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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 39-83

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

**FROM : ROYAL S. DELLINGER Administrator
for Regional Management**

SUBJECT : Model Legislative Language to Implement a Short-Time (Work Sharing) Compensation Program and Recommended Improvements in State Provisions for Partial Unemployment Benefits

1. **Purpose.** To assist States in developing appropriate legislative language to implement a short-time compensation (also known as "shared work" or "work sharing") program by providing model draft legislation for this purpose and to provide alternatives to encourage individuals to accept part-time employment.
2. **References.** Section 194 of P.L. 97-248 and pages C-34 to C-49, Manual of State Employment Security Legislation, 1950.
3. **Background.** Under the provisions of Section 194 of P.L. 97-248 which was enacted on September 3, 1982, the Secretary of Labor is directed to "develop model legislative language which may be used by States in developing and enacting short-time compensation programs." As a means of assuring minimum uniformity throughout the States, the Congress has specified certain guidelines for these programs which it encourages States to utilize in carrying out the intent and purpose of Section 194. That purpose as stated in Section 194(b)(4) is to encourage States to experiment in the implementation of a short-time compensation program.

Section 194 is an experimental provision which is in effect for the three-year period beginning on September 4, 1982. At the conclusion of that period, the guidelines provided for the short-time compensation program are terminated.

A provision has also been included in section 194 which requires that the Secretary conduct a study of State short-time compensation programs. This study is to be undertaken through consultation with employee and employer representatives, and has as its purpose the development of criteria and guidelines necessary to measure a number of specified factors that are designed to measure the impact of the program. The Secretary is required to submit a final report on the implementation of Section 194 not later than October 1, 1985. That report is to contain an evaluation of the short-time compensation programs and such

recommendations pertaining thereto as the Secretary deems advisable.

4. **Purpose of Short-Time Compensation Programs.** The intent of short-time compensation programs is to preserve the employees jobs and the employer's work force during times of lowered economic activity by reducing hours of work for all employees affected rather than by laying off some while others continue to work full-time. In this way the short-time compensation program seeks to cushion the adverse effect of the reduction in business activity on the worker by providing benefits for the portion of the normal work week that has been curtailed.
5. **Modifications Needed in State UI Laws.** It is recognized that under existing State partial benefit formulas or definitions of weeks of unemployment, individuals working reduced hours to the extent required under short-time compensation programs may not be entitled to benefits for partial unemployment or be considered unemployed because their earnings are too high. Since short-time compensation plans are designed to provide benefits for each week of reduced hours irrespective of the partial benefit formula or the amount of earnings or hours worked in a short-time week, changes are necessary in the partial benefit provision of State laws and definitions of weeks of unemployment in order to properly implement these programs. Additionally, the usual availability and actively seeking work requirements must also be modified to minimize obstacles to work force maintenance and benefit entitlement. Other modifications that may be necessary in State law provisions must be done in a manner that assures consistency with applicable Federal law requirement in the Federal Unemployment Tax Act and the Social Security Act.

Draft Language for a State short-time compensation program and commentary on the suggested provisions are attached.

Additional information will be provided later in a Reports and Analysis Letter. This letter will concern reporting instructions that will be applicable to a State adopting a short-time compensation program.

6. **Partial Benefits.** As an alternative to or as a complement to the model work sharing program, a State may wish to consider revising its formula for paying benefits for partial or part-total unemployment. In order to achieve the objectives of the partial benefit provisions in the State law, the earnings limit in the definition of "week of unemployment" or of "partial unemployment" and "part-total unemployment" should be set high enough to give a partially unemployed individual a realistic incentive to work as much as possible, but not so high as to result in total income (benefits plus earnings) that virtually reaches his/her wages for full-time work. Attachment III describes several approaches that may be taken to encourage the unemployed to accept part-time employment.
7. **Action Required.** SESAs are requested to:
 - a. Review the attached model legislative language and commentary, and are encouraged to seek enactment of appropriate legislation enabling them to implement a short-time compensation program in accordance with the guidelines contained in the model legislation.
 - b. Review and, where appropriate, improve their benefit formulas for partial and part-total unemployment.
8. **Inquiries.** Inquiries should be directed to your regional office.
9. **Attachments.**
 - I. [Draft Language and Commentary To Implement a Short-Time Compensation Program.](#)
 - II. [Text of Provisions on Short-Time Compensation As Set Forth in P.L. 97-248.](#)
 - III. [Benefits for Partial Unemployment.](#)

I. Draft Language and Commentary to Implement a Short Time Compensation Program

Draft Language

A. Definitions

1. "Affected Unit" means a specified plant, department, shift, or other definable unit consisting of not less than employees to which an approved short time compensation plan applies.
2. "Fringe Benefits" include, but are not limited to, such advantages as health insurance (hospital, medical, and dental services, etc.), retirement benefits under defined benefit pension plans (as defined in Section 3(35) of the Employee Retirement Income Security Act of 1974), paid vacation and holidays, sick leave, etc., which are incidents of employment in addition to the cash remuneration earned.
3. "Short-Time Compensation" or "STC" means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan as distinguished from the unemployment benefits otherwise payable under the conventional unemployment compensation provisions of a State law.
4. "Short-Time Compensation Plan" means a plan of an employer (or of an employers' association which association is a party to a collective bargaining agreement) under which there is a reduction in the number of hours worked by all employees of an affected unit rather than temporary layoffs of some such employees. The term "temporary layoffs" for this purpose means the separation of workers in the affected unit for an indefinite period expected to last for more than two months but not more than one year.
5. "Usual Weekly Hours of Work" means the normal hours of work for full-time and permanent part-time employees in the affected unit when that unit is operating on its normally full-time basis, not to exceed forty hours and not including overtime.
6. "Unemployment Compensation" means the unemployment benefits payable under this Act other than short-time compensation and includes any amounts payable pursuant to an agreement under any Federal law providing for compensation, assistance, or allowances with respect to unemployment.
7. "Employers' Association" means an association which is a party to a collective bargaining agreement under which the parties may negotiate a short-time compensation plan.

B. Criteria for Approval of a Short-Time Compensation Plan. An employer or employers' association wishing to participate in an STC program shall submit a signed written short-time compensation plan to the Director for approval. The Director shall approve an STC plan only if the following criteria are met.

1. The plan applies to and identifies specified affected units.
2. The employees in the affected unit or units are identified by name, social security number and by any other information required by the Director.
3. The usual weekly hours of work for employees in the affected unit or units are reduced by not less than 10 percent and not more than ___ percent.

4. Health benefits and retirement benefits under defined benefit pension plans (as defined in Section 3(35) of the Employee Retirement Income Security Act of 1974), will continue to be provided to employees in affected units as though their work weeks had not been reduced.
5. The plan certifies that the aggregate reduction in work hours is in lieu of temporary layoffs which would have affected at least 10 percent of the employees in the affected unit or units to which the plan Applies and which would have resulted in an equivalent reduction in work hours.
6. During the previous four months the work force in the affected unit has not been reduced by temporary layoffs of more than 10 percent of the workers.
7. The plan applies to at least 10 percent of the employees in the affected unit, and when applicable applies to all employees of the affected unit equally.
8. In the case of employees represented by an exclusive bargaining representative, the plan is approved in writing by the collective bargaining agent; in the absence of such an agent, by representatives of the employees in the affected unit.
9. The plan will not serve as a subsidy of seasonal employment during the off season, nor as a subsidy of temporary part-time or intermittent employment.
10. The employer agrees to furnish reports relating to the proper conduct of the plan and agrees to allow the Director authorized representatives access to all records necessary to verify the plan prior to approval and, after approval, to monitor and evaluate application of the plan.

In addition to the matters specified above, the Director shall take into account any other factors which may be pertinent to proper implementation of the plan.

C. Approval or Rejection of the Plan

The Director shall approve or reject a plan in writing within ___ days of its receipt. The reasons for rejection shall be final and non-appealable, but the employer shall be allowed to submit another plan for approval not earlier than ___ days from the date of the earlier rejection.

D. Effective Date and Duration of Plan

A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the Director. It shall expire at the end of the 12th full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the Director. If a plan is revoked by the Director, it shall terminate on the date specified in the Director's written order of revocation.

E. Revocation of Approval

The Director may revoke approval of a plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons therefor.

Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of any criteria on which approval of the plan was based.

Such action may be taken at any time by the Director on his/her own motion, on the motion of any of the affected unit's employees or on the motion of the appropriate collective bargaining agent(s); provided,

that the Director shall review the operation of each qualified employer, plan at least once during the 12-month period the plan is in effect to assure its compliance with the requirements of these provisions.

F. Modification of an Approved Plan.

An operational approved STC plan may be modified by the employer with the acquiescence of employee representatives if the modification is not substantial and in conformity with the plan approved by the Director, but the modifications must be reported promptly to the Director. If the hours of work are increased or decreased substantially beyond the level in the original plan, or any other conditions are changed substantially, the Director shall approve or disapprove such modifications, without changing the expiration date of the original plan. If the substantial modifications do not meet the requirements for approval, the Director shall disallow that portion of the plan in writing as specified in section E.

G. Eligibility for Short Time Compensation

1. An individual is eligible to receive STC benefits with respect to any week only if, in addition to monetary entitlement, the Director finds that:
 - (a) During the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan which was approved prior to that week, and the plan is in effect with respect to the week for which STC is claimed.
 - (b) The individual is able to work and is available for the normal work week with the short time employer.
 - (c) Notwithstanding any other provisions of this Act to the contrary, an individual is deemed unemployed in any week for which remuneration is payable to him as an employee in an affected unit for 90 percent or less than his normal weekly hours of work as specified under the approved short-time compensation plan in effect for the week.
 - (d) Notwithstanding any other provisions of this Act to the contrary, an individual shall not be denied STC benefits for any week by reason of the application of provisions relating to availability for work and active search for work with an employer other than the short-time employer.

H. Benefits

1. The short-time weekly benefit amount shall be the product of the regular weekly unemployment compensation amount multiplied by the percentage of reduction of at least 10 percent in the individual's usual weekly hours of work.
2. An individual may be eligible for STC benefits or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for unemployment compensation, nor shall an individual be paid STC benefits for more than 26 weeks (whether or not consecutive) in any benefit year pursuant to a short-time plan.
3. The STC benefits paid an individual shall be deducted from the maximum entitlement amount established for that individual's benefit year.
4. Claims for STC benefits shall be filed in the same manner as claims for unemployment compensation or as prescribed in regulations by the Director.
5. Provisions applicable to unemployment compensation claimants shall apply to STC claimants to the extent that they are not inconsistent with STC provisions. An individual who files an initial claim for STC benefits shall be provided, if eligible therefor, a monetary determination of entitlement to STC benefits, and shall serve a waiting week.

6.

(a) If an individual works in the same week for an employer other than the short-time employer and his combined hours of work for both employers are equal to or greater than the usual hours of work with the short-time employer, he or she shall not be entitled to benefits under these short-time provisions or the unemployment compensation provisions.

(b) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or less than 90 percent of the usual hours of work for the short-time employer, the benefit amount payable for that week shall be the weekly unemployment compensation amount reduced by the same percentage that the combined hours are of the usual hours of work. A week for which benefits are paid under this provision shall count as a week of short-time compensation.

(c) If an individual did not work during any portion of the work week, other than the reduced portion covered by the short-time plan, with the approval of the employer, he or she shall not be disqualified for such absence or deemed ineligible for STC benefits for that reason alone.

7. An individual who performs no services during a week for the short-time employer and is otherwise eligible, shall be paid the full weekly unemployment compensation amount. Such a week shall not be counted as a week with respect to which STC benefits were received.

8. An individual who does not work for the short-time employer during a week but works for another employer and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of the State law. Such a week shall not be counted as a week with respect to which STC benefits were received.

I. Charging Shared Work Benefits

STC benefits shall be charged to employers' experience rating accounts in the same manner as unemployment compensation is charged under the State law. Employers liable for payments in lieu of contributions shall have STC benefits attributed to service in their employ in the same manner as unemployment compensation is attributed.

J. Extended Benefits

An individual who has received all of the STC benefits or combined unemployment compensation and STC benefits available in a benefit year shall be considered an exhaustee for purposes of extended benefits, as provided under the provisions of section __ , and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

II. Commentary on Draft Language for Short-Time Compensation Program

The guidelines provided in Section 194 of P.L. 97-248 are intended only as minimum criteria that States are asked to follow to assure uniformity in developing an STC program. Whether or not a State uses the criteria is entirely a matter for State officials to decide, since an STC program is not mandatory. The model legislation incorporates those minimum criteria and also other provisions that are believed necessary to give more substance to STC legislation. The latter provisions deal primarily with eligibility conditions, criteria for approval and revocation of short-time compensation plans, entitlement of individuals who work in the employ of employers other than the short-time employer, and applicability of the plan to seasonal and part-time work.

States may need to change various provisions of the model legislation in order to meet their own statutory formats and requirements. Any substantive modifications or additions should, however, be consistent with

requirements of the Federal Unemployment Tax Act and Title III of the Social Security Act. Further, since this is an experimental program, it is expected that the experience of States in carrying out these provisions and studies to be made of the program's operation will reveal other matters that should be taken into account for an STC Program.

The following is a section by section commentary on the provisions contained in the model legislation.

A. Definitions

1. **Affected Unit** -- The definition limits and identifies an entity so that the STC plan can be applied selectively. The definition provides for a minimum number of employees to preclude the proliferation of plans covering small numbers of employees. This limitation will reduce problems of administering numerous plans, each for relatively few workers.
2. **Fringe Benefits** -- While the term is generally understood to include benefits other than the actual remuneration earned, it is defined to ensure that its meaning is clearer. It relates to and implements the guidelines in Section 194 (d) (4).
3. **Short-Time Compensation** -- The term is distinguished from conventional unemployment compensation for purposes of these provisions since short-time compensation (or STC benefits) differs in the amount payable and the conditions of entitlement.
4. **Short-Time Compensation Plan** -- In many instances, collective bargaining agreements are negotiated between an employers' association, on behalf of its constituent employers, and the labor organization representing their workers. The definition permits a plan to be submitted by such an association as well as by individual employers. The criteria for approval of a plan submitted by an individual employer also apply to a plan submitted by an employers' association.

Section 194 (d) provides for a short-time compensation program in lieu of "temporary layoffs." The quoted term is not defined; however, its intent is to make the program applicable to employees who would, though laid off, retain an attachment to the employer. The plan would apply to employees some of whom would be laid off if there were no such plan for a period long enough to justify its administration, but not longer than the one year approval period. Full-time separations for longer than one year would not ordinarily be considered temporary.

5. **Usual Weekly Hours of Work** -- A short-time compensation or STC plan is suitable only when normal hours are reduced. Overtime hours and hours in excess of 40 are not included as part of a work week because the generally accepted work week is forty hours. The definition would permit a plan for a unit where the usual work week is less than 40 hours, and the actual hours worked are fewer than the usual work week.

Note that the definition is restricted to regular full-time and permanent part-time employees only. Such workers should be defined. The definition should specify the minimum number of hours of work per week so that individuals who work minimally or sporadically are not included in the plan. In general, it is recommended that temporary part-time and intermittent workers be excluded from the plan. The fluctuation in hours worked (and resulting earnings) usually is not the result of diminished economic activity to which the STC program is a response.

6. The term "unemployment compensation" is used here solely for purposes of distinguishing benefits paid under the conventional unemployment compensation program from those paid under the STC program. As such, it applies to any regular, extended or additional unemployment compensation payable under State law, and any amounts payable pursuant to agreements by the State under any Federal unemployment compensation law. This distinction does not alter the designation of STC benefits as unemployment compensation for other applicable purposes.
7. **Employer' Association** -- The term is defined in accordance with the definition in Section 194 (d) of

P.L. 97-248. It identifies employer associations that may submit short-time compensation plans for approval by the Director of a State agency.

B. Criteria for Approval

This section establishes the requirements for approval of a short-time compensation plan and prescribes the form for submittal of a plan:

1. Paragraph 1 contains the specifications for identifying a plant, department, shift or other definable unit to which the plan applies. For example: Plant A at 123 Walnut Street; the finishing department at Plant A, 123 Walnut Street. A reduction in hours would apply to all of the employees in an affected unit or to an identifiable group of employees in the same entity. If a reduction in hours worked is to apply to a group of employees within a unit, it should not single out women, minorities, or the most recently hired.
2. The employees covered by the plan need to be identified so that their claim records can be distinguished from non-plan claimants employed by the same employer. STC plan claimants will normally be entitled to a different weekly benefit amount than regular claimants. The number of weeks for which STC benefits are payable and the expiration date of the plan must be noted.
3. The percentages for minimum and maximum reduction in hours worked should be determined on the basis of general State economic conditions and particular conditions in various industries and occupations. The minimum is specified to accord with the guidelines contained in Section 194(c) (1). Such a minimum is desirable to exclude relatively insignificant work reductions. Such unemployment may or may not be compensated under the partial benefit
4. The health and retirement benefits criterion seeks to ensure that reductions in fringe benefits will not be made to the detriment of the employee. The employer benefits available to the affected work force would remain stable for at least the duration of the plan.

This provision implements Section 194 (d) (4) which requires short-time employers to "provide health benefits and retirement benefits under defined benefit pension plans (as defined in Section 3(35) of the Employee Retirement Income Security Act of 1974) to employees whose work week is reduced under such plan as though their work week has not been reduced."

Section 3(35) provides:

(35) The term 'defined benefit plan' means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant--

(A) for the purposes of Section 202, shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and Section 204, shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan."

5. The certification on hours of work reduced accords with the guidelines in Section 194 (d) (2). The intent is to ensure that the short-time plan is a substitute solely for layoffs.
6. The intent of the four-month hiatus contained in Section 194 (d) (3) is to ensure that the reduction in hours is a relatively recent response to diminished economic activity and not a step in a long-term process of layoffs. The four-month hiatus is intended to discourage the layoff of less skilled and more recently hired workers before initiation of a short-time plan.

7. The 10 percent factor is contained in Section 194 (d)(2). It makes the plan applicable to a minimum percentage of the employees of an affected unit. The employer would be required to certify that the aggregate reduction in hours worked would have resulted in an equivalent reduction in the form of full-time layoffs.
8. An affected unit may include employees covered by more than one collective bargaining agreement, depending on the variety of skills and whether there are individual craft union agreements or a single industrial union type of agreement. Agreement by the collective bargaining agent (s) involved is provided to ensure that both labor and management are satisfied with the plan and to minimize possible problems in connection with approval of the plan. For similar reasons, the approval of workers in an affected unit not covered by a collective bargaining agreement should also be obtained.
9. Short-time compensation plans are not intended to address variations in economic activities which are an inherent part of the industry or occupation, as for example, the diminished activity that follows the summer peak in vegetable canning. Short-time plans should apply generally to situations in which there is primarily a full-time and, perhaps, a permanent part-time work force which has to be reduced because of economic conditions. This criterion is basically a judgmental matter which should be applied on the basis of the history of the affected unit.
10. The Director may need to examine company records for information in addition to that furnished with the proposed plan. Access to employer records may be necessary to determine whether the plan is operating as approved or whether approval should be revoked.

The last paragraph permits the Director to consider factors other than those specified in the criteria for approval of a plan. If such other factors are applied, they should be identified in the written approval or disapproval of a proposed plan.

The agency should develop informational material for employers, employers' associations and labor organizations which set forth the requirements for an STC plan. By doing so, the agency will be able to review more expeditiously plans submitted for approval.

C. Approval or Rejection of the Plan

The period of time within which a plan should be approved or rejected should be specified so that the purposes of an STC plan may be realized promptly.

The reasons for rejection should be specified as a matter of good administrative practice and to inform the applicant-employer of the plan's defects so that they may be remedied in any future application. The rejection of a plan would be non-appealable in a formal sense because an appeal would be time consuming and because the defects causing the rejection can be readily remedied in a revised application. Such a non-appealable decision would not raise issues under Sections 303 (a) (1) or (3) of the Social Security Act because it does not involve the denial of benefits to a claimant. If a State prefers to provide for administrative appeal by the, employer-applicant, the provision should be modified to provide for appeal rights under the current administrative review provisions of its State law.

A minimum period is specified before another plan can be submitted to preclude a hasty second submission without adequate correction of the defects causing rejection of the earlier plan.

D. Effective Date and Duration of Plan

Both the employer and the agency need time to prepare for the beginning of the plan. Thus, the plan may take effect at a specified time in the future. If denied, an effective date coinciding with the date of application for approval may be used.

Short-time compensation plans are not intended to address long-term adverse economic conditions. Accordingly, a 12-month duration is provided in accordance with the guidelines of Section 194 (c) (3). The 12-month period may be modified to meet particular State needs.

E. Revocation of Approval

The Director should have the authority to revoke approval if the plan is not being carried out according to its terms and intent, especially if there are full-time layoffs in an affected unit contrary to the approved plan and the employer's certification. This subsection provides authorization for such revocation. To accommodate the guidelines in section 194(d)(5), it provides for review of the short-time compensation at least on an annual basis to assure that the plan continues to meet the prescribed requirements. The State agency should provide for, methods of monitoring operation by the employer of the approved plan.

F. Modification of an Approved Plan

The conditions under which a plan was initially submitted and approved may change. The changed conditions may warrant modification of the original approved plan. These provisions permit such revisions under specified conditions. It may, on the other hand, be considered more desirable to provide that modification of a plan in operation serves to terminate it and that the modification constitutes a new plan. If this approach is chosen, these provisions will need to be changed accordingly.

G. Eligibility for Short-Time Compensation

1. In order for an individual to qualify for STC benefits, he or she must be eligible for conventional unemployment compensation to the extent that the requirements therefor are not inconsistent with the provisions of the STC program. Among these requirements are the wage qualification requirement, disqualification provisions, waiting period and modified claim filing and reporting procedures.

The provisions in paragraph (a) of Section G.1. are necessary to establish that the individual is a member of an affected unit under a short-time compensation plan approved by the agency. It assures eligibility for benefits only for those weeks in which the plan is in effect.

The availability and actively seeking work requirements for a short-time compensation program are modified for consistency with the guidelines in Section 194(c)(4) of P.L. 97-35. Under those guidelines, employees will not be expected to meet the normal able and available requirements except for being available for their normal work week.

The provisions in paragraph (c) of Section G.1. will override the normal definition of unemployment which would not, otherwise, permit a short-time compensation employee to be deemed unemployed because of the amount of services performed and wages received.

H. Benefits

1. The STC weekly benefit amount is the percentage of the weekly unemployment compensation benefit amount by which the weekly hours are reduced by 10 percent or more. Example: Weekly benefit amount is \$100. Weekly hours reduced by 30 percent. Short time weekly benefit amount is \$30.00. This weekly benefit amount is payable for each week for which the claimant is otherwise eligible, regardless of his earnings, subject to specified exceptions. Example: Individual on STC works the reduced hours with the short-time employer. He is paid wages of \$150.00. He is nevertheless entitled to the short-time weekly benefit amount of \$30.00 regardless of the partial benefit provisions.
2. The maximum number of weeks for which a short-time employee can receive regular short time benefits during the 52-week life of the plan is 26 weeks. This may involve a number of such weeks extending over two consecutive benefit years. In States with variable durations, this

provision may need to be modified for the different durations. Note that the maximum is expressed as a number of weeks in a benefit year. Thus, any week for which an individual receives STC benefits, regardless of the amount, is counted toward the maximum.

3. This provision implements Section 194(c)(3) which limits short-time benefits to the maximum unemployment compensation amount for the benefit year.
4. Claims for short-time benefits may, in general, follow the procedure for regular benefits. Special procedures to reflect unusual situations should, however, be adopted for short-time compensation claims as they are for unemployment compensation claims in special situations. The State agency may suitably modify procedures recommended in Section 5470-5479, Part V, Employment Security Manual, or its own partial benefit claims procedures.
5. The disqualification provisions, claim filing requirements, etc., that apply to conventional unemployment compensation claimants may apply or may be modified to apply to STC claimants. The availability and actively seeking work requirements and the partial benefit provisions would not, however, apply except to the extent prescribed under the eligibility requirements for the STC program as specified herein.
6. ,
7. , and
8. These provisions attempt to deal with situations in which the STC employee may work for an employer other than the short-time employer or when he has no work with that employer. They attempt to retain the short-time concept with respect to work with other than the short-time employer and to retain the unemployment compensation character of benefits when the individual has no work with the short-time employer. If the individual is given time off from work by the employer for any portion of the work week not subject to reduced hours under the short-time plan, he will, nevertheless, not be deemed ineligible for short-time benefits solely for that reason; provided, that the individual remained available for and accepted all work made available to him by the short-time employer during hours reduced under the plan.

I. Charging Short-Time Benefits

STC benefits are benefits paid from the State unemployment fund under special conditions.

Accordingly, for consistency with the experience rating and reimbursement requirements under FUTA, they must be charged or attributed (in the case of reimbursers) in the same manner as conventional unemployment compensation.

Although the cost of STC benefits will normally be recovered by contributions required by States' experience rating systems, as a result of experience rating charges or reimbursements, this will not always be the case with regard to employers who pay contributions at the maximum rate assigned under a State's schedule of rates. If a State wants an employer participating in a short-time compensation program to be responsible for all of the STC attributable to the employer, the State law should include a provision imposing a surcharge to cover the amount of STC benefits paid in excess of the contributions collected at the maximum rate for unemployment compensation. Such a charge should be high enough to cover the costs of STC benefits without discouraging or preventing employers from participating in the program. No draft language has been provided for this purpose because of the multiplicity of experience rating provisions in State laws.

J. Extended Benefits

For purpose of the extended benefits program required under the provisions of the Federal-State Extended Unemployment Compensation Act of 1970, any STC received by an individual is considered to be "regular compensation" as the term is used under that Act. Consequently, an individual who has received all of the STC or combined short-time and unemployment compensation that are available in a

benefit year would be entitled to extended benefits if otherwise eligible. Such extended benefits shall be charged or noncharged in the same manner and to the same extent as extended benefits paid to an exhaustee of unemployment compensation and to the same extent as extended benefits are attributed or non-attributed to a reimbursing employer.

Text of Provisions on Short-Time Compensation in Section 194 of P.L. 97-248
Short-Time Compensation

Sec. 194.

(a) It is the purpose of this section to assist States which provide partial unemployment benefits to individuals whose workweeks are reduced pursuant to an employer plan under which such reductions are made in lieu of temporary layoffs.

(b)(1) The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall develop model legislative language which may be used by States in developing and enacting short-time compensation programs, and shall provide technical assistance to States to assist in developing, enacting, and implementing such short-time compensation program.

(b)(2) The Secretary shall conduct a study or studies for purposes of evaluating the operation, costs, effect on the State insured rate of unemployment, and other effects of State short-time compensation programs developed pursuant to this section.

(b)(3) This section shall be a three-year experimental provision, and the provisions of this section regarding guidelines shall terminate 3 years following the date of the enactment of this Act.

(b)(4) States are encouraged to experiment in carrying out the purpose and intent of this section. However to assure minimum uniformity, States are encouraged to consider requiring the provisions contained in subsections (c) and(d).

(c) For purposes of this section, the term "short-time compensation program" means a program under which

(1) individuals whose workweeks have been reduced pursuant to a qualified employer plan by at least 10 per centum will be eligible for unemployment compensation;

(2) the amount of unemployment compensation payable to any such individual shall be a pro rata portion of the unemployment compensation which would be payable to the individual if the individual were totally unemployed;

(3) eligible employees may be eligible for short-time compensation or regular unemployment compensation, as needed; except that no employee shall be eligible for more than the maximum entitlement during any benefit year to which he or she would have been entitled for total unemployment, and no employee shall be eligible for short-time compensation for more than twenty-six weeks in any twelve-month period; and

(4) eligible employees will not be expected to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but shall be available for their normal workweek.

(d) For purposes of subsection (c), the term "qualified employer plan" means a plan of an employer or of an employers' association which association is party to a collective bargaining agreement (hereinafter referred to as "employers' association") under which there is a reduction in the number of hours worked by employees rather than temporary layoffs if --

(1) the employer's or employers' association's short-time compensation plan is approved by the State

agency;

- (2) the employer or employers' association certifies to the State agency that the aggregate reduction in work hours pursuant to such plan is in lieu of temporary layoffs which would have affected at least 10 per centum of the employees in the unit or units to which the plan would apply and which would have resulted in an equivalent reduction of work hours;
- (3) during the previous four months the work force in the affected unit or units has not been reduced by temporary layoffs of more than 10 per centum;
- (4) the employer continues to provide health benefits, and retirement benefits under defined benefit pension plans (as defined in Section 3(35) of the Employee Retirement Income Security Act of 1974), to employees whose workweek is reduced under such plan as though their workweek had not been reduced; and
- (5) in the case of employees represented by an exclusive bargaining representative, that representative has consented to the plan.

The State agency shall review at least annually any qualified employer plan put into effect to assure that it continues to meet the requirements of this subsection and of any applicable State law.

- (e) Short-time compensation shall be charged in a manner consistent with the State law.
- (f) For purposes of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
- (g)(1) The Secretary shall conduct a study or studies of State short-time compensation programs consulting with employee and employer representatives in developing criteria and guidelines to measure the following factors:
 - (A) the impact of the program upon the unemployment trust fund, and a comparison with the estimated impact on the fund of layoffs which would have occurred but for the existence of the program;
 - (B) the extent to which the program has protected and preserved the jobs of workers, with special emphasis on newly hired employees, minorities, and women;
 - (C) the extent to which layoffs occur in the unit subsequent to initiation of the program and the impact of the program upon the entitlement to unemployment compensation of the employees;
 - (D) where feasible, the effect of varying methods of administration;
 - (E) the effect of short-time compensation on employers' State unemployment tax rates, including both users and nonusers of short-time compensation, on a State-by-State basis;
 - (F) the effect of various State laws and practices under those laws on the retirement and health benefits of employees who are on short-time compensation programs;
 - (G) a comparison of costs and benefits to employees, employers, and communities from use of short-time compensation and layoffs;
 - (I) such other factors as may be appropriate.
- (2) Not later than October 1, 1985, the Secretary shall submit to the Congress and to the President a final report on the implementation of this section. Such report shall contain an evaluation of short-time compensation programs and shall contain such recommendations as the Secretary deems advisable, including recommendations as to necessary changes in the statistical practices of the Department of Labor.

III. Benefits for Partial and Part-Total Unemployment

UI benefits are payable under all State laws to some claimants who work less than full-time hours (as defined in each State law): partial benefits are payable to a claimant whose hours of work at his regular job are reduced; part-total benefits are payable to a worker with part-time employment for some other employer, and whose hours of work are less than full-time.

Most State laws completely disregard small amounts of earnings in the compensable week, and thereafter reduce benefits on a dollar-for-dollar basis for each dollar of earnings up to the weekly benefit amount. If a claimant's earnings for the week are greater than the amount disregarded under State law, his combined income from benefits and wages will not be increased, no matter how many hours he works. Moreover, some States totally discontinue benefits when earnings for the week equal the weekly benefit amount--with the result that an additional dollar of earnings brings a complete termination of benefits, resulting in a sharp decrease in total income for the claimant.

Under work-sharing, partial benefits are payable when the claimant's hours of work at his regular job are reduced to a lesser extent than the wage loss for which State laws now pay benefits. It is recommended that State benefit formulas also provide a similar more liberal allowance for part-time work, to encourage claimants to seek out part-time jobs, which would not only increase the claimant's overall income, but which in many cases may lead to full-time employment.

An effective encouragement for claimants to seek part-time work would be to increase the amount of wages to be disregarded in a compensable week, expressed either as a fraction of earnings, or of the weekly benefit amount. There should be some maximum to the combination of earnings and benefits that a claimant could receive to ensure that the combined income would not exceed the claimant's regular weekly wage. Such a cap could be twice the weekly benefit amount, or some similar limitation.

Any formula developed should assure that reductions in benefit payments would be gradual, up to the maximum allowable combined income, to avoid total loss of benefits by only a small increase in earnings.

Technical assistance from the UIS is available for any State which desires to review the applicability of these recommendations to its own benefit formula.