

An Agenda for a Better New York

Modernizing New York's Unemployment Insurance System

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June 2000

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Executive Summary

On the last day of the 1998 Legislative Session, a significant Unemployment Insurance (UI) reform bill was passed by both houses of the legislature and later signed into law by Governor Pataki. This wide-ranging bill addressed many aspects of the UI program — employer tax rates, the taxable wage base, the maximum benefit amount, seasonal employers and individual eligibility. A more limited set of reforms, some of which corrected technical difficulties with the 1998 package, passed in January 2000.

Unfortunately, even with these recent reforms, New York's UI program, quite simply, has not kept pace with the changing nature of the state's labor force. First, while New York's *employed* labor force is covered in the highest proportion ever, New York's *unemployed* workers are covered in the smallest proportion ever. While this saves on payments out of the already precariously financed trust fund, it runs counter to the nature of the program. The large share of the unemployed that does not receive benefits raises important policy questions about the design of the program. Some of the 1998 reforms to the New York program actually exacerbated the problem — making it more difficult for some insured workers to qualify for benefits. New York's choice of the insured unemployment rate as a “trigger” for extended benefits saves the state money but leaves thousands of long-term unemployed workers without benefits and denies the state significant federal matching funds when the economy most needs fiscal stimulation.

Second, benefits that are paid out are often inadequate. Sporadic legislative initiatives to lift the ceiling on the maximum weekly benefit have trailed behind increases in the cost of living. The 1998 UI reform legislation increased the maximum weekly benefit from \$300 per week to \$365 per week. This was an important and needed change. But, even more importantly from a conceptual perspective, it also provided that in September 2000 the maximum weekly benefit would be increased again — but this time not to an amount set forth in the law, but to one-half the average weekly wage in the state. The new law provides for the application of this indexing approach only on this single occasion, but a clear precedent has been established on which New York should build. This paper explains why this indexing approach is so important and why it should become a permanent, regular feature of New York State's UI system. This paper also explores further reforms which would increase the adequacy of benefits for the lowest paid workers and workers with dependents.

Third, the health of New York's trust fund is poor: its balance as a percent of total wages is smaller than all but two states — Maine and Texas. Even the 1998 increase in maximum taxable earnings from \$7000 to \$8500 was not sufficient to restore a healthy reserve in the trust fund.

Fourth, there are a number of administrative concerns which should be addressed. The State Advisory Council was left without effective staff support. Increasingly the New York State Department of Labor is relying on automated telephone systems to administer the UI program. Neighborhood UI offices have been closed leaving hundreds of applicants without access to UI experts to resolve eligibility and benefit issues.

While federal law drives much of the UI program, New York State has a great deal of flexibility it could use to strengthen its UI system. This paper will describe briefly how the UI program works, examine

current issues facing New York's system in greater detail and make a series of recommendations to improve the system. While significant changes were enacted in 1998, many reforms that would improve the economic security of New York's labor force have yet to be accomplished. New York should:

- Modify the eligibility requirements that leave so many of the unemployed without benefits;
- Strengthen the adequacy of benefits;
- Index the taxable wage base; and
- Reactivate the State Advisory Council and carefully monitor the implementation of new UI rules and particularly the telephone claim system.

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Since 1938, New York's Unemployment Insurance (UI) system has provided temporary income support to unemployed workers. Through the years the system has expanded to cover more workers and benefits have been periodically increased to reflect increases in the cost of living. In 1998 a wide-ranging UI reform bill modified many aspects of the UI program --- employer tax rates, the taxable wage base, the maximum benefit amount, the treatment of seasonal employers and individual eligibility.¹ This year a more limited reform bill corrected some of the most egregious problems created by the 1998 reforms.²

Unfortunately, even with the 1998 reforms and the 2000 amendments to these reforms, New York's UI system has not kept pace with the changing nature of the state's labor force. This report looks at four broad areas of concern: eligibility, the adequacy of benefits, financing the trust fund and the administration of the UI system. For each area the report provides background information, a detailed discussion of current issues and finally a set of recommendations for public policy reform.

UI Fundamentals

The 1935 Social Security Act created the federal Unemployment Insurance program. The New York State Unemployment Insurance Law was enacted April 25, 1935 and began paying benefits on January 1, 1938. From the beginning, the UI program was structured as *insurance*, not *welfare*. Benefits are earned through employment and are distributed exclusive of need. However, the UI program is *social* insurance, not *private* insurance: it is compulsory, and benefits are prescribed by law, not contract.³ Certain aspects of the program's design are derived from social welfare considerations rather than actuarial ones, meaning that the purpose of the program is not profitability but to maximize social well-being by, for instance, moderating the impact of large-scale unemployment on aggregate national spending.

Eligibility

The primary eligibility requirement for a newly unemployed worker is to have become unemployed through no fault of one's own from a "covered" employer — one who is required to participate in the UI program. Covered employment is determined largely by federal law and has been broadened through the years. The UI program covers approximately 99% of all employment in New York.⁴

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Employees in “covered” employment are not guaranteed receipt of benefits by the mere fact that UI taxes have been paid on their behalf. Each claimant must meet additional individual qualifications before being granted benefits. These individual qualifications include a minimum earnings requirement, a minimum length of attachment to the labor force, and a demonstrable commitment to finding employment.

These individual qualifications, which are determined largely at the state level, were significantly altered by the 1998 reform legislation. The 1998 legislative reforms redefined the base period from the most recent 52 weeks to the first four of the five most recently completed quarters with an optional “alternative base period” consisting of the four most recently completed quarters.⁵ Effective April 1, 1999, to qualify for benefits claimants must have: (1) worked in at least two calendar quarters during the previous five quarters; (2) earned at least \$1600 in one of these quarters; and (3) during the four quarters of the base period, earned at least one and one-half times the amount earned in the quarter with highest earnings. As will be discussed later in this paper, these changes made it easier for some workers to qualify for benefits while making it more difficult for others.

The 2000 reforms provide a mechanism whereby most claimants who would have been eligible for benefits under pre-1998 law but are not eligible under the current law can receive benefits. The 2000 law also includes a specific provision that addresses the concerns of workers with income concentrated in a single quarter, e.g. those who earned at least \$1600 in the “high quarter” but did not earn one and one-half times the amount earned in the quarter with the highest earnings during the base year. Any worker who earned at least 33 times the maximum benefit (33 times \$365 or \$12,045 until the maximum benefit is increased in September 2000) during the base year — regardless of whether or not most of these earnings are concentrated in a single quarter— is now eligible for benefits.

A UI beneficiary continues to receive benefits for 26 weeks provided that the beneficiary remains capable of work and “ready, willing, and able” to work. Claimants are disqualified for further benefits if they refuse an “acceptable” employment offer.⁶ In 1998 the legislature added a provision which changed the definition of “acceptable” work for those who receive more than 13 weeks of unemployment benefits. According to the new statutory language, as amended in 2000, after the 13th week of unemployment, a claimant must now accept any employment for which he or she is qualified and which pays at least 80% of the claimant's high quarter wages and the wages prevailing for similar work in the locality.⁷

The New York UI statute, unlike the statutes of many other states, does not explicitly require that individuals be available for full-time work on all shifts. Nevertheless, the law has been interpreted by courts and administrative ruling to permit the suspension of benefits to any individual who places restrictions on her work search, no matter how reasonable, if there are no prospects of employment as a result of the restriction.⁸ Recipients of unemployment benefits are allowed to restrict their employment search to part-time work only if they had been working part time prior to losing their job.

During periods of high unemployment, the benefits are sometimes “extended” to provide up to 20 extra weeks of unemployment benefits to workers who cannot find new jobs. There have been two types of extended benefit programs in the United States. The permanent standby Extended Benefit (EB) program

enacted under the Federal-State Extended Unemployment Compensation Act of 1970 is supposed to activate automatically in a recession. Since 1992 each state has been allowed to choose which of two triggers to use to activate the Extended Benefits Program — the Insured Unemployment Rate (IUR) or the Total Unemployment Rate (TUR). Extended Benefits are activated if the three-month average TUR exceeds 6.5 percent and is 10 percent above the three-month average TUR in either of the two preceding years or if the IUR is 5% or more for 13 weeks and is at least 20% above the average state IUR of the corresponding 13-week period in either of the two previous years. New York uses the IUR trigger. The second type of extended benefits is the federal “emergency” program through which Congress has extended the duration of UI benefits on a temporary and discretionary basis during each of the last six recessions. Benefits under the EB program are financed half by state UI funds and half by the federal government while benefits under the emergency programs have historically been financed wholly by the federal government.

Benefits

The weekly benefit level is currently about one-half the average weekly wage (technically one twenty-fifth of high-quarter earnings) or \$365, whichever is less.⁹ The maximum benefit, which was increased by the legislature in September 1998 from \$300 to \$365, is important because many unemployed workers are eligible for the maximum. In the 1996 program year, for instance, 30% of beneficiaries were receiving the maximum weekly benefit of \$300.¹⁰ The 2000 reforms established an alternate method to calculate benefits — one half the average weekly wage for all weeks of employment in the base period up to the maximum for claimants with at least 20 weeks of employment, if the benefit calculated in this manner is at least \$5.00 greater than the benefit using the standard calculation formula.

Each week’s benefits are reduced by 25% for each day of work. A claimant working three days a week at a part-time job loses 75% of the weekly benefit. There is no benefit during weeks in which the claimant earns an amount greater than or equal to the maximum benefit, even if the earnings are for a single day of work.

Financing the Trust Fund

Regular benefits are paid out of New York State’s UI Trust Fund, which is financed by taxes levied on employers. Each covered employer has its own “account” within the General Account. With certain exceptions, benefits paid to claimants are charged against the account of the claimant’s former employer. At the end of the calendar year, payouts charged to each individual employer are subtracted from any carry-over balance plus taxes the employer paid in during the year. This net amount, expressed as a percent of the employer’s payroll, is used to determine the employer’s individual tax rate for the coming year.

The tax rates are applied against taxable wages which currently are defined in New York as only the first \$8500 in wages. The Unemployment Insurance tax levied on employers consists of three elements:

Normal tax rate - This is calculated individually for each employer using its account percentage — the balance in the employer’s UI trust fund account expressed as a

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percentage of the employer's payroll. The greater the employer's account percentage, the lower the employer's tax rate. The normal tax rates increase for all employers as the Size of Fund Index (General Fund balance as a percent of average annual payrolls) decreases. These normal tax rates range from 5.9% to 8.9% for employers whose trust fund account deficits are greater than 21% of their average payroll and from 0.0% to 0.9% for employers with positive trust fund account balances greater than or equal to 12% of their average payrolls. The 2000 reforms increased the tax rates for employers with trust fund deficits when the Size of Fund Index is less than 2.0 percent.¹¹ These tax revenues are credited to the employer's individual UI account.¹²

Subsidiary tax rate - When the total balance in the General Account is less than \$650 million, some employers must pay an additional subsidiary tax. Subsidiary tax revenues are deposited into the General Account and are therefore not credited to the employer's UI account. The subsidiary tax rate for each employer depends on its employer account percentage and the total balance in the General Account. The subsidiary tax rate ranges from 0.025% to 0.925% for employers with negative account balances depending on the total balance in the General Account. When the balance in the General Account falls below \$600 million employers with positive account balances which are less than 5.5% of their average payroll must pay the subsidiary tax which ranges from 0.25% to .625%. When the General Account balance falls below \$375 million all employers must pay the subsidiary tax but the tax rates vary by employer account percentages. The maximum subsidiary tax rates — assessed when the General Fund balance is negative — range from .525% to .925%.

Re-employment Service Fund tax rate - All employers pay an additional 0.075% tax into the Re-employment Service Fund which was established to fund additional automated systems and staff to provide enhanced reemployment services and claim management.

Administration

The UI system is administered by the New York State Department of Labor. Historically, the program was administered by local unemployment insurance offices located in communities throughout the state. In the early 1990's, the Department of Labor was restructured creating the Community Service Division to operate 81 Community Service Centers that provide "one-stop shopping" for employment-related needs. Community Service Centers offer all DOL programs in a single location – including unemployment insurance benefits administration and career-related assistance.

Until 1999, all applicants for UI insurance were required to file their initial UI claim at a local UI office or Community Service Center. After the initial visit, claimants had the option to either file weekly

recertification information by phone or by person. In 1999 the Department began to implement a new system called "Tel-Claim" that will require that all new unemployment insurance claims be filed using a telephone. This new system is gradually being introduced in different regions of the state.

The State Advisory Council on Employment and Unemployment consists of five members appointed by the governor. The UI statute requires the commissioner to consult the council on all matters of public policy and procedures involved in or connected with the administration of the UI program. The council is required to submit an annual report to the governor and the legislature.

Current Issues in NYS

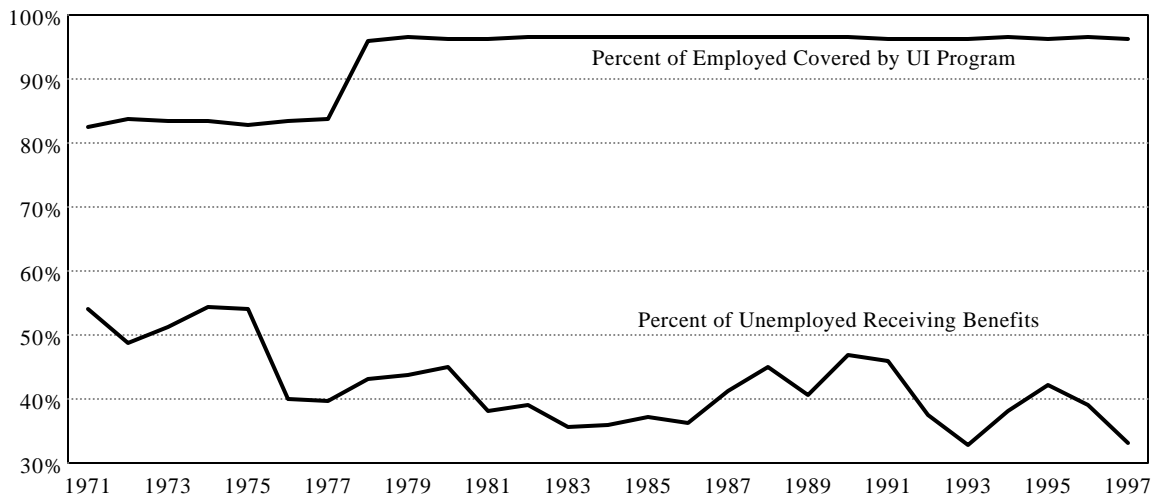
Eligibility

Inadequate Coverage of the Unemployed

As was mentioned earlier, the majority of unemployed New Yorkers do not receive any unemployment benefits. New York has echoed the national downward trend in reciprocity rates. In 1971 more than 50% of the unemployed in New York State received unemployment insurance benefits, while in 1997 less than 35% of the unemployed received benefits. Figure 3 shows the evolution of coverage and reciprocity rates in New York since 1971. While almost 100% of employed individuals are covered by the UI program, a very small percentage of unemployed individuals receive benefits.

The falling reciprocity rates have been attributed to a set of factors, including the surge in the labor force participation rate of women, the growing prevalence of part-time work, the increase in the average length of a spell of unemployment and the barriers which keep qualified unemployed workers from applying for benefits.

Figure 1: UI Coverage Rates Compared to UI Reciprocity Rates



Women, low-wage and part-time workers are the groups least likely to qualify for UI assistance when they lose their jobs.¹³ Since former welfare recipients tend to fit in all three groups (women, low-wage, part-time) they often do not receive UI benefits when they lose their jobs.¹⁴ In the past these workers turned to public assistance when they found themselves unemployed. With the new time limits on the receipt of cash public assistance, there is an urgent need to find ways to ensure that the unemployment insurance system provides benefits to a greater share of the unemployed, including these former welfare recipients.

Like the unemployment insurance programs in other states, New York's program was designed to meet the needs of male household heads with full-time, full-year employment and therefore workers who do not match this profile, particularly women with family responsibilities, are much less likely to receive benefits

when they are unemployed. There are three areas in which eligibility requirements tend to discriminate against female workers:

1. First, women are more likely than men to leave a job for compelling personal reasons. Since the New York law is vague about the definition of "good cause" for separation from employment, these workers may be unfairly denied benefits.
2. Second, the earnings requirement disproportionately hurts low-wage and part-time workers and women are disproportionately represented in these groups of workers.
3. Third, women may have a more difficult time maintaining eligibility for benefits because they are more likely to have family circumstances which restrict their job searches beyond what is allowed by the law.

The recipiency rate has also fallen because many workers who are eligible for unemployment benefits do not apply for benefits. The decline in the "take-up rate" — the percentage of those eligible for unemployment insurance who apply for benefits — has been attributed to the decline in unionization (labor unions educate their members about their rights to benefits and how the system works), lack of public understanding of the UI program rules and requirements, replacement of UI claims offices with telephone systems, and the failure to provide program services in languages other than English and Spanish. Finally, recipiency rates are driven down by the growing length of unemployment spells which increases the percentage of unemployed who do not receive benefits because they have exhausted their 26 weeks of benefits. In the fourth quarter of 1998 there were 57,391 exhaustions, leaving New York tied with Texas for the highest exhaustion rate (49%) in the nation.¹⁵

Voluntary Separation Statute Does Not Explicitly Recognize Reasons for Leaving Work that Disproportionately Impact Women

The New York unemployment insurance statute has a voluntary separation provision which, unlike most states, does not require that the reason for leaving the job be connected to work. Unfortunately, the statute has often been misinterpreted at the expense of workers who have left their jobs for good cause related to compelling individual circumstances. Unlike the statutes in some states (e.g. California, Arizona, Maine, Illinois and Washington), New York's law does not explicitly address specific circumstances (i.e., domestic responsibilities, health-related reasons, marital obligations, and domestic violence) and therefore is subject to unduly narrow and inconsistent interpretations. For example, while a recent New York Department of Labor study found that workers separated from employment due to domestic violence are generally found eligible for benefits based on a case-by-case "good cause" analysis, domestic violence victims may hide their victimization and therefore not disclose domestic violence as the reason they left their jobs and therefore may

not qualify for benefits.¹⁶ More explicit statutory language would clarify the “good cause” provision and encourage applicants to fully disclose their reasons for leaving a position.

Earnings Thresholds Prevent Low-wage Part-time Workers from Gaining Access to Benefits

The 1998 UI reforms increased the weekly earning requirements for low-wage workers by over 50%. As a result of these changes, certain part-time low-wage employees who would have been eligible for UI under the old law will not be eligible for UI benefits. New York already has a very low percent of unemployed workers receiving benefits. This reform will likely exacerbate the problem.

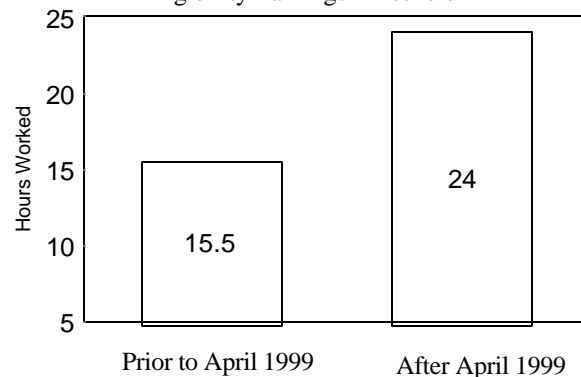
Until April 1999, someone would qualify for UI benefits if he or she had earned at least \$80 a week for 20 weeks during the preceding year: this was equivalent to 15.5 hours of work per week at the minimum wage. The law passed in June 1998 requires a worker to have earned at least \$1600 in at least one quarter during the previous year.¹⁷ This is roughly equivalent to 13 weeks of work with earnings of at least \$123 per week. An employee earning the federal minimum wage would have to average 24 hours of work per week that quarter to meet the new threshold. Figure Two shows the change in the work requirements for claimants earning the minimum wage.

Under the new law, an individual working 20 hours per week, earning the minimum wage of \$5.15 per hour, would not qualify for UI benefits, even if the person worked every single week of the preceding year. This individual’s highest quarter earnings would be \$1,339 — not sufficient to meet the minimum earning threshold of \$1,600 under the new law. Even if an individual earning the minimum wage works more than 24 hours a week and therefore earns more than \$1,600 in 13 weeks, if those 13 weeks of earnings do not fall in a single calendar quarter, the individual will fail the new eligibility test.

On the other hand, workers earning higher hourly wages with precisely the same employment history can easily qualify for UI benefits. For example, a worker making \$10.00 per hour would need to average only 12.3 hours of work per week to meet the earnings threshold. A worker earning \$16.00 an hour would need to average fewer than 8 hours of work per week to qualify for UI benefits.

The earnings threshold may also constitute a barrier for workers who have exercised their rights under the Family Medical Leave Act (FMLA). Under the current system, a worker who has taken unpaid

Figure 2: Weekly Hours of Work at the Minimum Wage Required to Meet the UI Eligibility Earnings Threshold



leave under the FMLA during the base period may be unable to meet the earnings threshold if that person later loses his/her job.

The earnings threshold is particularly problematic as welfare reform and time limits on public assistance benefits take effect. When former welfare recipients enter the labor force, many will be working at low-wage, part-time jobs and many will have weeks or months during the year without earnings. If these new workers lose their jobs, the earnings threshold will make it difficult for them to qualify for unemployment insurance. Unlike the past, these workers may no longer be able to rely on cash public assistance as a safety net in lieu of unemployment insurance.

Low-Income Workers with Family Responsibilities May Find it Difficult to Maintain Eligibility

Many parents may find it difficult to maintain eligibility for unemployment benefits. Since the statute is silent regarding limitations on availability for part-time work or work on specific shifts, some individuals may be disqualified for placing restrictions on their work search. Under current law, only claimants with a history of part-time employment are allowed to limit their job search to part-time positions.

Rules for Claimants who Find Part-time Work are Unfair to Low-Wage Workers

Every state provides for the payment of a partial weekly benefit to encourage workers to take some part-time work until they can regain regular employment. Most states have a flat earned income disregard — recipients are allowed to earn up to a certain level (either a specific dollar amount or a percentage of the weekly benefit amount) without sacrificing any UI benefits but beyond that level lose benefits on a dollar for dollar basis for each additional dollar earned. For example, Maryland disregards the first \$70 of weekly earnings; Florida disregards weekly earnings up to 8 times the federal minimum wage while North Dakota disregards earnings up to 60% of the weekly benefit amount. The disadvantage of this approach is that it creates a disincentive to pursue earnings beyond the established disregard. Other states attempt to avoid this problem by disregarding a percentage of earnings or combining the two approaches. For example, Connecticut disregards one-third of earnings while Minnesota disregards \$50 or 25% of wages, whichever is greater.¹⁸

New York has a unique system to handle "part-time" unemployment. Rather than looking at the amount of earnings from part-time work, New York takes into account the number of days worked. For each day a claimant works, the claimant loses one-fourth of a week's unemployment insurance benefit, regardless of the amount earned, as long as total weekly earnings do not exceed the maximum weekly benefit. This system is unfair to low-wage workers. A high-wage worker can earn up to \$364 for a day's work and lose only one-quarter of his/her weekly benefit. On the other hand, a low-wage worker earning as little as \$41.20 (eight hours of work at the minimum wage) will also lose one-quarter of his/her weekly benefit. As a result

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of this rule, the high-wage worker is allowed to keep 75% of his/her supplemental earnings while the low-wage worker keeps only 38% of his/her incremental earnings, despite the fact that the low-wage worker may have a greater need to supplement UI benefits to maintain a decent standard of living. In fact, if the low-wage worker works less than 5 hours at the minimum wage the reduction in his/her UI benefit will exceed the income from work, totally eliminating any economic incentive to work part-time while receiving benefits.

New York's Choice of Trigger for the Extended Benefit Program Makes it More Difficult to Access Federal Matching Funds for Long-term Unemployed

Each quarter thousands of New Yorkers exhaust their unemployment benefits. For example, in the fourth quarter of 1998, more than 57,000 workers in New York exhausted their eligibility for regular benefits. The Extended Benefit (EB) program pays benefits for up to 20 weeks beyond the 26-week duration of regular benefits. As mentioned before, each state is allowed to choose which of two triggers to use to activate the Extended Benefits Program --- the Insured Unemployment Rate (IUR) or the Total Unemployment Rate (TUR). New York uses the IUR trigger which activates the extended benefits program much later during a period of high unemployment than does the TUR.¹⁹ During the recession of the 1990s, the IUR trigger activated the EB program in 10 states for an average of 6.2 months. If the TUR trigger had been in effect, the EB program would have been activated in 43 states for an average of 18.4 months and would have provided \$10.9 billion more in benefits.²⁰ By not adopting the TUR trigger, and thereby dragging out the initiation of an extended benefits program, New York is able to minimize money spent from the state's UI fund while putting pressure on Congress to enact an Emergency Benefits program, which is funded entirely by the federal UI trust fund leaving thousands of unemployed New Yorkers without benefits.

Benefits

Benefit Levels are Inadequate

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There is a great deal of tension between two competing philosophies of setting the maximum weekly benefit: it must be generous enough to keep the former employee out of poverty while not being generous enough to act as a disincentive to employment. When the program began in 1938, the average weekly benefit was 40% of the average weekly wage. In 1998 New York's wage replacement ratio (average weekly UI benefit as a percent of average weekly wage in covered employment) was the second lowest in the nation at 27%.²¹ Figure 3 shows the historical relationship between the average weekly benefit and the average weekly wage for New York. Even if one compares the average weekly benefit to the average pre-unemployment wage of beneficiaries (rather than the average wage of all workers), New York's replacement ratio is extremely low. For 1998, the average replacement ratio (average weekly benefit divided by average weekly wage) was only 44.4. As shown in Table 1, only nine states in the nation had lower ratios than New York in 1997.²²

What makes New York's situation even worse in New York is that the maximum benefit level is *not* automatically set at 50% of the average weekly wage — it is set legislatively, which requires periodic

Figure 3: New York's Average Weekly benefit as a percent of the Average Weekly Wage: 1941-1997

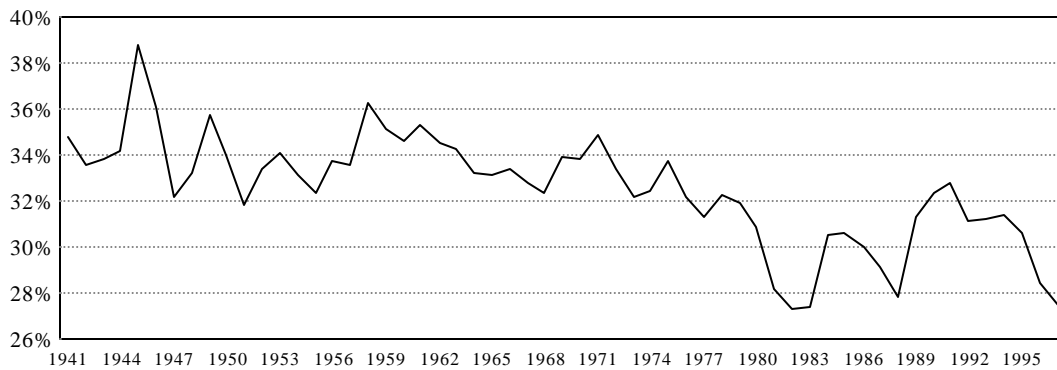
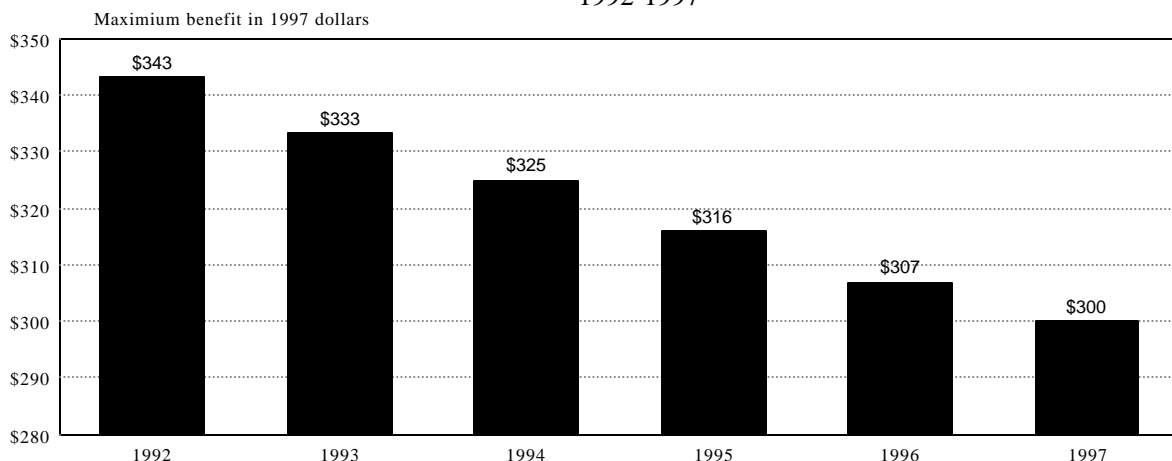


Table 1 Average Weekly Benefit as a Percent of Average Weekly Wage					
State	Average Weekly benefit	As a % of Average Weekly wage	State	Average Weekly benefit	As a % of Average Weekly wage
Hawaii	\$269	50.6%	Wisconsin	\$188	36.0%
Arkansas			Vermont	\$174	35.8%
Iowa	\$205	43.3%	South Carolina	\$169	35.4%
Kansas	\$198	44.9%	Indiana	\$186	35.2%
North Dakota	\$176	42.2%	Michigan	\$222	35.2%
Minnesota	\$242	41.8%	Nebraska	\$163	34.8%
Idaho	\$187	41.1%	Texas	\$196	34.6%
Rhode Island	\$224	41.1%	Illinois	\$217	34.4%
Washington	\$240	41.0%	New Mexico	\$158	34.3%
Wyoming	\$182	41.0%	Maryland	\$196	33.2%
Montana	\$166	40.4%	Mississippi	\$142	33.0%
Utah	\$193	39.6%	Virginia	\$179	32.5%
Pennsylvania	\$228	39.5%	Maine	\$152	32.2%
North Carolina	\$198	38.9%	Tennessee	\$163	31.7%
Oklahoma	\$177	38.7%	Delaware	\$194	31.4%
West Virginia	\$180	38.7%	New Hampshire	\$165	29.5%
Massachusetts	\$263	38.4%	Alabama	\$145	29.4%
South Dakota	\$156	38.2%	Georgia	\$162	29.2%
Florida	\$192	38.1%	Missouri	\$154	29.2%
Ohio	\$208	37.5%	Connecticut	\$211	28.4%
Colorado	\$213	37.2%	Alaska	\$176	28.2%

adjustments. Relying on legislation to keep the maximum benefit level in sync with the economy is an extremely inefficient method of preserving the dual purposes of the UI system: to prevent poverty on an individual level and to soften economic blows to society at large by slowing the spiral of unemployment and lower consumer spending. Figure 4 shows the deterioration of the real value of the maximum benefit between 1992 and 1997. Expressed in constant 1997 dollars, the purchasing power of the maximum weekly benefit fell from \$343 to \$300 in the five years between legislative adjustments. This deterioration constitutes a decline of 12.5% in the real purchasing power of the maximum benefit over this time period.

In September 1998 the maximum weekly benefit increased from \$300 to \$365, and will rise again in September 2000 to one-half the average weekly

Figure 4: Real Value of the Maximum Weekly UI Benefit, 1992-1997



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wage (estimated to be \$400). Unfortunately, in the absence of legislatively mandated indexing, the value of the maximum benefit and, as a consequence, the value of the average benefit will once again likely diminish with respect to the cost of living. Most other states have addressed this issue by indexing the maximum benefit to average wages. Thirty-five states index maximum payments to average wage levels to insure that benefit levels keep up with inflation.²³

Since benefits are tied to average weekly wages, benefits for the lowest wage earners do not provide sufficient income to keep a family out of poverty. An individual working 35 hours per week at the federal minimum wage of \$5.15 per hour who loses her job would receive a weekly benefit of \$90, which is less than half the federal poverty level for a two-person family and only 36% of the federal poverty level for a three-person family. Although families can supplement low unemployment insurance benefits with public assistance (if benefits are below the public assistance standard of need), this flies in the face of much touted state policy goals to eliminate dependence on welfare. Like their higher-wage counterparts, low-income workers should be able to turn to the unemployment insurance system for temporary support when they lose their jobs rather than being forced back on to welfare rolls.

Even with the 2000 Reforms, There is No Guarantee that an Individual Eligible for Benefits under the Old Law Would Be Eligible for Benefits under the New Law.

The 1998 legislation radically transformed the administration of New York's UI system by moving the state from a "wage-request" system to a "wage-reporting" system. Under the old "wage-request" system, when a worker applied for benefits the local UI office contacted the former employer to "request" the employee's wage history. With the new system, the UI office is able to use the administrative wage reports filed by employers each quarter to the Department of Taxation and Finance to ascertain the employment and earnings history of each applicant.

In anticipation of the transition from the "wage-request" to "wage-reporting" system, in 1995 the legislature passed Section 502. This section set forward the state's intention to move to a "wage-reporting" system, specifying the numerous administrative advantages of a wage reporting system. This section also included the following provision:

"Accordingly, for the above reasons, section one hundred seventy-one-a of the tax law is amended to provide the department with complete access to the wage reporting files maintained by the department of taxation and finance as the first stage in the transition to an unemployment insurance system based upon such wage reporting files, with the express requirement that the department shall design and operate such a system

so that an individual eligible for benefits under the current law would be eligible for the same amount of benefits under a new system based upon the wage reporting files. [Emphasis added].

While the 1998 reform legislation ignored this provision, the 2000 reform of the UI law addressed some of these concerns. Claimants who have worked for at least 20 weeks are able to petition for a higher benefit calculated at one half their average weekly wage for all weeks for which they provide satisfactory proof of employment (paycheck stubs, payroll envelopes or canceled checks), if this would result in a benefit that is at least \$5.00 higher than the benefit calculated using the standard rules. (The maximum benefit still applies to this alternative calculation.)

However, there are several scenarios in which workers eligible for benefits under the old system will not receive benefits under the new system. First, workers who work twenty weeks and earn \$1,600 in the base period but who did not earn \$1,600 in a single calendar quarter are not eligible for benefits. These would be low-wage or part-time workers with jobs that do not provide employment every week. The second group of disadvantaged workers are recent entrants to the labor force who cannot meet the eligibility requirements without counting earnings and work in the quarter in which they are filing for benefits. These workers may be able to qualify for benefits by waiting a quarter (at which time the “filing quarter” will become a part of the base period) but are probably the claimants least able to weather a quarter without benefits.

Financing the Trust Fund

The Trust Fund Cannot Sustain Another Recession

The trust fund is ill-prepared to sustain another recession because the growth in the tax base has not kept pace with the growth in benefits. In other words, the revenues into the fund do not match the expenditures out. The tax base was increased from \$7,000 to \$8,500 in 1998 but this was

Table 2
Trust Fund Balance: Number of Months of Benefits Covered: Fourth Quarter 1998

State	Months of Benefits in Current Trust Fund	State	Months of Benefits in Current Trust Fund
NEW YORK	7.4	Montana	34.4
Texas	10.0	Oregon	35.5
North	13.6	Ohio	36.6
Arkansas	14.4	North Carolina	38.3
West	17.2	Florida	38.4
Hawaii	17.5	South Dakota	42.6
Pennsylvania	20.4	Wisconsin	42.6
Rhode Island	20.6	Colorado	51.0
Illinois	20.9	Kansas	51.3
California	21.0	South Carolina	52.7
Missouri	21.9	Nebraska	54.0
Minnesota	22.1	Iowa	57.3
Alaska	22.9	Delaware	57.8
Maine	25.0	Indiana	64.7
Washington	25.9	Mississippi	66.8
Alabama	26.3	Virginia	67.7
Nevada	28.5	New Mexico	68.0
New Jersey	28.5	Vermont	68.1
Massachusetts	28.6	Oklahoma	74.8
Maryland	29.3	Arizona	78.1
Michigan	29.6	Wyoming	82.4
Connecticut	30.9	Georgia	90.5

the first increase in 15 years. Taxable payroll was approximately 90% of total payroll when the UI system was established in New York in 1935. In 1996, it was 21%.

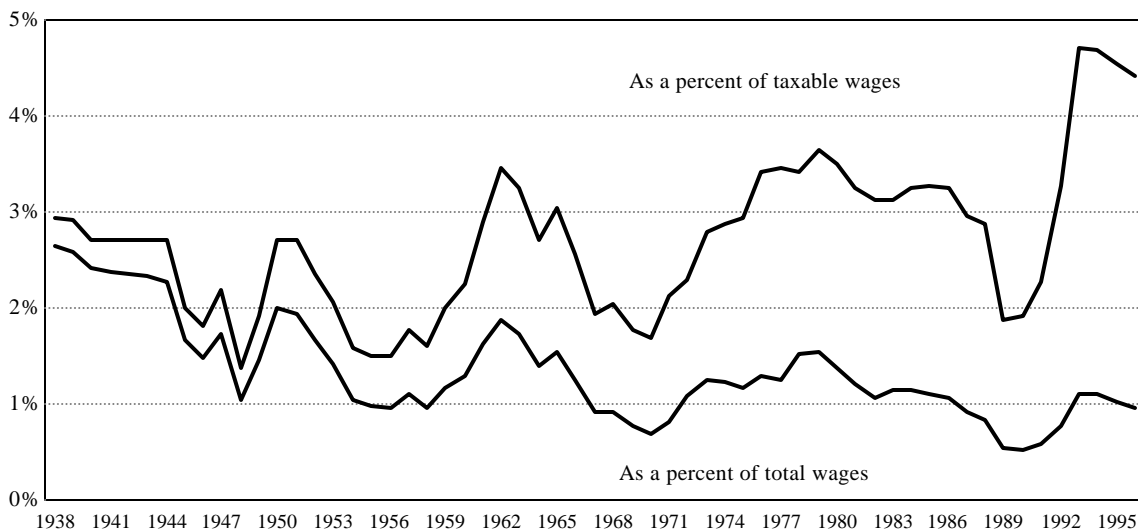
The impact of the inadequate tax base is clear when looking at the size of the reserves. New York's Trust Fund reserves do not score well on any of the numerous indicators commonly used to measure the health of a UI trust fund and the financial condition of New York's trust fund is much more precarious than the financial condition of trust funds in other states. At the end of 1998 New York's UI Trust Fund Balance was only 0.38% of total wages, a lower fund balance to total wage ratio than any other state in the system except Texas. Similarly, New York's UI Trust Fund Balance represented only 7.4 months of average statewide benefit payouts, fewer months than any other state and far below the national average of 29.4 months.²⁴

The Minimal Tax Base Makes Tax Rates Seem High and Disadvantages Low Wage Workers

Average tax rates appear to be high only because the taxable wage base is so small. The average employer tax rate as a percent of *taxable* wages in New York for 1996 was 4.41% but the average employer tax rate as a percent of *total* wages was a mere 0.94%. Figure 5 illustrates the evolution of these measures since 1938.

New York's reliance on relatively high tax rates on a very low tax base (even after the 1998 reforms) overtaxes employers with predominantly low-wage and/or part-time employees. For example, the employer

Figure 5: Average New York UI Tax Rates: Total UI Taxes as a Percent of Total Wages Compared to Total UI Taxes as a Percent of Taxable Wages



with a part-time worker who earns \$8500 per year pays exactly the same amount of tax as the employer (with similar *experience* characteristics) with a year-round worker earning \$100,000. To the extent that these taxes are passed along workers in the form of lower wages, the minimal tax base hurts this segment of the labor market.²⁵ Many other states have a much higher taxable wage base. Ten states (Arkansas, Minnesota, Montana, Nebraska, New Jersey, Hawaii, Idaho, Oregon, Utah, Washington) have taxable wage bases which are more than double New York's \$8,500.

Administration

Closure of UI Offices and the Transition to the New Telephone-based Application System Have Created Significant Administrative Problems

The establishment of multi-purpose Community Service Centers and the introduction of the "Tel-Claim" system have resulted in the closure of many local unemployment insurance offices across the state. While the staff of the Community Service Centers are supposed to be trained to enable them to provide a full range of services, it is not clear whether they have the expertise to assist claimants given the complexities of the UI system. In addition, there are anecdotal reports of widespread problems with the transition to the new eligibility and benefit system, particularly with the accuracy of the historical earnings data extracted from the wage reporting system. Another problem is that the new telephone application system does not include adequate provisions for service to claimants who do not speak either English or Spanish. Unfortunately, the Department of Labor moved to the telephone application system at precisely the same time it was implementing the complex 1998 reforms, thereby exacerbating the administrative problems.

The State Advisory Council Has Not Been Meeting Regularly and Has Submitted Only One Annual Report since 1994

The state advisory council on employment and unemployment historically met monthly to advise the Commissioner and staff on policy and administration of the Unemployment Insurance system in New York State. The statute requires the commissioner to consult the council on all matters of major policies and procedures yet despite the fundamental changes made in the UI system as a result of the 1998 legislative reforms, the advisory council has not met since March 1998. Furthermore, the advisory council has produced only a single annual report since 1994, despite the explicit statutory obligation to "report each year on or before February first to the governor and to the legislature."²⁶ The Advisory Council is the only formal mechanism through which representatives of employers and employees can provide input on the UI program and its administration.

Recommendations

5. Broaden Coverage

The current eligibility requirements exclude many workers who lose their jobs through no fault of their own. Particularly in light of welfare reform, the UI system must be strengthened so that it serves as a safety net for all workers.²⁷ Tightening eligibility requirements such as was done by the 1998 legislation will only serve to exclude more workers.

! All workers employed at least half time at the minimum wage for any 26 weeks in a year should be eligible for unemployment benefits. This can most easily be achieved by eliminating the earnings requirement and replacing it with a requirement based on hours worked. For the New York worker with average weekly wages (\$541.55), the current eligibility test requires about 120 hours of work in the high-earning quarter and an additional 60 hours of work in the other three quarters of the base period. A reasonable eligibility standard might be 130 hours of work in the quarter with the most work effort (an average of 10 hours per week) and at least 195 hours of work in the four quarters of the base year. This would correct the inequity of the current system which favors workers with higher wages.²⁸

! Workers taking unpaid family leave should have their base period extended. New York should suspend the base period during the time that FMLA leave is used so that an individual is not penalized, in terms of the required labor force attachment, for taking FMLA leave.²⁹

! New York's voluntary separation provisions should be strengthened by adding explicit language to the statute to clarify that no disqualification will result if the separation is caused by *individual circumstances of a necessitous and compelling nature* and list domestic responsibilities, health-related reasons, marital obligations, domestic violence, sexual harassment, and pregnancy discrimination as legitimate causes to leave a job.³⁰ Explicit language would guarantee that individuals who leave their job for these reasons will be eligible for benefits. The statute should also be amended to recognize that a worker has good cause to terminate employment if an employer refuses to grant a worker leave she is entitled to under the Family and Medical Leave Act.³¹

! In order to ensure that workers with family responsibilities are able to maintain their eligibility for benefits, the statute should be revised to provide that workers have the right to refuse employment that is inconsistent with family responsibilities and eliminate the requirement that a worker have a history of part-time work to limit a job search to part-time employment. Language should also be added that explicitly permits claimants to limit the shifts during which she is willing to accept work if she has a good cause for such a restriction.³²

! New York should change the Extended Benefits trigger to the Total Unemployment Rate (TUR) which would make it easier for New York workers to become eligible for benefits beyond the initial 26-week period and bring significant federal resources into the state. As stated before, the cost in the early 1990s of *not* moving to the “total unemployment rate” trigger was \$10.9 billion of earned benefits.

Even without changes in the law, a great deal can and should be done to expand access to the UI system by increasing the percentage of unemployed workers eligible for benefits who apply for benefits. Some of these reforms include: enhanced public education campaigns, maintenance of community-based UI offices, and the provision of program services in languages other than English and Spanish.

Finally, for those who are initially denied UI benefits, access to representation has had a dramatic effect on the outcome of a UI claim. While there are excellent models in New York to provide representation to appeal a denied UI claim, these programs are able to handle a small fraction of the need. Thus, resources should be made available to provide representation of UI claimants as part of a larger outreach and education effort.

2. Strengthen the adequacy of benefits.

! New York State should build on the precedent set by the 1998 UI reform legislation and index the maximum benefit level on a continuing and regular basis. Legislative increases to the maximum weekly benefit clearly are not sufficiently frequent to prevent erosion of the benefit level due to inflation. It is obviously difficult to separate the poverty-avoiding effects of UI benefits from the opposing work-disincentive effects, but even the simple goal of setting the maximum at equal to one-half the average weekly wage is not met. The cost of relying on the Legislature to adjust the benefit ceiling to reflect changes in the cost of living is high. Tying the benefit ceiling automatically to the average weekly wage, as is done in 35 other states, would be much more effective and efficient.

! For workers earning the minimum wage, the weekly unemployment insurance benefit falls well below the poverty threshold. Consideration should be given to setting the benefit level at more than 50% of the average weekly wage for those with very low wages who have worked full-time at the minimum wage for six months or more. The rationale for using a higher percentage for setting benefits for these workers would be that lower-paid workers spend a greater proportion of their incomes for necessities than do others and therefore need more than half their average weekly wage to survive a spell of unemployment. This is done in Arkansas, California, Massachusetts, Nebraska, New Hampshire, Indiana, and Pennsylvania.

New York's 1998 legislation took the first step towards implementing a multi-tiered benefit formula. Beginning in September 2000, the weekly benefit will be computed at the rate of 1/26 of high quarter wages if wages are greater than \$3,575 and 1/25 of high quarter wages if wages are less than or equal to \$3,575.

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Providing a more adequate level of benefits for low-wage workers could be accomplished by widening the range of benefit/wage ratios. Assembly Bill 8608 (introduced in 1998) would have established a benefit rate of 70% of average weekly wages for workers with average weekly wages less than \$200; 60% of average weekly wages for workers with average weekly wages between \$200 and \$400; 55% for workers with average weekly wages between \$400 and \$600, and 50% for workers with average weekly wages above \$600. Expressed as fractions of quarterly wages, these benefit formulas would range from 1/18 of high-quarter wages for workers with high-quarter wages less than \$2,600 to 1/26 of high-quarter wages for workers with high-quarter wages above \$7800.

! The level of unemployment benefits is particularly inadequate for low income workers with families. In order to supplement the benefits of low income workers with dependents, New York should adopt a system of dependents' allowances. The advantage of using dependents' allowances to supplement weekly benefits is that this method targets workers with dependent families for enhanced benefits. By addressing the needs of unemployed parents with children, dependents' allowances can reduce the number of families forced to turn to welfare when they lose their jobs.³³

Twelve states, including half of the 10 largest states, pay higher weekly UI benefits to claimants with dependents. The social security system also pays more to beneficiaries with dependents. The states vary in the definition of compensable dependent and in the amount of the allowances granted. All states include children, usually under 18, and most include a nonworking spouse. In seven states the allowance for each dependent is a fixed amount. For example, Massachusetts supplements weekly benefits with \$25 per week for each dependent child. Two states make the allowance a percentage of the individual's weekly benefit amount. A few states base the allowance not only on the number of dependents but also on the amount of the claimant's earnings.³⁴

Most states that provide dependents' allowances pay for them out of the general UI trust fund rather than charging individual employers. As such, no one employer pays directly for extra benefits to one of his or her employees' children. Spreading the costs of dependent allowances removes the incentive for employers to discriminate against workers with dependents.³⁵

! New York should also address the work disincentives and inequities inherent in the current system of providing partial benefits for those who find part-time employment. New York should establish a fixed earnings disregard — \$100 per week — for all beneficiaries. Benefits would then be reduced by 75 cents for each dollar of additional earnings beyond the initial \$100 earned. Use of an earnings disregard will correct the current system's inequitable treatment of low-wage workers and provide important incentives to recipients to supplement their UI benefits with earnings. This is much more in line with the post-welfare reform emphasis on self-sufficiency and personal responsibility.

3. Index the Taxable Wage Base

The reform that could by itself make dramatic improvements to the progressivity of the UI tax as well as the health of the trust fund is the indexing of the taxable wage base. New York's taxable wage base — although just increased from \$7000 to \$8500 — is extremely small. The effect of this is compounding: the trust fund will be less prepared to meet increased demand for UI benefits during the next economic downturn and may have to rely on federal loans to meet its obligations (as it did in 1975), and it will then be playing catch-up during the next recovery to repay its debt. The Social Security tax base in 1972 was \$3000, as was the federal UI tax base. The Social Security tax base was then adjusted in 1972 to automatically increase with inflation: it is \$72,600 for 1999 while the UI tax base is only \$8500.³⁶

The failure to index the taxable wage base has made the unemployment insurance tax extremely regressive. Tax rates, as a percentage of total wages, are much higher for employers with predominantly low-wage workers, regardless of their experience rating. Given the imperatives of welfare reform and the need to generate thousands of entry-level jobs for former welfare recipients, efforts should be made to spread the burden of unemployment insurance premiums more evenly across the state's employers.

4. Administration: Reactivate the State Advisory Council and carefully monitor the implementation of new UI rules and claim system.

The State Advisory Council on Employment and Unemployment should immediately resume its monthly meetings. Adequate staff and resources should be assigned to the council to enable it to carefully assess the impact of the 1998 legislative reforms and consider the recommendations suggested in this paper. The findings from these deliberations should be included in a timely annual report to the legislature and the governor.

The Legislature should carefully monitor the service provided to UI recipients by the new "tele-claim" system and if inadequacies are found, it should require the Department of Labor to place at least one UI expert in each Community Service Center to assist any applicant or recipient who is having problems using the telephone system. Before closing any local community UI office, the Department should ensure that an existing Community Service Center will be able to provide an equivalent level of service to local workers. Until the transition to the new quarterly wage reporting system is complete, the Department of Labor should delay further movement to the mandatory telephone application system.

Conclusions

In 1998 the legislature began the process of modernizing the New York State unemployment insurance system. While the 1998 bill addressed some important aspects of the system and the 2000 legislation made some technical corrections, more significant changes are necessary for this critical state income security program to conform to the changes in the labor force and the public assistance system. Adoption of the

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recommendations included in this paper would be important first steps in this modernization process and would advance both equity and efficiency principles.

Endnotes

¹. Senate Bill S.7817 passed June 19, 1998.

². Assembly Bill A9529/ Senate Bill S6539, enacted February 15, 2000.

³. Saul J. Blaustein, Christopher J. O'Leary and Stephen A. Wandner, "Policy Issues" in Christopher J. O'Leary and Stephen A. Wandner, *Unemployment Insurance in the United States: Analysis of Policy Issues* (W. E. Upjohn Institute for Employment Research: 1997), p. 12.

⁴. Four exceptions remain to the universe of employers required to participate in the UI program: "small" farms; self-employed workers; employers paying less than \$1000 a calendar quarter for household workers, and religious organizations. *Report on the Operations of the New York State Department of Labor*, vol. 58, no. 4. The small farm exception leaves many migrant and seasonal farmworkers without coverage.

⁵. The base period was redefined in order to conform with the existing Tax Department wage reporting system. Absent the provision for the alternate base period, this new definition would have significantly disadvantaged new entrants to the labor force whose earnings and work experience are concentrated in the final quarter before job loss.

⁶. "Acceptable" employment is further defined to exclude: (1) Employment that is an unreasonable distance from claimant's residence; (2) Employment that requires the claimant to join a company union or interferes with joining or retaining membership in any labor organization; (3) Employment at an establishment currently experiencing an industry controversy, such as a strike or lockout; (4) Employment offering wages substantially less favorable than prevailing wages.

⁷. The 1998 law defined this as 80% of high quarter wages or the prevailing wage, *whichever is less*. This provision was, however, inconsistent with the federal unemployment insurance rules which do not allow benefit reductions if a claimant refuses a job which pays less than the local prevailing wage for that type of employment. Section 3304(a)(5)(B) of the Federal Unemployment Tax Act requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that unemployment compensation not be denied to any otherwise eligible individual for refusing to accept new work 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. The New York State Department of Labor recognized this inconsistency and implemented the provision as requiring that the claimant accept any position paying at least 80% of high quarter earnings AND the prevailing wage and amended the law in January 2000 to conform to the federal rules.

⁸. National Employment Law Project, " *Women, Low-Wage Workers and The Unemployment Compensation System: State Legislative Models for Change. An Analysis of New York State Law,*" (January 1996).

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⁹ Beginning in September 2000 benefits will be computed at the rate of one twenty-sixth of high quarter wages if the wages are greater than \$3,575 and one twenty-fifth of high quarter wages if they are \$3,575 or less giving a slightly higher benefit to the lowest income recipients.

¹⁰ *A Profile of Unemployment Insurance Program Beneficiaries in New York State: Benefit Year Ending in 1996* (Department of Labor, December 1997).

¹¹ The tax rates were increased by .4% for employers with negative balances greater than or equal to 4 percent of their average payrolls. Tax rates for employers with negative account balances of less than 4.0% were increased by only .2%

¹² One of the goals of the 1998 reforms was to shift the tax burden toward unstable employers, or those employers who account for the majority of layoffs. In order to achieve this goal, the normal tax rate table was recalibrated to increase the highest rates while decreasing the lowest rates. Every employer with a positive employer account balance has a lower overall tax rate under the new reform. The table was also expanded at both ends: in 1995, about 60% of employers were at the ends of the employer account percentage distribution: "negative account percentage less than -12%" and "positive account percentage over 10.5%." The bottom end was lowered to -21% and the top end was raised to 12%. Adding this greater degree of specificity more closely relates the tax rate an employer faces to its experience with and use of the UI system.

¹³ Another group left out of the current system are contingent and/or contract workers. For example, women employed as "temps" may be denied benefits if they refuse to continue with the temporary agency even if the positions offered by the agency are not suitable. For an excellent analysis of these issues from a national perspective, see National Employment Law Project, *Mending the Unemployment Compensation Safety Net for Contingent Workers* (October 1997).

¹⁴ Young-Hee Yoon and Roberta Spalter-Roth, *Unemployment Insurance: Barriers to Access for Women and Part-time Workers* (National Commission for Employment Policy, 1995) and Alan M. Hershey and LaDonna A. Pavetti, "Turning Job Finders into Job Keepers," *The Future of Children: Welfare to Work*, Vol. 7, No. 1 (The Center for the Future of Children, Spring 1997) cited in *Making The Unemployment System Work for California's Low Wage Workers* (California Budget Project, August 1997).

¹⁵ The exhaustion rate is computed by dividing the average monthly exhaustions by the average monthly payments. In order to allow for the normal flow of claimants through the program, the numerator lags the denominator by 26 weeks, e.g. the exhaustion rate for the fourth quarter of 1998 is computed by dividing the average monthly exhaustions for the 12 months ending December 1998, by the average monthly first payments for the twelve months ending June 1998.

¹⁶ New York State Department of Labor, *Report to the Legislature on Employees Separation from Employment Due to Domestic Violence* (1996).

¹⁷ The base period for determining eligibility is the first four quarters of the previous five calendar quarters but if a worker fails to qualify for benefits using this base period, he or she may use the alternative base period which consists of the previous four calendar quarters.

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- ¹⁸ U.S. Department of Labor, Employment and Training Administration, “Significant Provisions of State Unemployment Insurance Laws” (January 3, 1999).
- ¹⁹ Extended Benefits are activated if the three-month average total unemployment rate (TUR) exceeds 6.5 percent and is 10 percent above the three-month average TUR in either of the two preceding years or if the insured unemployed rate is 5%.
- ²⁰ Stephen A. Woodbury and Murray A. Rubin, “The Duration of Benefits” in O’Leary and Wandner (1997), p. 260.
- ²¹ Robert Tannenwald, Christopher J. O’Leary and Wei-Jang Huang, “New Ways of Evaluating State Unemployment Insurance,” *New England Economic Review*, Federal Reserve Bank of Boston, March/April 1999, p. 19.
- ²² Data prepared by USDOL UI Division of Performance Review on June 16, 1999 from the Benefit Accuracy Measurement database.
- ²³ Advisory Council on Unemployment Compensation, *Defining Federal and State Roles in Unemployment Insurance* (1996) as cited in *Making the Unemployment Insurance System Work for California’s Low Wage Workers*.
- ²⁴ “Financial Information by State for CYQ: 1998.4,” *UI Data Summary*, <http://www.itsc.state.md.us/data_stats/datasum98/sum.htm#lf> (April 16,1999).
- ²⁵ Laurie J. Bassi and Daniel P. McMurrer, “Coverage and Reciprocity” in O’Leary and Wandner, p. 83. Bassi and McMurrer refer to a 1994 paper by Patricia Anderson and Bruce Meyer, “The Incidence of the Unemployment Insurance Payroll Tax” prepared for the Advisory Council on Unemployment Compensation for evidence on the extent to which employer UI taxes are shifted to workers.
- ²⁶ Section 533(2) of the New York Labor Law.
- ²⁷ In light of the legislature’s expectations that DOL employees will improve their job placements for UI recipients, the Legislature should ensure that state employees’ placements are evaluated in a manner that takes into account any broader UI coverage they adopt.
- ²⁸ Washington State currently has an hours of work rather than an earnings threshold for eligibility. A 1995 report by the Advisory Council on Unemployment Compensation recommended that an individual who works at least 800 hours per year (or approximately 15.5 hours per week for a full-year worker) should be eligible for benefits. Advisory Council on Unemployment Compensation, *Unemployment Insurance in the U.S.: Benefits, Financing, Coverage* (1995).
- ²⁹ *Women, Low-Wage Workers and the Unemployment Compensation System: State Legislative Models for Change* (National Employment Law Project, October 1997) p. 23.
- ³⁰ These recommendations are taken from the National Employment Law Project's excellent 1996 report, "*Women, Low-wage Workers and The Unemployment System: State Legislative Models for Change (An Analysis of New York State Law)* .

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³¹ Benefits paid out under these provisions could be paid out of the general fund rather than charged to a specific employer. The purpose of adopting a noncharge provision is often to reduce employer opposition to a particular kind of benefit. Differences among the state in the use of noncharged benefits are substantial, ranging in 1993 from 0.8 percent in Delaware to 32 percent in Washington. New York had the second lowest percentage of noncharged benefits (1.1 percent). Advisory Commission on Unemployment Compensation, p. 78.

³² Another issue affecting the ability of claimants to maintain eligibility for benefits is the definition of "acceptable" employment. The 1998 legislation changed New York's definition of "acceptable" employment for those unemployed more than 13 weeks in a way which is inconsistent with the federal statute. The new language requires claimants after the 13th week of unemployment to accept any employment for which he or she is qualified which pays at least 80% of the claimant's high-quarter wages *or* the wages prevailing for similar work in the locality, *whichever is less*. The New York State Department of Labor has recognized this inconsistency and is only requiring claimants to accept employment which meets *both* criteria, *i.e.* paying at least 80% of high quarter wages *and* prevailing wage rates, therefore keeping New York's program consistent with the federal requirement that no beneficiary be forced to accept employment that pays less than the prevailing wage for that job.

³³ A recent California study estimated that for every \$4.00 in benefits provided through a dependents' allowance the state would save \$1.00 in public assistance benefits. California Budget Project, "Making the Unemployment Insurance System Work for California's Low Wage Workers" (August 1997) p. 15.

³⁴ Christopher J. O'Leary and Murray A. Rubin, "Adequacy of the Weekly Benefit Amount," in O'Leary and Wandner (1997) pp. 199-200.

³⁵ As mentioned earlier, New York has a very low rate of non-charged benefits for there is room to finance dependents' allowances.

³⁶ Phillip B. Levin, "Financing Benefit Payments" in O'Leary and Wandner (1997) p. 330.

Appendix: Summary of Key Provisions of 1998 Comprehensive UI Legislation

Reform of Eligibility Requirements

- ***Base Period*** — Effective April 1999, wage information provided by employers through the existing quarterly Wage Reporting process is used for UI entitlement and benefit rate determination. Two base periods will be available for entitlement determination: the first four of the five most recently completed calendar quarters or the four most recently completed calendar quarters. If a claimant's base period includes a completed calendar quarter for which wage data has not been received, the claimant must provide proof of remuneration during the quarter.
- ***Minimum Earnings and Work Requirement*** — To qualify for benefits, claimants must have worked to at least two quarters during the base period, earned at least \$1,600 in their highest-earnings quarter and at least 1.5 times their high-quarter earnings during the base period.

Benefit reforms

- ***Increase in Maximum Weekly Benefit*** — The amount of the maximum weekly benefit increased from \$300 to \$365 on September 7, 1998 and will increase in September 2000 to one-half of the average weekly wage. It is estimated that the average weekly wage in September 2000 will be about \$800 per week resulting in a maximum weekly benefit of approximately \$400.
- ***Benefit Rate Calculation*** - Effective April 1, 1999, benefit rates are calculated in a new way. Instead of being equated to one-half the claimant's average weekly wage, they are set at one twenty-fifth of high quarter earnings. Beginning in September 2000, benefits will be computed at the rate of one twenty-sixth of high quarter wages if the wages are greater than \$3,575 and one twenty-fifth of high quarter wages if they are \$3,575 or less.
- ***Suitable/Capable Work Requirement*** — Beneficiaries are required to accept suitable work based on their previous education, work experience and earnings if it is within a reasonable commuting distance. The law was amended to require that claimants must accept suitable employment during the first 13 weeks of their claim and from the 14th week on they must accept any job that they are capable of performing if the quarterly wages from the job are at least 80 percent of the claimant's high calendar quarter wages received in the base period of the wages prevailing for similar work, *whichever is less*.

- **Wage Credits** — Wages earned during the base-period from a specific employer will not be credited as qualifying wages if the reason for termination was due to a criminal act.

Reemployment Services Fund

- A Reemployment Services Fund was established to provide additional automated systems and staff to provide enhanced Reemployment services and claimant management activities for UI claimants and for the payment of associated administrative costs relating to UI claimants. The fund is financed through a new Reemployment Services Tax of 0.075% of taxable wages. This new tax was offset by an equivalent reduction in the Subsidiary Tax rate. This fund generates about \$35 million a year and was established with the expectation that the state would improve its job placement efforts for unemployment insurance recipients.

Charging of Benefits to Employer Accounts

- Benefits are no longer charged to employers' accounts in reverse chronological order. The last separating employer is charged seven times the weekly benefit amount with the remainder of the claim charged to each base-year employer in proportion to its share of wages paid to the claimant during the base-year.

Benefit Financing

Although extensive UI financing reforms were enacted, they were designed to be revenue neutral, overall. The intent was to redistribute more of the cost of UI benefits to the employers who account for the majority of layoffs. Stable employers, those with positive account balances saw a tax reduction, while unstable employers, those with negative account balances, have experienced tax increases.

- **Taxable Wage base** - The taxable wage base was increased from \$7,000 to 8,500 effective January 1, 1999. The experienced-based Normal tax table and the Subsidiary tax schedule were adjusted to hold positive-balanced employers harmless.
- **Supplemental tax** - The 0.7% Supplemental tax, which was a solvency tax enacted in 1988, was repealed.
- **Higher tax rates for unstable employers** - The maximum rates in the Normal tax table (those assigned to the least stable employers) rose from 5.4% in 1998 to 7.3% in 1999. If the Size-of-Fund Index (SOFI) is less than 2.0, the maximum rate is 7.7%. A "stable negative account employer" adjustment factor was

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enacted to mitigate the impact of these normal tax increases on stable seasonal employers. This provision improves the negative account balance of employers by four percentage points if their aggregate taxable payrolls during the latest payroll year are at least 80% of the average of the previous three years payrolls. The Normal tax rate for employers that qualify for the “stable negative account employer” adjustment cannot be reduced below 6.1%.

- Lower tax rates for stable employers. The minimum Normal tax rates (those assigned to employers with the fewest layoffs), was reduced from 0.5% in 1998 to 0.0% in 1999 if the SOFI is 2.0 or greater. If the SOFI falls below 2.0, the minimum Normal rate is 0.1%.
- Employer’s account percentage calculation – Previously, employers’ account percentages are calculated by dividing the year-end balance in their accounts by the average of their last three years taxable payrolls. The legislation changed the denominator to the average of the last five years.
- Size-of-Fund Index – the Size-of-Fund Index is computed by dividing year-end Trust Fund reserves by the average of aggregate taxable payrolls over the last five years. Previously, the average of taxable payrolls over the last three years is used in the denominator.
- New Employer Tax Rate – The Normal tax rate assigned to new employers was increased from 2.7% to 3.4%.
- Negative balance write-offs – Previously, if an employer had a UI account deficit greater than 2.0% of its taxable payrolls at the end of the calendar year, the deficit in excess of 2.0% was written off to the General Account. The threshold for these write-offs was raised to 21.0%.
- Subsidiary tax – The Subsidiary tax is no longer a single rate levied uniformly on all employers, but instead an experience-linked range of five rates. The Subsidiary tax rate assigned to each employer from the range of rates is based on the account percentage of the employer at the end of the previous calendar year. The new Subsidiary tax table consists of 11 rate ranges, with the range in effect during any given year dependent on the year-end balance in the General Account. The General Account thresholds used to determine the range of rates have been expanded to reflect the size of current General Account transactions.
- Minimum tax rate – The minimum total tax rate of 0.3% was repealed

Appendix: Summary of Key Provisions of 2000 UI Legislation

Reform of Eligibility Requirements

- ! The February 2000 legislation establishes a cap on the earnings in the high calendar quarter for purposes of determining whether or not the claimant has earned one and one-half times the high quarter earnings in the base year. The cap is set at 22 times the maximum benefit. Currently that cap would be 22 times \$365 or \$8,030. Therefore any applicant who has earned one and one-half times that cap or \$12,045 would be eligible for benefits regardless of how those benefits are distributed as long as the applicant has worked at least one day in a second calendar quarter.

Establishment of an Unemployment Insurance Control Fund and Penalties for Failure to File Timely and Accurate Quarterly Wage Reports

- ! A new section 552-b of the law established in the joint custody of the Commissioner of Taxation and Finance and the State Comptroller a fund consisting of all penalties imposed and collected for failure to file a quarterly combined withholding wage reporting and unemployment insurance return to be used for the location and prevention of fraud and abuse, collection and enforcement activities, benefit payment control activities and other quality control activities related to the unemployment insurance program.
- ! A new section 575-A sets forth the penalties for failure to provide complete and correct wage reporting information ranging from \$1 for each employee for the first failure to \$25 per employee for third and subsequent failures in any eight consecutive quarters when discovered through an examination of an employer's records and \$25 per occurrence when discovered in relation to a specific claimant's claim for benefits.
- ! The new law also establishes penalties for an employer who fails to file a quarterly combined withholding wage reporting and unemployment insurance return equal to five percent of the amount of contributions required to be shown on such return with an additional five percent, not exceeding 25 percent for each additional month or fraction thereof during which such failure continues.

Increased Contribution Rates for Employers with Negative Account Percentages

- ! Tax rates were increased for employers with negative account percentages when the "size

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of fund index” is less than 2 percent. The size of fund index is the UI fund balance as a percentage of all payrolls for the preceding year or, if lower, as a percentage of the average payrolls for the five previous years. The tax rates were increased by .4% for employers with negative balances greater than or equal to 4 percent of their average payrolls. Tax rates for employers with negative account balances of less than 4.0% were increased by only .2% Tax rates for employers with positive account balances were not changed.

Alternate Benefit Calculation Formula

- ! Subdivision 12 is added to Section 590 of the law to provide for the reconsideration of the benefit rate when the claimant would have received a higher benefit under the pre-1998 rules. Specifically, if the claimant can show proof of employment in at least 20 weeks of his/her base year and that one half the average weekly wage for this period is \$5.00 greater than the claimant’s benefit under the 1998 formula, then the claimant may receive the larger amount. Benefits calculated using the alternate formula are still subject to the statutory maximum.

Correction of the Prevailing Wage Provision

- ! The condition for continuation of benefits was amended to conform with the federal statute. The 1998 law required that a claimant still unemployed after receiving thirteen weeks of benefits was required to accept any employed proffered that paid not less than 80 percent of such claimant’s high calendar quarter wages OR substantially less than the prevailing wage for similar work in the locality. The 2000 amendments changed this language to require claimants to accept work paying not less than 80 percent of high calendar quarter wages AND not substantially less than the prevailing wage.