averaged over a period of years and to potential liability measured by recent taxable pay rolls.

(3) Rate computation.--Paragraph (3) provides the conditions under which employers may have their rates determined on the basis of their experience and the procedure for rate computation. Only employers who have employed

workers and maintained quarterly pay-roll records during each of the years of the qualifying period are eligible for reduced rates. The definition of the qualifying period (paragraph 8(d)(1)(C)) permits reduced rates for newly subject employers who have had three years' experience as employing units and whose pay-roll records are available for use as a basis for rate determination. The inclusion of new employers who have had the required experience means that when newly subject groups, such as workers in nonprofit organizations, are covered by a State law, the employers of those workers may have the advantage of rate reduction during the first year of their liability. For States which limit coverage by size of firm, it means that small employers who become subject could have this advantage if they have three years' experience.

Paragraph (3) provides the procedure to be used in rate determination. Each employer's quarterly pay rolls are arranged in chronological order, beginning with the first pay roll in the qualifying period. Whenever a quarterly pay roll is less than the quarterly pay roll preceding it, the difference is divided by the pay roll for the earlier quarter to obtain the percentage decline. The paragraph authorizes regulations for allocating lump-sum remuneration to calendar quarters and for the treatment of declines in pay rolls resulting from labor disputes.

The quarterly percentage declines of an employer are added and the total is divided by the number of possible declines in the period, i.e., by one less than the number of quarters in the qualifying period. If the qualifying period is five years, the divisor is nineteen. The result of this division is the employer's average percentage decline. Schedules are outlined for the designation of an employer's rate on the basis of his average percentage declines during the qualifying period. The figures in the heading of the columns in the text are also illustrative. In rate schedules in a State law the minimum reserve percentage required for the least favorable rate schedule should be the same as that required for any reduction in rates under paragraph (2).

This method of determining the employers' rates by schedule is presented in preference to assigning rates on the basis of an array of employers' experience because an array system cannot be used effectively in those States in which a large percentage of the State-wide pay roll is concentrated among a few employers. The method of assigning rates by means of an array has the advantage of providing income to the fund at a predetermined percentage of pay rolls. If a given percentage of pay rolls were maintained over a period of years, the fund would be built up in periods of expanding business and it would not be necessary to raise rates in periods of contracting business activity. If a State in which a large percentage of the State-wide pay roll is not concentrated among a few employers wishes draft language for an array system, such language will be furnished on request.

To meet the requirements of the additional credit provision of the Federal Unemployment Tax Act at least three rate classes should be provided. The number of different rates and the actual rates assigned are matters for State determination. While administrative considerations may indicate the desirability of only a few rate differentials within the limited span of maximum and minimum rates, the differentials should be numerous enough to reflect variations in the employers' experience. With many rates, the intervals between them must be small and slight variations in employer experience will not result in wide differences in rates, which may be more equitable than the large variations which result when there are few rates.

(4) Estimated pay-roll report.--Paragraph (4) enables the agency to proceed with rate determination when no report is submitted by an employer or the reports submitted are insufficient or incorrect. The commissioner may estimate the pay roll on the basis of the best evidence available to him, and must notify the employer of the estimate by registered mail. For administrative convenience, this estimate would be incorporated in the first delinquency notice sent the employer after the computation date. Unless the employer sends in a corrected and sufficient report within fifteen days, the agency will use the estimate as the basis of the determination. Any rate determined on the basis of such an estimate can be increased but not decreased on the basis of later information.

(5) Transfer of experience.--One of the most complex issues in experience rating is the question of assignment of rates when a business is sold. If a buyer was not an employer before he purchased a business, should he have a new rate or should the law permit him to have his rate determined on the basis of his predecessor's experience? If the buyer was an employer prior to the purchase, should his rate thereafter be determined on the basis of a combination of his experience and the predecessor's experience? If the predecessor's experience is to be used in computing a successor employer's rate, the predecessor's record for the qualifying period must be transferred to the new employer.

The issues surrounding a transfer of the record are simple in instances in which a whole business enterprise is sold to one purchaser. They are difficult if segments of a business are sold to several buyers or if only a portion is sold to one buyer. In these instances there is always the question of how the experience-rating record is to be divided among the predecessor and successor employers. Because of these difficulties, paragraph (5) is limited to total transfers.

Transfers of business occur with such frequency that redetermination of successors' rates as of the date of transfer is administratively difficult. In the interest of simplicity, the paragraph specifies that if the successor was an employer before he bought the predecessor's business, he continues until the end of the current rate year at the rate assigned him prior to the purchase. If he was not an employer until after the purchase, his rate until the end of the current rate year is that of the predecessor, or if there were several predecessors with differing rates, the highest of these rates.

(6) Notification and redetermination.--It is essential that the law make provision for administrative review of contested rates with opportunity for a fair hearing. Paragraph (6) provides that employers shall be notified of their rates so that they may file application for review and redetermination; that they shall be granted a reasonable opportunity for a fair hearing, and notified of the results. Any redetermination of a rate or denial of review is final unless a petition for judicial review is filed in the court within fifteen days. The number of issues on which employers may contest rates is fewer under an experience-rating plan based on pay-roll declines than under plans using benefits as a measure of experience. The fifteen days which are allowed before a redetermination or denial of review becomes final should give an employer adequate time for filing a petition for judicial review.

(e) Financing benefits paid to State employees.--Section 8(e) provides special financing of benefits paid to State employees on a pay-as-you-go basis. Under this provision the State does not pay contributions as do other employers but reimburses the agency for the benefits paid State employees on the basis of State wages.

The fact that the actual contributions paid by the State may represent a rate of contributions below 2.7 percent will not jeopardize conformity of the State law with the requirements of section 1602 of the Federal Unemployment Tax Act, since the term "person," as used in section 1602(a) and (c)(1) and as defined in section 1607(k) is construed as not including a State.

Such a system of financing could be effective fifteen days after enactment. The State need not be required to file wage reports quarterly, but could file them on request of the agency, after a claimant has filed a request for determination of insured status or a notice of unemployment. Appropriate regulations would be required setting forth the duties of the State with respect to wage records, separation notices, etc., to the extent that they differ from those of other employers. In some States it may be feasible to extend coverage to municipal employees in a similar manner.

COLLECTION OF DELINQUENT AND CONTESTED CONTRIBUTIONS

This section prescribes methods for the collection of delinquent and contested contributions. Procedures for routine collection should be provided by regulations adopted by the commissioner pursuant to section 8(a) under which contributions become due and payable. More specific statutory authority is needed, however, for the procedures to be used in collecting contributions when the employer either fails to make payment or contests his liability. Section 9 is designed to provide this authority.

(a) Interest on past-due contributions.--Section 9(a) provides the interest rate to be assessed on contributions which are not paid by the due date. For simplicity of administration, interest on contributions delinquent only a fraction of a month is the same as for a full month. The interest on past-due contributions is intended to compensate the State for any loss which it may suffer because the payment of the contribution was delayed, and to provide an incentive for prompt payment. Section 9(a) specifically provides that the interest collected on delinquent contributions be deposited in the unemployment fund and thus made available for benefit payments.

(b) Collection by suit.--Paragraph (1) authorizes the collection of contributions by civil action in the name of the commissioner in case of default on the part of an employer. It imposes costs on the employer if he is adjudged in default. It gives the suit priority on the court calendar over all other civil actions except petitions for judicial review of benefit decisions and cases arising under the workmen's compensation law. This priority given actions for collections of contributions may enable the commissioner to collect amounts which might become wholly uncollectible after a few months delay as in the case of an employer who is near bankruptcy or is about to leave the State.

(2) and (3) Collection of contributions from out-of-State employers.--Paragraph (2) provides procedures for collecting delinquent contributions from out-of-State employing units. The need arises when nonresident employers which have or have had workers performing service in the State fail to pay contributions on such service or when an employing unit moves to another State without making the required contributions for service performed for him while he was resident in the State. Whether or not a State is required under the full faith and credit clause of the Federal Constitution to entertain suits by another State for contributions due under the employment security law of the latter State is not entirely clear. There would seem to be little doubt, however, that a State will enforce the judgment of another State for contributions due under its law if it has personal jurisdiction over the defendant.

Paragraph (2) also permits the State to obtain personal jurisdiction over such nonresident employers. The out-of-State employer is deemed to have appointed the secretary of state (or other designated State officer) as

an agent or attorney for him for the acceptance of service incident to any civil action that may be taken in connection with the State employment security law. In other words, the service of process on a State officer as an agent for the out-of-State employer is a substitute for personal service. With such a provision a State will be able to obtain personal jurisdiction over out-of-State employers and, on the basis of that jurisdiction, personal judgments for contributions owed can be recovered in its own courts. Such judgments then become the basis for suits in the States where the defaulting employers are found.

Paragraph (3) directs the courts of the State to entertain suits for the collection of contributions or interest due under the employment security law of another State or of the Federal Government. This provision is recommended to afford access to the State courts by another State which has not adopted a provision similar to paragraph (2).

(4) Protection against restraining orders.--Paragraph (4) protects any civil suit instituted by the commissioner for the collection of contributions by prohibiting the court from entertaining any suit or action or declaratory judgment which would forestall, restrain, or delay the collection of contributions or would substitute any other collection procedure, and from issuing any writ or process which would have the same effect.

(c) Priorities under dissolutions or distributions.--This subsection establishes the order of priority for the claims of the State for contribution indebtedness of an employer when his business is dissolved or his assets are distributed. It makes the contribution claim second only to a wage claim when neither claim has been reduced to a lien. The order of priority is as follows: (1) claims for wages; (2) claims for unemployment contributions and interest; and (3) other claims in the order of priority provided by other provisions of law. In view of the social purposes of employment security legislation there is sound basis for the recommendation that contributions and interest owed the agency be given preference over other State taxes, which in turn are usually given preference over private claims. The reason for the preference of wage claims over contribution claims is obvious. It would be inconsistent with the objectives of the Act to require payment of an employer's contributions from money due his workers as wages.

Under Federal law (United States Code, title 31, section 191) a Federal claim for unemployment taxes is given priority over a State claim for contributions in the distribution of assets. Any claim filed by the Federal Government, therefore, would have to be paid in full before any other non-lien claims. The purpose of section 9(c)(2) is to establish a priority for payment of contributions due the State if the payment of such contributions will establish a credit against a prior Federal claim. Under the offset provisions of the Federal act, contributions due the State, if paid, would be credited against the amount of the Federal claim for unemployment taxes. The establishment of this credit for the

State means that the Federal share in the debtor's assets is reduced by the amount of the credit, and the State claim for contributions is satisfied without reducing the share of the assets available to other creditors.

(d) Refunds.—Under paragraph (1), the commissioner may use his discretion in determining whether contributions found to be erroneously paid should be refunded or credited against the employer's future payments, in each case without interest. The refund or the credit can be made on the application of an individual or on the initiative of the commissioner. The period within which an application must be made is fixed as one of two dates, whichever is later: within three years from the last day of the period with respect to which the payment was made or within one year from the date of the erroneous payment. A time limit for filing an application for refunds is an administrative necessity since contribution records cannot be preserved indefinitely. The time limit may be waived, however, to allow refunds to employers who have inadvertently paid their contributions to the wrong State. It is important that such employers should not incur double liability.

Under most State employment security laws the refund period begins to run either as of the date on which payment was made or as of the last day on which the employer could have paid contributions for the period concerned without having been delinquent. Although something of this "due date" concept has been retained in the draft provision, it has been modified so that the refund period runs from the last day of the period with respect to which the payment was made. This modification will eliminate any ambiguity which might arise where the payment was never in fact due. The exclusive use of either the date of payment or of the end of the period for which payment was made is not recommended. Reliance solely on the date of payment discriminates against the employer who pays contributions promptly since the delinquent employer has in effect a longer period in which to claim a refund. On the other hand, the exclusive use of the other concept prevents the making of refunds where, by reason of late payment, the refund period expires before payment is made. To meet these objections the provision incorporates both concepts and reduces, although it does not eliminate, the advantage given the employer who does not pay promptly.

A sentence is included to the effect that there shall be no refunds or credits for contributions which were due under the law at the time at which they were paid. A change in contribution or coverage provisions does not make contributions paid under the previous provisions erroneous payments.

(2) Employer's right of appeal if application for refund is rejected.—Under this paragraph the employer is given the right to appeal a decision of the commissioner rejecting his application for a refund. A written notice of rejection must be sent to the employer who then has a fifteen-

day period in which he may appeal to the board of review, giving the reasons for his appeal. The fifteen-day period begins with the date of mailing or delivery of the notice. The hearings are to be held in accordance with the proceedings described in section 9(f) on contribution hearings before the board of review.

Administrative procedures for collection of delinquent contributions.--The collection of taxes is recognized as an administrative rather than a judicial function with the role of the court being that of a review body to safeguard the rights of the taxpayer. Experience has shown that in order to fulfil this administrative responsibility legislatures must authorize the tax-collection agencies to use somewhat summary procedures for the enforcement of tax collections. The use of the courts does not seem justified when there is no dispute as to liability or when court costs would be high in relation to the amount involved.

In general outline, the procedure follows established procedure used in many States for tax-collection purposes. Where procedure differs for other areas of tax collection, the language should be adapted to conform to those procedures. In spite of the summary character of the proceedings, the employer's rights are protected by notice and opportunity for hearing in all except the final administrative step provided in section 9(e). Even here the inclusion of such protection may be advisable.

(e) Assessments.--Paragraph (1) gives the commissioner authority to issue assessments for contributions and interest due when employers fail to pay their contributions under the routine procedures. If the employer has submitted a correct report but has not paid his contributions, the assessment is based on that report. If he has not sent in a report or if his report is incorrect or insufficient, the commissioner makes an assessment on the basis of whatever information the employer has submitted or on the basis of an estimate. If the liability of the employer or the coverage of service performed for him has been determined under paragraphs (2), (4), or (5) of section 7(a) and if the determination has become final, that determination is conclusive in any later assessment proceeding, to the extent provided in section 7(b). The commissioner must give the employer a written notice of the assessment and the employer may appeal an assessment to the board of review within fifteen days after the notice of the assessment was mailed or delivered to him. In filing his appeal the employer states his grounds for making the appeal and the proceedings are held in accordance with the provisions of section 9(f).

(2) Jeopardy assessments.--Paragraph (2) authorizes the commissioner to ignore the time allowed for making reports or paying contributions in cases in which he determines that any collection of contributions or interest will be endangered if he delays an assessment. In such cases he may immediately assess the contributions and interest and give written notice of the assessment to the employer. When an assessment is made the employer's right to appeal to the board of review is conditioned upon his making the payment or upon his giving appropriate security for payment.

(3) Assessment filed with clerk of court.--Paragraph (3) represents the last administrative step which the agency may take, short of court action, in its effort to collect contributions from a delinquent employer. This paragraph authorizes the commissioner to file a certificate of assessment with the clerk of the court of the county in which the employer has his principal place of business and to file copies of the certificate in any other counties where he has real or personal property, if he fails to pay the amount assessed against him and if the time for judicial review has expired or if further delay will jeopardize collection. When the certificate is duly filed and recorded, the amount of the assessment becomes a lien upon the employer's property.

(f) Hearings before the board of review.--Section 9(f) provides a basis for hearings before the board of review on appeal from decisions of the commissioner on refunds or assessments. The rights of the employer and the commissioner are protected with all the safeguards provided in the case of appeals on claims, and the board of review is authorized to make findings of facts and conclusions of law on the basis of which it may affirm, modify, or reverse the action of the commissioner. Both parties must be notified of the decision and the reasons therefor. The decision becomes final if no appeal is taken to the court within fifteen days.

(g) Judicial review.--Section 9(g) describes the procedure to be followed when the decision of the board of review on an assessment or refund is appealed to the court, by reference to section 6(i) which provides judicial review of administrative determinations on benefits. Judicial review of determinations on contributions may, if the court so orders, be conditioned upon a requirement that the employing unit file a bond or other security in an amount fixed by the court.

(h) Conclusiveness of determinations.--Section 9(h) is designed to prevent the reopening of questions of coverage in connection with applications for refund or credit if the coverage question has been previously determined in connection with a suit for the collection of contributions, or in the course of assessment proceedings. Some questions, other than coverage, may be reopened under the draft language; for example, applications for refund could reopen questions on pay roll and the amount of contributions.

(i) Liability of successor for contribution debt of predecessor.--When an employer who owes the agency for contributions makes a sale in bulk of his business to another employer, some provision is needed to give the agency unconditional recourse for the unpaid contributions against the buyer and the property transferred. Section 9(i) establishes the liability of a successor employer, who has acquired an organization, trade, or business or a substantial part of the assets of another employer, for any contributions or interest that the predecessor may owe the agency and makes the amount of the liability a lien, with first priority, against the acquired property and assets. The buyer is protected by a clause which limits the liability to "an amount not to

exceed the reasonable value of the acquired organization, trade, business or assets." A proviso clause states that the lien on the property shall not be valid against someone who, in good faith and without knowledge of the lien, acquires an interest in the property from the first buyer.

The subsection directs the commissioner to furnish the successor, upon request, a written statement of the amount of the contributions and interest due or accrued and unpaid by the predecessor employer at the time of the acquisition. The statement is final as to the maximum amount of the liability and the lien.

(j) Contributions paid in error to another State.--Subsection (j) furnishes employers relief from the accrual of interest on delinquent contributions in cases of contribution payments to the wrong State. This is consistent with the provisions of section 1601(a)(4) of the Federal Unemployment Tax Act.

Commentary - Section 10

UNEMPLOYMENT FUND

It is essential that the taxes or contributions collected for financing unemployment benefits be set apart and safeguarded against expenditure for purposes other than those specified in the Act. Section 303(a)(4) and (5) of the Social Security Act and section 1603(a)(3) and (4) of the Federal Unemployment Tax Act require that the State law provide such safeguards. Under these sections the State law must require immediate deposit of contributions and other money received in the State unemployment account in the unemployment trust fund in the United States Treasury and must limit withdrawals to money necessary for unemployment benefits and specified refunds. In 1946 these sections were amended to permit the States to use certain amounts in the payment of cash benefits with respect to disability. In line with the requirements of the Federal act, therefore, this section establishes an unemployment fund, specifies the items comprising the fund, imposes upon the commissioner the responsibility for the maintenance of the fund, specifies the accounts to be maintained, imposes an obligation for immediate deposit of receipts, and authorizes withdrawal from the fund for the payment of benefits and for specified refunds.

(a) Establishment and control.--This subsection establishes a fund which is separate and apart from all other State or public funds. It places all responsibilities in connection with the unemployment fund upon the head of the employment security agency, rather than naming as custodian the State treasurer or some other State officer or employee. This is to avoid duplication of work by State agencies and State treasurers, and uncertainty and controversy as to the functions and responsibility of each. If there are constitutional reasons or special conditions which make it necessary or advisable to designate the State treasurer as treasurer and custodian of the fund, the legal authorities of the State should be consulted concerning the necessary legislative language.

Items deposited in the fund.--The section specifies the items which are to constitute the fund, i.e., all contributions collected under the Act; interest, fines, and penalties paid by employers because of delinquency in payments as well as interest earned upon any money deposited in the fund; property or securities (and any earnings from such property or securities) that may have been received in lieu of money payments to the fund; and all funds recovered on losses sustained by the fund. Specific reference is made to the inclusion of any money advanced from the Federal unemployment account in the unemployment trust fund under the provisions of title XII of the Social Security Act, as amended. A catch-all clause "all money received for the fund from any other source" should insure the deposit in the fund of such items as payments received under a reciprocal plan for compensating interstate workers.

Pooling of money in the fund.--The last sentence in section 10(a) provides that all money in the fund shall be mingled and undivided. This places emphasis on the pooling of all funds for benefit-payment purposes as contrasted with a system under which the contributions paid by any one employer are set aside in a special reserve to pay benefits to his employees and are not available for payments to other insured workers. This identification of the unemployment fund as a pooled fund means that the experience-rating provisions of the law must meet the requirements of section 1602(a)(1) of the Federal Unemployment Tax Act if the employers in the State are to receive additional credit for reduced rates of contributions.

(b) Accounts and deposit.--This subsection directs the commissioner to maintain three separate accounts within the fund, a clearing account, an unemployment trust fund account, and a benefit account. The maintenance of separate bank accounts for the clearing account and the benefit account and the maintenance of separate custody accounts for collateral pledged for the protection of the fund facilitates audit by the Federal authorities to verify the status of the fund and to determine whether the provisions of the Social Security Act and the Federal Unemployment Tax Act are being complied with and whether the Federal standards with respect to collateral security are being met.

Compensation of the banks for service.--Because of the requirement that collections under the State law must be deposited immediately in the unemployment trust fund in the United States Treasury and money withdrawn therefrom shall be used only for purposes of benefit payments and specified refunds, it is not possible for the State to maintain balances of unemployment insurance money sufficient to compensate the banks for their services in connection with the separate accounts. However, under arrangements made with the Treasury Department, that Department will maintain a balance of Treasury funds in the depositary banks as a basis for servicing benefit and clearing accounts. The Treasury requires the maintenance of the separate accounts before it will place a balance in the bank for this purpose.

Character of the separate accounts.--The clearing account is for the temporary and immediate deposit of all money paid to the fund. While the money is on deposit in the clearing account, the agency has an opportunity to credit all receipts, pending clearance of checks, and to make corrections for uncollected items.

When clearance is completed, the money must be deposited immediately with the Secretary of the United States Treasury to the credit of the State's account in the unemployment trust fund, established under section 904 of the Social Security Act. Because of the immediate deposit requirements in the Social Security Act and the Federal Unemployment Tax Act, the requirement in this section is made "notwithstanding any provisions of law in this State relating to the deposit, administration, release,or disbursement of money in the possession or custody of this

State to the contrary." Deposit in the trust fund of the Treasury may be effected by deposit in any Federal Reserve Bank or member bank of the Federal reserve system designated by the Treasury Department or in other depositaries specified by the Treasury Department.

The benefit account serves as the repository of money which the State, in turn, requisitions from its account in the trust fund for the payment of benefits to unemployed workers.

Protection of funds.--Section 10(b) provides also that the money entrusted to a depositary bank be secured to the same extent and in the same manner as required by the general depositary law of the State and that collateral pledged for this purpose be kept separate and distinct from collateral pledged to secure other funds of the State. This provision is essential for safeguarding adequately money in the unemployment fund while on deposit with depositaries in the States. Most States have general depositary laws requiring public depositaries to pledge collateral security for deposits of State money. Where such a law contains adequate provisions as to the character and extent of collateral security to be pledged, the State employment security law should be explicit in bringing the unemployment fund under the protection of the general depositary law. Where no general depositary law exists or such law fails to assure adequate protection, a provision for the pledge of collateral should be written into the employment security law.

Another safety provision requires the commissioner to give bond conditioned on the faithful performance of his duties. The amount of the bond is a matter for State determination; it will depend on the size of the fund. It should be noted that section 10(a) provides for the deposit in the fund of any sums recovered (under the bond or otherwise) because of losses sustained by the fund. If the State treasurer rather than the commissioner is custodian of the fund, his general official bond should cover his duties under the employment security law. Under some State laws, giving a separate and additional bond might prevent recovery upon the treasurer's general official bond. Moreover, coverage under the official bond generally affords a greater amount of protection to the fund. Therefore, if the treasurer is the custodian, the statute should be explicit in providing protection under the treasurer's general bond and this liability should be made effective immediately to avoid any question as to the liability of the surety on a general bond in the event that the duties of the incumbent fiscal officer in connection with the unemployment fund had been initially covered under a separate and additional bond. The following language would accomplish these purposes if inserted in lieu of the last two sentences of section 10(b)(2):

> "The State treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment fund provided under this Act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to the liability upon any separate bond existent on the effective date of this provision, or which may be given in the future."

(c) Advances from the Federal unemployment account.--Section 904(h) of the Social Security Act, adopted in 1944, establishes a Federal unemployment account in the unemployment trust fund in which is deposited any excess of the Federal unemployment tax that is not needed for administration. Because Senator George sponsored the legislation establishing the account, it is commonly known as the "George Fund." Title XII of the Act entitles a State to apply for a transfer from this Federal account to its account in the trust fund in the event that the balance in the State's account falls below a specified amount. The amount transferred must be treated as an advance, without interest, and must be repaid when the balance in the State's account is restored. In 1950 amendments of the Social Security Act extended the life of the Federal account to April 1, 1952 and the time within which a State may apply for an advance to January 1, 1952. Section 10(c) authorizes the commissioner to apply for an advance from the Federal account in the unemployment trust fund and to accept responsibility for repayment of the advance in accordance with the provisions of title XII of the Social Security Act.

(d) Withdrawals from the unemployment trust fund.--Although money paid into the unemployment trust fund belongs to the State, and the Secretary of the Treasury is directed to pay any amount duly requisitioned by a State from its account, withdrawals are limited in conformity with the Federal Unemployment Tax Act and title III of the Social Security Act. This section authorizes the commissioner to requisition such amounts from the unemployment trust fund as he considers necessary for the payment of benefits. Obviously, the amount requisitioned cannot exceed the amount standing to the State's account in the trust fund.

Any balance in the benefit account of the unemployment fund may remain in the account for future benefit payments or may be redeposited with the Secretary of the Treasury.

(e) Expenditures from the unemployment fund.--Expenditures from the benefit account and refunds from the clearing account are not subject to any provisions of law which require specific appropriations or other formal release by State officers for money in their custody. Warrants are to be signed by the commissioner or his duly authorized agent. This provision facilitates the prompt payment of benefits.

(f) Management of funds upon discontinuance of the unemployment trust fund.--This provision is inserted to provide a method of administering the State's fund if, for any reason, the Federal unemployment trust fund is terminated.

Commentary - Section 11

EMPLOYMENT SECURITY ADMINISTRATION FUND

Under the provisions of title III of the Social Security Act and under the Wagner-Peyser Act, Congress makes yearly appropriations for the administration of State employment security programs. On the basis of the congressional authorization in section 302(a) of the Social Security Act, in section 5 of the Wagner-Peyser Act, and in Chapter V of the General Appropriation Act, 1951, the Secretary of Labor determines the amount needed by each State for proper and efficient administration of its unemployment insurance program and of its public employment offices during the fiscal year. Under title III no administrative funds may be granted a State unless the State law, approved under section 1603(a) of the Federal Unemployment Tax Act, includes the provisions listed in section 303(a) of the Social Security Act. Under sections 4 and 6 of the Wagner-Peyser Act, as amended, grants to a State for the administration of public employment offices are conditioned upon the acceptance by the State of the provisions of the act, the designation by the State of an agency to cooperate with the United States Employment Service, and Federal approval of plans submitted by the State for carrying out the provisions of this act within the State. The 81st Congress repealed the requirement formerly in section 5(a) of the Wagner-Peyser Act that no payments for the employment service be made to a State until the State matched the amount of the payment. Prior to its repeal the requirement had been waived by successive Federal appropriation acts for several years.

Section 11 provides that any funds granted the States from these congressional appropriations or money received from any other source for administrative purposes shall be deposited in the administration fund.

(a) Establishment of administration fund.--Section 11(a) creates a fund in the State treasury, to be known as the employment security administration fund. An earmarked fund where the money granted for administrative purposes is kept apart from other State money is essential. It is a help to the State agency in its accounting and it enables the Federal authorities to make necessary audits without having to examine the State's whole financial structure.

The clause which makes the money continuously available for expenditure by the commissioner prevents the possible withholding of the money in the State treasury or its diversion to some other use. It also protects any balances against lapse or transfer. If a State's constitution contains special requirements or limitations on continuous availability or on expenditure of funds in the State treasury, this clause would have to be changed.

This subsection lists the items which constitute the fund, including all money appropriated by the State to replace any money which may have been lost or expended for purposes which are found not necessary to proper and efficient administration, received from the United States or any of its agencies, and all money received for administration from any other source. In addition it includes any money that the Federal Government or any other State might pay the State for services or facilities, any surety-bond or insurance payments received because of losses to the fund or damage to property or equipment, and finally, any proceeds from the sale of any agency property, equipment, or supplies.

(b) Protection against loss.--All the safeguards against loss which are required for the protection of the unemployment fund are necessary for the administration fund. Section 11(b) provides that the money must be secured by the depositary by a pledge of collateral security and kept in a separate custody account and that the State treasurer shall be liable on his general official bond for his duties in connection with the account. As in section 10, it is suggested that where there is no general depositary law or the existing law is inadequate or uncertain, a special provision should be incorporated in the employment security law.

(c) Deposit and disbursement.--Section 11(c) provides in general that the money for administration shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as other special funds in the State treasury, except that the money must be kept apart from other State funds and maintained as a separate account on the books of a depositary bank. This subsection also limits withdrawals from the fund in terms of the purpose and the amount of the expenditure. Thus it brings the State law into conformity with the requirement, in section 303(a)(8) of the Social Security Act, that the State law include a provision for the expenditure of all money received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for proper and efficient administration. This limitation on expenditures of administrative funds emphasizes the fact that Federal funds are granted to the State as a trust to be expended in the administration of the program.

As the section is drafted, it covers all funds received from the Federal Government or any Federal agency for the administration of the program and all funds appropriated by the State under section 11(d).

(d) Reimbursement of the fund.--Section 11(d) is designed to meet the requirements of section 303(a)(9) of the Social Security Act which requires that provision be made in the State law for the replacement within a reasonable time of any title III money which may have been lost or expended for purposes which are found not necessary to proper and

efficient administration. It is an expression of the State's intention to make such replacements as a matter of State policy. Under the provision the commissioner is directed to report to the Governor the amount of any needed replacement and he, in turn, is directed to request the needed appropriation from the legislature at the earliest opportunity.

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Auxiliary administrative funds.--Many States have used the interest and penalties on past-due contributions to create auxiliary administrative funds. In general, the laws provide that the money is to be used: (1) to meet administrative costs which are not properly chargeable against Federal administrative grants or other funds subject to the same control; (2) to replace Federal administrative funds which have been lost or expended for purposes which the Secretary of Labor considers not necessary for proper and efficient administration; and (3) as a revolving fund in advance of the receipt of an administrative grant.

While no language for the establishment of this type of auxiliary fund is included in the Bureau's draft, certain principles should govern the drafting of any provision designed to create such an auxiliary fund.

(1) Deposits of interest and penalties in the auxiliary fund should be limited to interest and penalties paid after the effective date of the new legislation. If the provision were made retroactive so that interest and penalties which had been deposited in the unemployment fund could be withdrawn from that fund for deposit in the auxiliary fund, the legislation would not conform with the requirements of section 303 (a)(5) of the Social Security Act and section 1603(a)(4) of the Federal Unemployment Tax Act. Those sections limit withdrawals from the fund to expenditures for the payment of unemployment benefits and for specified refunds erroneously collected under the law in effect.

(2) The legislation should provide that interest and penalties for deposit in the auxiliary fund will be placed directly in that fund or after clearance through the clearing account of the unemployment fund. If the latter approach is followed, the legislation should make clear that the interest and penalties are not a part of the unemployment fund and that they will be transferred to the auxiliary fund immediately upon their clearance. Withdrawal from the unemployment fund for any purpose other than those specified above would be contrary to the fund requirements of title III and the Federal Unemployment Tax Act.

(3) If refunds of interest are made under the law, the provision authorizing the refunds of erroneously collected interest or penalties should be modified to provide that refunds of interest erroneously paid into the auxiliary fund should be paid out of that fund and not from the unemployment fund.

(4) The size of the fund should be limited to a specified amount and provision should be made to transfer to the unemployment fund any excess on specified dates.

(5) Even if it is planned to use the fund to make such replacements to the employment security administration fund as may be required under section 303(a)(9) of the Social Security Act, provision for replacement by State appropriation in the event that the money in the auxiliary fund is insufficient is required as provided in section 11(d).

(6) The controls on the expenditures from the auxiliary fund will have to be worked out to conform to the State's fiscal practices.

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State legislation for centralized fiscal control.--Problems arose in several States as a result of activity in the 1949 legislative sessions to amend State laws to provide for the transfer of authority concerning budget requests to a general State budgetary office and to require appropriation for all expenditures. None of the 1949 proposals was enacted.

There are arguments in favor of uniform centralized fiscal control in the States, but such controls must be achieved without interference with the requirements of the Federal acts. The bills which were proposed, if enacted, would not in themselves have raised conformity questions but their application and construction might have done so since they required appropriation for all expenditures. If the laws were construed not to require the appropriation of all granted funds for the purposes for which granted, the laws would not conform to section 303(a)(8) of the Social Security Act, and the State plan would not meet the conditions for approval under the Wagner-Peyser Act. If the laws were construed to require proper appropriation, but in operation the appropriations were delayed, questions would be raised under section 303(a)(1) of the Social Security Act and section 9 of the Wagner-Peyser Act; in addition there would be a question of compliance with the State law provision enacted to meet the requirements of section 303(a)(8) of the Social Security Act. If the laws were construed not to exempt the unemployment fund, inadequate or delayed appropriations would raise a question under section 303(a)(1). Furthermore, the transfer of any money now in the unemployment fund to the State's general revenue fund would raise a question under 303(a)(5) of the Social Security Act and 1603(a)(4) of the Internal Revenue Code.

Commentary - Section 12

ADMINISTRATIVE ORGANIZATION

While a program of finding work for, and paying benefits to, unemployed workers necessitates an extensive organization, only the broad outlines of the organization should be included in the law. The details should be left to the commissioner so that he may be free to meet the changing circumstances which affect a program so closely associated with the changes of a dynamic economic society. Employment service and benefit payment functions should be closely integrated since it is the obvious intent of the legislation to find employment for workers wherever possible and to limit benefit payments to workers for whom there is no suitable work.

(a) Administrative body.--In the early days of the program without experience to serve as a guide, it was better to base major policy decisions upon the considered judgment of several persons who were members of a commission. Now that the program has been operating over a period of years, the answers to many questions arising in connection with administration can be resolved on the basis of experience. Moreover, the majority of administrative decisions relate to operations and should not be delayed pending consideration by a commission. With a single administrator, responsibility for decisions and for overall efficiency of the agency rests directly upon one person, and recognition of that fact results in better performance.

Section 12(a), therefore, provides coordinate employment service and unemployment insurance divisions or bureaus administered by a single commissioner who in section 13 is directed to establish local employment offices to perform functions for an integrated program.

First provision: Bureau of Employment Security.--This provision establishes a Bureau of Employment Security in the State Department of Labor with two coordinate divisions, an employment service division and an unemployment insurance division. The subsection gives the commissioner of labor, reporting directly to the Governor, final responsibility for the administration of the bureau. The bureau would have a full-time salaried director, appointed by the commissioner in accordance with merit system requirements and subject to the commissioner's supervision and direction. With the director appointed under civil service, continuity of policy in administration would be assured.

Second provision: Department of Employment Security.--This provision creates a Department of Employment Security on a par with other departments of the State government. The department would have two coordinate bureaus, an employment service bureau and an unemployment insurance bureau. The commissioner would be responsible for the administration of the Department of Employment Security concerning which he would report directly to the Governor. His position would not be under civil service. Continuity in administration would, therefore, depend upon subordinates.

(b) Board of review.--Section 12(b) establishes a board of review which under sections 6, 7, and 9 has broad powers with respect to appealed claims for benefits and the reconsideration of coverage determinations, refunds, and assessments. Under section 6 the board of review is made responsible for appointing members of appeal tribunals. The Governor, rather than the commissioner, appoints the board of review in accordance with merit system requirements. This makes the board independent of the agency in the performance of its quasi-judicial functions and thus assures its detachment and impartiality. In States where the volume of appeals is large, this type of independent review body is particularly desirable to assure efficient administration of the appeals process; in any State with two or more referees or appeal tribunals, some form of review body is needed to coordinate decisions and assure uniform interpretation of the statute.

The first provision in section 12(b) establishes a full-time three-member board of review. A multi-member board is suggested because the issues which come before a board of review may be clarified by group discussion. The members of the board need not represent special interests. For States which desire representative members and where the load is not sufficient to justify three full-time members, the second provision establishes a board with a full-time chairman and two per diem members. If the full-time member is appointed on a merit-system basis and remains in office, his experience in the area of appeals becomes invaluable in resolving new issues. In cases which involve complicated issues of employer-employee relationship, the considered opinion of representatives of labor and employers can be had at the first appeal stage by the appointment of a tripartite appeal board consisting of the referee as chairman, a representative of employers and a representative of labor. (See section 6(a)).

A third provision is suggested because in some States the volume of appeals is not large enough to justify the establishment of a board of review. Many States now provide that second-stage appeals be heard by the employment security commissioner, director, or commission, rather than by an independent board of review. Where the administrative agency itself acts as a review body, with power to hear appeals, it is important that the commissioner should be empowered to delegate to other personnel the authority to make original decisions; section 13(a) contains such authority.

(c) Advisory councils.--Section 12(c) directs the commissioner to appoint a State advisory council composed of men and women including an equal number of representatives of employers and employees and a public member or members. In addition, the commissioner may appoint special local or industrial councils. The members of the council serve without compensation but are reimbursed for travel and subsistence expenses on the same basis as agency employees. Section 11(a) of the Wagner-Peyser Act similarly requires the appointment of a tripartite advisory council.

Commentary - Section 12(c)

The United States Employment Service requires each State agency to provide in its plan of operation for the establishment of such a council, including at least one woman. The same council can effectively serve both the employment service and the unemployment insurance programs.

The experience of many States in the use of advisory councils shows that they can be of invaluable aid to the successful administration of the law. Such a council should serve to minimize bias or partisanship in the administration of the Act. It can assist in interpreting the administration to employers, workers, and the public, in formulating desirable amendments to the law, and in presenting the amendments to lawmakers. The advisory council should be appointed by the commissioner so that the members of the council and the State agency will not work at cross purposes but will cooperate in increasing the effectiveness of the program.

Commentary - Section 13

ADMINISTRATION

The remedies provided in employment security laws for alleviating the results of unemployment are specific: an employment service is established to find work for the unemployed and benefits are paid in specified amounts to unemployed individuals for whom no suitable jobs are available. The application of the remedies, however, is not automatic. The objectives are so broad and are affected by such a wide variety of facts and conditions that their execution requires a broad grant of authority to the public official responsible for the administration of the Act. This authority is needed to give legal support to such administrative action as the commissioner may find necessary. Section 13 is designed to give the commissioner this necessary authority and to provide him with the tools needed to implement that authority.

The section includes a few specific administrative details. The commissioner is directed to make appointments on a merit system basis, to submit regular reports to the Governor, to publish the law and other materials, and to make investigations. He is prohibited from disclosing certain confidential information obtained in the course of his administration of the law and is given instructions on the preservation and destruction of records.

(a) Duties and powers of the commissioner.--Section 13(a)(1) imposes the duty of administering the Act upon the commissioner and gives him a broad grant of power. It provides for the use of an official seal. Under the grant he has the power and authority to adopt, amend, and rescind such rules and regulations, to employ such persons and to make such expenditures, to require such reports, and make such investigations, as he deems necessary. Under the organization established in section 12(a), he has a free hand in determining his own organization, methods of work, and procedures. This grant of power is broad enough to enable him to take any appropriate action to meet the manifold problems which are bound to arise under the employment security program.

(2) State employment services.--Paragraph (2) meets the requirement of section 4 of the Wagner-Peyser Act in accepting the provisions of that Act and designating the State department to cooperate with the United States Employment Service established thereunder. It directs the commissioner to establish employment offices wherever they are needed for the performance of employment-service or unemployment-insurance functions. The local employment offices are the points at which the remedies intended by the legislation culminate. There information on employment opportunities is centralized, unemployed workers register for work, those equipped to fill existing vacancies can be placed and those who are insured but for whom no work isimmediately available can claim benefits to tide them over until suitable jobs are found. Integration of all these functions under single management in the local office is desirable.

(3) Reports to the Governor.--Paragraph (3) requires the commissioner to submit a biennial (or annual) report to the Governor. This provision should be consistent with the general State requirements as to the time and frequency of reports to the Governor; these will presumably vary with the timing of the regular legislative sessions. The report must cover the administration and operations of the Act during the two (or one) preceding calendar years and must include such recommendations for amendments to the Act as the commissioner deems proper. A regular report to the Governor represents sound administrative practice for all departments of the State government but is particularly important when the operation of the law requires the collection and disbursement of large sums of money. The requirement that the commissioner include recommendations for amendments to the Act should give the Governor the benefit of the commissioner's knowledge of the strength and weaknesses of the employment security law as revealed in day-by-day operations and in special investigations.

(b) Research and publication.--Section 13(b) imposes upon the commissioner the duty of studying and making recommendations as to the most effective method of providing economic security in case of unemployment through unemployment insurance, employment service, and related programs, and of reducing and preventing unemployment. This provision would authorize studies of temporary disability insurance, for example. The studies are to be made in cooperation with the advisory council.

This provision is included because of the strategic position of an employment security agency. Through their contacts with the unemployed agency personnel have knowledge of the effect of unemployment on the individual and society. Daily contact with the labor market gives them an advantage in analyzing causes of unemployment. Employers' reports and workers' claims supply invaluable materials for statistical purposes, and their analysis should help in a better understanding of our complex economic society. In its regular report to the Governor and the legislature and in its programs of public information, the State agency has opportunities for dissemination of its unique information. The reports can be used to obtain public understanding of the purpose of the program and the problems of its administration.

Because compliance with the law is based upon knowledge of its requirements, wide dissemination of information about the program is essential to proper administration. It is also essential that the information be based on an accurate presentation of facts. Therefore, the commissioner is directed to print and distribute to the public the text of the Act, his regulations and general rules, his biennial (or annual) reports to the Governor, and any other material he deems relevant and suitable; section 13(b) specifically requires that such material be furnished to any person who asks for it.

(c) Adoption, amendment, and rescission of general and special rules and regulations.--Section 13(c) prescribes the methods to be followed in the adoption, amendment, and rescission of general and special rules and authorizes the commissioner to prescribe the method for adopting and repealing regulations. States follow their own custom in the matter of terminology and many of them use one term "regulations" or "rules" in referring to all regulatory material. However, the necessity for differentiation in the procedure for adoption and repeal of different types of regulations remains. The State will determine the appropriate procedure in a particular case on the basis of State practice and precedents.

Under the terminology of section 13(c), rules rather than regulations are generally appropriate when the validity and conclusiveness of the policy depends upon prior notice and an opportunity for hearing to any interested persons. If the proposed rule is limited in its application to a particular individual or individuals, there is the same necessity for notice to the individuals affected and for opportunity for hearing on the special rule. This provision makes rules effective ten days after filing with the secretary of State and publication in one or more newspapers in the State. Regulations are appropriate in prescribing a course of action in the administration of the Act. The commissioner may adopt, amend, or rescind them with less formality.

(d) Merit system and personnel.--Under section 303(a)(1) of the Social Security Act, States are required to adhere to a merit system of personnel administration as a condition for the receipt of title III grants; the Labor-Federal Security appropriation in the General Appropriation Act, 1951, 81st Congress, makes the same requirement a condition for the grants. Alternative provisions for a merit system are presented. The first provision authorizes and directs the commissioner to adopt a regulation which will establish a merit system for all persons employed in the administration of the Act. The regulation would cover all matters which are appropriate to the establishment and maintenance of such a system on a basis of efficiency and fitness. This last clause refers to such matters as the selection of employees, the classification of positions, salary schedules, tenure of office, hours of work, annual and sick leave, and other conditions affecting the employment of the agency's employees. This section places responsibility for meeting Federal personnel standards upon the commissioner since it gives him specific authority to include in the regulations any standards which may be necessary to meet the merit system requirements of the Secretary of Labor. The commissioner is directed to make appointments and to fix compensation and prescribe the duties of his staff on the basis of the merit system established. This section also gives a legal basis for merit systems operated jointly for employment security, health, and welfare agencies. It gives effect to the provisions in the standards applicable to the employment security program and the other grant-in-aid programs that, in the interest of economy and efficient administration, there should be a joint merit system to serve all programs covered by the standards.

The alternative provision is designed for States in which all or most State employees are covered by a State civil service law. In such

States there is no need for the establishment of a separate merit system. The section, therefore, directs the commissioner to make appointments, fix compensation, and prescribe the duties of his staff in accordance with State civil service requirements. A proviso clause authorizes the commissioner, in cooperation with the State civil service agency, to take such action as may be necessary to meet the Federal standards, if the State civil service requirements are not in line with the Secretary of Labor's personnel standards.

Section 13(d)(2) is included because the employees of State employment security agencies are paid from Federal funds and thus are subject to the provisions of the Hatch Act and are prohibited from engaging in political activity. Under that act the United States Civil Service Commission has responsibility for deciding whether employees should be removed because they have violated the provisions of the act. The State agency must dismiss any employee within thirty days after it has been notified by the commission that he is guilty of violation of the act. If the State agency fails to dismiss the employee, the United States Civil Service Commission notifies the Secretary of Labor who is then required to reduce the administrative grant to the State agency by an amount equal to the employee's salary for a period of two years. This paragraph is intended to override any legal obstacles that may exist to dismissal of State employees under such circumstances by giving the commissioner specific authority to dismiss any employee who has been found to violate the Hatch Act.

(e) Records and reports of employing units.--Information which will enable the agency to identify subject employers, covered workers, their wages and the proximate causes of their unemployment is essential to the administration of any employment security law. Section 13(e) is designed to ensure the employers' maintenance of the information and the agency's access to it.

Paragraph (1) requires employing units to keep true and accurate work records for such periods of time and containing such information as the commissioner may prescribe.

Paragraph (2) makes the information available to the commissioner and his representatives by (A) giving them the right to inspect records and the privilege of copying the information, and (B) by giving the commissioner, an appeal tribunal, or the board of review authority to require employing units to submit any sworn or unsworn reports about their employees when such reports are needed for the administration of the Act.

(f) Preservation and destruction of agency records.—Agency records should be preserved for a reasonable period of time to assure the payment of benefits when due. However, the time comes when they are no longer necessary for the administration of the law and the cost of their maintenance is not justified. Legislative direction is needed on the methods and period of preservation, with statutory authority for their destruction after their period of potential usefulness. If there is no general State statute, the employment security law should contain a special provision on the subject.

Section 13(f) is such a provision. Since original records are bulky and expensive to maintain, paragraph (1) authorizes the commissioner to adopt methods for preserving the information in the records in a more economical form. It authorizes summaries, compilations, photographs, duplications, and reproductions of any records, reports or transcripts and, if their authenticity is assured, makes them admissible as evidence before administrative tribunals or courts whenever the original records would have been admissible.

Paragraph (2) authorizes the commissioner to adopt regulations on the destruction of records which are no longer necessary for the establishment of liability, the determination of benefits, or other purposes. The regulation should ensure the obliteration of all confidential information prior to disposal if records are disposed of in some manner other than by destruction. The period for which records should be preserved will be affected by the provisions of the employment security law on the finality of coverage and benefit determinations and the period within which applications for refunds of contributions may be filed. It will also be affected by the statute of limitation for suits for the collection of contributions, refunds of contributions, and prosecutions for offenses of various types.

(g) Authority to administer oaths and issue subpoenas.--(1) Since it is essential that the department have authority to gain access to payroll records and other information relevant to the administration of the Act and to compel the attendance of witnesses and the production of records, section 13(g)(1) gives the commissioner, an appeal tribunal, the board of review, and any duly authorized representative of any of these, the power to administer oaths and take depositions, to issue subpoenas, to compel the attendance of witnesses or the production of books, papers, correspondence and other memoranda which are necessary as evidence in connection with any determination disputed under this Act.

(2) Court subpoenas.--Under paragraph (2) any court of the State (within the jurisdiction of which an inquiry is carried on) may issue an order to any person who refuses to obey an order of the commissioner, an appeal tribunal, the board of review, or any of their representatives. Failure to obey the order of the court may be punished as contempt. In addition failure to comply with an administrative subpoena is made a criminal offense under section 14(c).

(3) Protection against self-incrimination.--Paragraph (3) protects from prosecution or penalty an individual who claims privilege against self-incrimination in giving testimony or producing records. It does not, however, protect him from prosecution for perjury. With this provision the agency should be able to obtain testimony from persons who otherwise might refuse to testify; such a provision enhances the effectiveness of fair hearing provisions.

(h) Representation of agency in court.--In presenting issues involving the interpretation and application of the employment security law to the courts, the commissioner should be represented by counsel who is thoroughly familiar with the problems arising in the administration of the Act, and able to devote his undivided efforts to the preparation and presentation of the agency's case. Section 13(h)(1) provides such representation. The commissioner may employ an attorney (or in the larger States attorneys) as a regular salaried member (or members) of the staff of the agency to advise generally on legal matters and also to represent the agency and the State in litigation arising under the Act. In addition the commissioner is authorized to call upon the attorney general for assistance in appropriate cases. Where constitutional provisions require that the State be represented in all litigation by the attorney general, the regular salaried attorney of the agency can be designated by the attorney general as a deputy for the purpose of appearing for the State in civil litigation on unemployment insurance.

In criminal proceedings, however, the regularly constituted prosecuting agencies are in a better position to handle the cases. Paragraph (2), therefore, directs the attorney general of the State either to prosecute all criminal actions for violation of the Act or to request prosecution, under his direction, by the prosecuting attorney of the county in which the employing unit concerned has a place of business or the violator resides.

(i) Disclosure of information.--Section 13(i) restricts the disclosure of information received by the agency by limiting its use to the purposes of the Act. With the power to require information for use in the administration of the law goes the responsibility for using the information only for the purposes intended. Compliance with reporting requirements would be difficult to enforce if the information obtained in the reports were open to public inspection or made available to other public agencies in the administration of unrelated statutes. The importance of maintaining the confidential character of information given in connection with tax returns has long been recognized. To permit the information to become public would defeat the purpose of the law by deterring the taxpayer from revealing what frequently could not be learned from any other source. Section 13(i) is tantamount to the State's pledge that if a taxpayer makes full disclosure of all facts affecting the tax, the facts will be kept inviolate except for the purpose for which they were given.

Moreover, the disclosure of information received from an employer about a claimant or of personal information given by a claimant would tend to discourage workers from exercising their full rights in filing claims. Likewise, employers and applicants would tend to withhold information necessary for the successful operation of a public employment service unless they were confident that it would be used only for the purposes for which it is given. The privileged and confidential nature of information given a lawyer by his client or a physician by his patient

has long been recognized in law and tradition. The wisdom of confidential treatment of such information has been proved in practice. A requirement for confidential treatment of the claimant's information is in effect in the public assistance program and the history of workmen's compensation has demonstrated the necessity for maintaining records in confidence. The same need exists in this program. The provision is a protection also to the commissioner and the agency. Failure to include such a provision may mean that the agency will be harassed (to the detriment of its efficiency) by requests for information about individuals and their personal affairs. For these reasons section 13(i) provides that information obtained from any employing unit or individual and determinations of benefit rights may be released only:

(1) to a claimant as necessary for the proper presentation of a claim;

(2) to State and Federal agencies charged with the administration of an unemployment insurance program or the maintenance of an employment service, such as other State employment security agencies, the Secretary of Labor, the Railroad Retirement Board, the Veterans' Administration, and the Maritime Commission;

(3) to the Federal Bureau of Internal Revenue, for purposes of the Federal Unemployment Tax Act; and

(4) to Federal agencies administering public works and public assistance through public employment, as required by section 303(a)(7) of the Social Security Act.

Information obtained in connection with the administration of the employment service may be made available to persons or agencies only for purposes related to the operation of a public employment service.

The section provides also that that the commissioner may request the Comptroller of the Currency of the United States to examine the correctness of any report which he has received from a national banking association. This reference to the examination of reports from national banking associations is in line with section 1606(c) of the Federal Unemployment Tax Act. That section authorizes the State to require the submission of reports from national banking associations but imposes responsibility for examination of the correctness of the reports upon the Comptroller of the Currency, thus avoiding conflict on the question of State jurisdiction over national banks.

Section 14(e) provides penalties for any unauthorized disclosure of information.

(j) Federal-State cooperation.--Section 13(j) is an expression of the State's intention to give its citizens the full advantage of Federal legislation as enacted in the Social Security Act, section 1601

of the Federal Unemployment Tax Act, and the Wagner-Peyser Act. To insure these advantages the section requires cooperation with the Federal Government and with other State agencies.

Paragraph (1) directs the commissioner to cooperate with the Secretary of Labor in the administration of the employment security act and gives him the authority to take whatever action may be necessary to give the State and its citizens all the advantages of the Social Security Act, section 1601 of the Federal Unemployment Tax Act, and the Wagner-Peyser Act.

Paragraph (2) directs the commissioner to comply with the regulations of the Secretary of Labor relating to the receipt or expenditure of money granted under the Federal acts, to make the reports required by section 303(a)(6) of the Social Security Act, and to comply with any provisions which the Secretary finds necessary to assure their correctness.

Paragraph (3) authorizes the commissioner to make investigations, transmit information, and make services available to facilitate the administration of other unemployment insurance or public employment service laws whether State or Federal, and to accept similar services and information from other agencies, thus enabling the States to perform services for one another in the interests of the program and to cooperate in the administration of such programs as railroad unemployment insurance, servicemen's readjustment allowances, and Federal seamen's benefits, as required by section 303(c) of the Social Security Act.

Release of Records for Prosecution of Interstate Claimants

A special problem may arise in some States in connection with the release of records required for the prosecution of interstate claimants for fraud.

Although the provisions of section 14(a) are adequate to provide authority for the prosecution by an agent State of interstate claimants who file claims with the intent to defraud, a few States have been unable to furnish documents required by an agent State for successful prosecution. For example, some States require as evidence of payment, the original indorsed cancelled benefit check. A few States have been unable to furnish such evidence when the cancelled checks are no longer in the possession of the commissioner but are lodged with the State treasurer or auditor.

The following language added to Section 13(i) would provide the necessary authority for the release and authentication of such records required by the agent State and adequate safeguards on their use. The authentication required will vary according to the law of the agent State.

authorize the commissioner to ask another State to sue interstate claimants for repayment of benefits. In addition to the provisions of section 13(j)(3), the general authorization in section 13(a) that "it shall be the duty of the commissioner to administer this Act; and he shall have the power . . . to devise such methods of procedure and take such action as he deems necessary or suitable to that end" is adequate to provide such authority.

PENALTIES

Any program as broad in scope as unemployment insurance is unfortunately subject to abuse by some individuals. To be realistic, therefore, the underlying legislation needs to recognize this fact and to make provision for imposing penalties on individuals (workers, employers, and others) who violate the provisions of the law with the intent to defraud. The mere inclusion of criminal penalties in the law will act as a deterrent to most individuals and their application in appropriate cases will serve to give notice to others that they run the risk of detection if they misrepresent their case. The procedures of the agency should, of course, oe so devised as to reduce to a minimum the opportunitues for fraud. Whenever an individual or employer is found wilfully to have misrepresented a material fact in connection with a claim or other matter relating to the administration of the law, there should be a resolute enforcement of the law by application of the penalties provided through the regular law enforcement agencies of the State. The language is drafted so that the penalties are applicable whenever there is proof that an individual has knowingly made a false statement or misrepresentation or failed to disclose a material fact with intent to defraud, whether or not the individual in fact obtains any advantage thereby.

The penalties for the different actions covered have been equalized as a fine of $25 to $200 and not more than sixty days of imprisonment, excepting that up to ninety days of imprisonment is provided for unauthorized disclosure of information obtained in the administration of the Act. With the increase of benefits payable under the Act, the penalty for misrepresentation to obtain benefits has been increased from a fine of $20 to $50 and imprisonment up to thirty days to a fine of $25 to $200 and imprisonment up to sixty days.

(a) Misrepresentation to obtain benefits.--The penalties in section 14(a) are imposed in the case of false statement or misrepresentation in a deliberate attempt to obtain or increase benefits under the employment security law of any State, the Federal Government, or a foreign government. Under these provisions the courts of an agent State may punish individuals making false statementsor representations to obtain or increase benefits claimed under the law of another State through the Interstate Benefit Payment Plan, which includes the Canadian unemployment insurance system. See also (1) section 5(j) dealing with recovery or recoupment of benefits received by reason of misrepresentation, (2) Commentary, page C-118, for a discussion of recovery in connection with fraud on interstate claims, and (3) Commentary, page C - 62, for a discussion of administrative disqualification for fraud.

(b) Misrepresentation by employing unit.--Section 14(b) imposes penalties for misrepresentation by an employing unit or an officer or agent of an employing unit to prevent the payment of benefits or to avoid liability for contributions. The penalty of imprisonment is

made to apply to an officer or agent of a corporation so that such violators may not always escape with the penalty of no more than a fine under the protection of corporate identity.

(c) Noncompliance with subpoena.--Section 14(c) provides penalties for a failure, without just cause, to obey an administrative subpoena issued under the provisions of section 13(g)(1) by the commissioner, an appeal tribunal, or the board of review. This penalty is in addition to the remedy of asking the court to issue a subpoena as provided in section 13(g)(2) when an individual fails to respond to an administrative subpoena.

(d) Violation of law, rules, or regulations.--The blanket penalty included in section 14(d) covers any wilful failure to comply with the commissioner's orders, rules, and regulations, as well as all sections of the law. It is essential for proper enforcement of the Act. It would apply, for instance, to an employer who requires or accepts any waiver of the benefit rights of any individual in his employ in violation of section 5(k) and to any attorney or other agent who overcharges a claimant for representation in proceedings before the commissioner, an appeal tribunal, or the board of review in violation of section 6(m).

(e) Unauthorized disclosure of information.--A specific penalty in section 14(e) for unauthorized disclosure by agency personnel of information obtained in the administration of the Act supports the confidential treatment accorded such information in section 13(i).

Commentary - Section 15

RECIPROCAL ARRANGEMENTS

Because each State employment security law defines the service which is subject to it as the basis both for collecting contributions and for paying benefits, provision is made for integrating the various laws with respect to individuals who perform service in more than one State, in addition to the localization of employment tests in section 2(k)(2) and(3). Since the Federal Government administers an unemployment insurance law for railroad workers and Canada administers an unemployment insurance law, provision is made also for cooperation with their administrative agencies.

(a) Interstate benefit payments.--Section 15(a) provides that the States may enter into arrangements under which benefits may be paid to insured workers on the basis of claims filed in a State other than the one in which they have attained insured status. It is under provisions such as this that all States are now participating in an interstate benefit payment plan under which each State acts as an agent in taking claims for all other States. Under this plan the agent State takes the claims and forwards them for determination and payment by the State in which the claimant's work is insured.

This subsection also authorizes an arrangement under which the benefits are paid by the agent State on the basis of the benefit formula of the State in which the claimant's work is insured but the law of the agent State is controlling in several respects. The commissioner is authorized to reimburse other States and to accept reimbursements from other States for payments to claimants under such an arrangement, and reimbursements paid to other States constitute benefits for all purposes of the Act. Although several States participated in such an arrangement on an experimental basis, no such arrangements have been in affect since July 1949.

(b) Combining wage credits.--This provision makes it possible for the States to enter into an arrangement whereby wage credits earned in more than one State may be combined in order to accumulate all of a worker's wage credits in one determination of insured status. This provision authorizes the present basic wage-combining arrangement in which several States are participating. Under this arrangement wage credits may be combined only if the claimant does not have insured status in any State. The subsection is so worded, however, as to enable the States to adopt a more complete wage-combining plan, or a plan for the use of wage credits by another State even though there are no credits there with which to combine.

For States which charge benefits to employer accounts, the language in the footnote to the text should be added to the provision to limit the charging of benefits paid under wage-transfer arrangements to exclude: (1) benefits paid in excess of the maximum weekly or annual amounts

provided in the benefit formula in section 3; and (2) benefits paid on the basis of earnings insufficient in themselves for the claimant to qualify under section 3.

(c) Reciprocal coverage.—For the most part, service performed by an individual for one employing unit in more than one State is subject to one State law by reason of the localization-of-work provisions in section 2(k)(2) and (3) which have been adopted by all States and by Canada. Service performed by an individual in one State for an interstate employer is normally covered by the law of the State in which it is performed. Section 15(c) provides, however, that the commissioner may enter into reciprocal arrangements with other States to permit coverage in one State under circumstances not included in the localization provisions, or in certain circumstances which are contrary to the mandatory coverage provisions. In States subscribing to such a reciprocal arrangement employers are permitted to elect coverage of specified service in one State. Such elections may be handled through the State's regular elective coverage procedures.

In order that any such election may be effective it is necessary that the State law include also the provisions of section 2(k)(4) and 2(k)(6)(Q). Section 2(k)(6)(Q) is essential to permit a waiver of mandatory coverage by one State so that an election of coverage of the same service may be approved by another State. However, for elections under section 15(c)(1), such service must be counted in the State of original coverage in determining whether an employing unit is an employer, as provided in section 2(i)(1) of the alternative definitions of employer.

In the past some States have not entered into the reciprocal coverage arrangement because it appeared to them to be inconsistent with the provision in section 5(k) which prohibits an individual from waiving any of his rights under the Act. Other States have assumed that the authorization to enter into the reciprocal arrangement overrode any conflicting provisions. In order to remove any question on this score, section 15(c) includes the words "notwithstanding the provisions of section 5(k)."

Two different types of coverage arrangements are provided. One refers to individuals performing service in more than one State. The other refers to a few individuals performing service in only one State for an interstate employer. These two types could be included in one over-all arrangement or each could be the subject of a separate arrangement. They are presented in two separate paragraphs because most States are now participating in an interstate reciprocal coverage arrangement similar to that authorized in paragraph (1), but no general arrangement to implement paragraph (2) has been adopted. The present arrangement could be rescinded and a new omnibus arrangement covering both types of election could be adopted by the States, or the present arrangement could be continued, supplemented by a new arrangement covering the provisions of paragraph (2).

The purpose of the arrangement in paragraph (1) is to achieve continuity of coverage, in one State, of service performed by an individual in more than one State for one employing unit, even though some of the service may have been subject to the mandatory coverage provision of the law of some other State. Elections under this type of reciprocal arrangement are intended to apply to individuals who are not continuously employed by an employing unit but are hired by the job, and whose consecutive jobs for the same employing unit in different States may be of long enough duration to be covered in the States in which the service is performed. Under this provision, the employing unit may elect to cover all the service performed by such an individual in any one of the States in which (A) any part of his work is performed, (B) he has his residence, or (C) the employing unit maintains a place of business. The acquiescence of the individual must be obtained prior to final approval of the election. In addition to providing continuity of coverage for the worker, such an election may reduce the number of States to which an employing unit must report wages.

The purpose of the arrangement in paragraph (2) is to permit an employer who has out-of-State employees, each working in only one State and not more than three in any one State, to concentrate his wage reports in one State. Under this type of arrangement an employer may elect to cover under the law of the State in which he has his principal office a few individuals who customarily work for him in another State and whose wages are normally subject to contributions in that State. The number of individuals whose coverage may be transferred from one State to another is limited to three in order to prevent concentration of coverage of certain nation-wide enterprises. The consent of the individual in this type of election is particularly important since he has a basic right to coverage under the law of the State from which his credits would be transferred as a result of the election and may lose substantial benefit rights if the law of the State of election is less liberal than the law of the State where he performs his service. This type of reciprocal coverage provision has been requested by the administrators in some States in order to reduce employer reporting requirements. It is opposed by others because it is not consistent with one of the basic principles of coverage, namely, that an individual should be covered in the State in which he is most likely to become unemployed and to seek work.

(d) Reexamination of reciprocal arrangements.--Section 15(d) provides for a finding by the commissioner whether to continue any arrangement when the provisions in the law of a participating State are substantially amended. Such a provision would remove any question as to the validity of the delegation of legislative power in adopting benefit provisions of another State law. The adoption of provisions of other State laws has generally been upheld by the courts when the existing provisions of the law of another State are adopted.

(e) Cooperation with agencies of foreign governments.--Because of the nearness of Canada, and the interrelationships between Canadian and American industry and trade, it is desirable that there be cooperation between the unemployment insurance systems of these two countries. The States, however, cannot, under the United States Constitution, enter into agreements with a foreign government. An Executive Agreement has been entered into by the governments of the United States and Canada (Executive Agreement Series 244) which establishes a basis for cooperation between the States and the Unemployment Insurance Commission of Canada.

Section 15(e) authorizes the commissioner to cooperate in arrangements of the character provided in section 15(a), (b), and (c) with agencies of foreign governments administering unemployment insurance systems. This provision implements that part of the Executive Agreement which refers to benefit claims and permits the States to include Canada in the terms of the Interstate Benefit Payment Plan. The Executive Agreement permits Canada to participate in the plan only on a reciprocal basis, so that it is necessary for any State which wishes to include Canada in its interstate claims operations to notify the Canadian Commission of its desire.

The Executive Agreement also permits election of coverage in some one jurisdiction of service to which the localization provisions in section 2(k)(2) and (3) do not apply, when Canada is one of the jurisdictions involved.

Commentary - Section 16

SAVING CLAUSE

Saving clause.--This provision is included to meet the requirements of section 1603(a)(6) of the Federal Unemployment Tax Act for approval of a State law and of section 1603(c) for its continued certification. Section 1603(a)(6) requires that the State law provide that all rights, privileges, or immunities conferred by the law and all acts performed in accordance with the law shall exist subject to the power of the legislature to amend or repeal the law at any time.

Section 17

SEPARABILITY OF PROVISIONS

Separability of provisions.--This provision is included to prevent the invalidation of the whole system by a court decision throwing out some minor feature of the Act. If any provision of the Act is held invalid or if its application to any person or circumstance is invalid, the remainder of the Act and the application of the provision to other persons or circumstances is not affected.

Section 18

EFFECTIVE DATE

Effective date.--All States now have employment security laws which become effective on the date specified in the enacting legislation. The matter of effective date will henceforth require consideration only in connection with (1) specific amendments or (2) general revision and reenactment. The drafting of bills to accomplish changes in either form will require careful attention to necessary transition provisions and the dates on which the changes are to become effective. See also the commentary on section 2, pages C - 6, 13, and 20; section 3, page C - 50; and section 8, page C - 85.

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