

THE ECONOMIC DISLOCATION AND WORKER
ADJUSTMENT ASSISTANCE ACT

JUNE 2, 1987.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Human
Resources, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany S. 538]

The Committee on Labor and Human Resources, to which was referred the bill (S. 538) to implement the recommendations of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

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I. SUMMARY OF THE BILL

This bill, titled the "Economic Dislocation and Worker Adjustment Assistance Act", replaces the provisions of Title III of the Job Training Partnership Act (JTPA) pertaining to dislocated workers. The bill establishes a comprehensive system for providing prompt adjustment and training services to dislocated workers. The bill is in three parts: Part A concerns services to dislocated workers, Part B provides for advance notification of plant closings and mass layoffs, and Part C creates demonstration programs and provides for the creation of discretionary programs to assist dislocated workers. Seventy five percent of the funds appropriated during a given fiscal year will be allocated to the States under Part A; the remaining 25% will be reserved for the Secretary's use under Part C.

Part A provides for comprehensive worker adjustment programs to be developed and administered by States whose plans for delivery of services have been approved by the Secretary of Labor. Workers are eligible for services if they have been laid off from employment, have experienced long-term unemployment, or have lost their self-employment job because of general economic conditions. Homemakers who are trying to enter the labor force because they have lost their spousal support also are eligible. States must maintain the capability to respond rapidly to imminent plant closings or mass layoffs and provide services to affected workers. In addition, a State may use the funds allocated to it for normal labor market services, correcting basic education deficiencies, vocational and on-the-job training, and income support. Services are delivered at the statewide level through a dislocated worker unit or office, and at the local level through substate grantees designated by the Governor, the chief local elected official, and the local private industry council.

Part B of the bill adds an advance notification requirement to Title III of JTPA. It requires employers to give advance notification of plant closings and mass layoffs to employees, state governments and local governments, in order to permit the effective deployment of dislocation services before dislocation actually occurs. The amount of advance notice required is graduated on the basis of the number of employees affected, with 90 days required when 50-100 employees are affected, 120 days for 101-499 affected employees, and 180 days for 500 or more affected employees. An exception is provided if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable. Additionally, the notice requirement does not apply to temporary projects, does not apply to the sale of a business where the purchaser agrees to hire substantially all of the seller's employees, and does not cover businesses relocating within a local community if transfers are offered to substantially all employees. This part also requires that employers provide certain information about the planned closing or mass layoff—such as audit reports and relocation plans—upon request by the employee or local government representative. Penalties are established for failure to comply with this part.

Part C creates five demonstration programs and provides for discretionary expenditures on other programs by the Secretary of Labor. Up to 30% of the funds reserved for this part may be used

for the demonstration programs; the remaining 70% or more of the funds shall be available for the Secretary's discretionary and exemplary programs. The demonstration programs created by this part are: (1) the Dislocated Workers Training Loan Demonstration program; (2) the Self-Employment Opportunity Demonstration program; (3) the Public Works Employment Demonstration program; (4) the Dislocated Farmers, Farm Employees and Ranchers Demonstration program; and (5) the Job Creation Demonstration program. The Secretary shall expend the discretionary funds for activities such as multi-state or industrywide projects and additional assistance to States that experience substantial unanticipated increases in the number of dislocated workers.

Authorization of appropriations for this bill for fiscal year 1988 is \$980,000,000 and for each succeeding fiscal year such sums as may be necessary.

II. BACKGROUND AND NEED FOR LEGISLATION

INTRODUCTION

For many years Congress has addressed different aspects of the problem of worker dislocation. The present legislation provides, for the first time, a comprehensive approach to this national issue. The Committee's approach is guided by two principles: (1) assuring the most rapid possible readjustment and retraining of displaced workers for the new jobs that are being created by our changing economy; and (2) easing the personal and financial difficulties for workers who must make these transitions.

There is at present no comprehensive legislative framework for dealing with the problems of worker dislocation. Some existing programs, notably trade adjustment and Title III of the Job Training Partnership Act, have dealt with pieces of the problem. For nearly fifteen years there have been legislative proposals that would have facilitated adjustments by requiring advance notification of plant closings and layoffs. The most recent of these proposals was H.R. 1616, introduced in the House of Representatives during the 99th Congress. During consideration of H.R. 1616, minority members of the House Education and Labor Subcommittee contended that mandatory notice legislation was premature and insufficient in itself to deal with worker dislocation. The Administration echoed this position, and Secretary of Labor Brock appointed a task force chaired by former Undersecretary of Labor Malcolm Lovell to undertake a comprehensive study of the problem.

Last December the Department of Labor Task Force issued its recommendations, which have been used as the cornerstone for this legislation. The Committee has adopted the Task Force recommendation for development of a rapid response capability for delivery of labor market services at the sites of plant closings and mass layoffs. The Committee also has implemented the Task Force recommendation for a federal program that encourages and finances flexible worker adjustment initiatives at the state level. Finally, mindful of the Task Force's conclusion that advance notification is "essential" to successful readjustment, the Committee has included a carefully drawn provision requiring that advance notification of

plant closings and mass layoffs be given to affected workers and communities.

1. The Magnitude of the Dislocation Problem

Increased competitiveness of the international economy, the greater mobility of capital, and technological advancement have combined to quicken the pace of change in the American economy. One persistent result of these developments has been worker dislocation. In the words of the Department of Labor Task Force, the American economy has generated a "population of displaced workers, distinguished from other unemployed workers by the permanence of their job loss, as well as their substantial investment in and attachment to their former jobs."¹ The problem of worker dislocation has been a constant in recent years, in good times and in bad.

The sheer numerical size of the problem is daunting. According to the Bureau of Labor Statistics, during the five year period 1981-1986, over 11 million workers lost their jobs under circumstances suggesting that they would not get them back. Many of these workers had considerable job experience—5.1 million had worked a minimum of three years in their former jobs. Half of the latter group had worked 6 or more years.

One-third of these experienced men and women were either still unemployed or had dropped out of the labor force by 1986. Half of those displaced over these five years faced 18 or more weeks of unemployment. For those workers still unemployed in 1986 the median number of weeks without a job was even higher.

Not surprisingly, groups in society that are particularly vulnerable to change face even longer periods of joblessness. Blacks and women who lose their jobs far worse than white males. Less educated and older workers can expect longer than average time without a job. Workers living in economically depressed areas are hard hit by dislocation.

The problem of worker dislocation is a national phenomenon. Workers in the manufacturing sector of the economy are disproportionately affected by dislocation, according to data from a recent Bureau of Labor Statistics (BLS) survey. BLS data indicate that between 1981 and 1986, the Northeast and Midwest suffered more than half of the employment loss due to closures and mass layoffs. Yet the number of jobs lost in the South during this period was about equal to the number of jobs lost in the Midwest. When regions of the country were further subdivided, the East South Central States (Kentucky, Tennessee, Alabama and Mississippi) and West South Central states (Arkansas, Oklahoma, Louisiana, and Texas) had the highest dislocation rates in the United States. (See Table 1).

¹Task Force on Economic Adjustment and Worker Dislocation, "Economic Adjustment and Worker Dislocation in a Competitive Society," study prepared for the Secretary of Labor (Washington, D.C.: U.S. Government Printing Office, December 1986), p. 11.

TABLE 1.—DISLOCATION OF ELIGIBLE WORKERS BY REGION, 1981-85¹

BLS region ²	Adult employment	Worker dislocation		Rate of dislocation (percent)	
		Plant closings thousands	Total thousands	Plant closings	Total
New England.....	5,510	235	502	4.3	9.1
Middle Atlantic.....	14,671	676	1,486	4.6	10.1
East North Central.....	16,439	937	2,289	5.7	13.9
West North Central.....	7,334	388	916	5.3	12.5
South Atlantic.....	15,778	742	1,601	4.7	10.2
East South Central.....	5,558	371	834	6.7	15.0
West South Central.....	10,343	629	1,466	6.1	14.2
Mountain.....	5,068	312	674	6.2	13.3
Pacific.....	13,900	783	1,798	5.3	12.9
Total.....	94,601	5,074	11,567	5.5	11.8

¹ See Larry Mishel, "Dislocation: Who, What, Where and When," paper presented at Eastern Economic Association Meetings (Washington, D.C., March, 1987).

² Regions are: New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut); Middle Atlantic (New York, New Jersey, Pennsylvania); East North Central (Ohio, Indiana, Illinois, Michigan, Wisconsin); West North Central (Iowa, Missouri, Nebraska, Kansas, Minnesota, North Dakota, South Dakota); South Atlantic (Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida); East South Central (Kentucky, Tennessee, Alabama, Mississippi); West South Central (Arkansas, Louisiana, Oklahoma, Texas); Mountain (Montana, Wyoming, Colorado, Utah, Idaho, Arizona, Nevada, New Mexico); Pacific (California, Hawaii, Washington, Oregon, Alaska). Region determined at time of survey.

Source: Bureau of Labor Statistics, January 1986 and January 1984; Dislocated Worker Survey and Geographic Employment Profile, 1983 (Bulletin 2215).

Plant closings and mass layoffs affect workers and communities throughout the nation. As the Office of Technology Assessment observed:

Especially hard hit were the middle-class blue-collar workers of the frostbelt—the Cleveland or Chicago steelworkers, for example, who once made \$13 per hour plus benefits but now, in the middle of their working lives, with families to support and mortgage payments to make, found themselves out of work. Nor were these the only victims of displacement. Thousands of workers in a variety of industries and regions—pharmaceuticals in Rhode Island, communications equipment in New Jersey, textiles in the Carolinas, household appliances in Kentucky, semiconductors in California—lost jobs in plant closings and mass layoffs, often with little chance of landing equally good jobs.²

Displacement of workers on this scale, and with these limited prospects for successful adjustment to new endeavors, is first and foremost a human problem, as detailed below. But the displacement of millions of workers who then become unemployed or underemployed is also an economic problem. The economic losses are not only the unemployment compensation, public assistance, and food stamps that must be paid to those who have lost their jobs through no fault of their own. Every unemployed and underemployed worker represents an opportunity cost to the nation, which loses the value of the goods and services these people could produce if their skills were put to work.

² Office of Technology Assessment, "Technology and Structural Unemployment: Reemploying Displaced Adults," (Washington, D.C.: U.S. Government Printing Office, February 1986), p. 105.

2. *The Effects on Workers and Communities*

The magnitude of the increased production that might have been is matched by the magnitude of the losses and pain that have actually occurred. As noted earlier, one-third of the experienced workers displaced over the last five years are still not employed. Another 8% of these previously full-time workers have found only part-time work. Even for dislocated workers fortunate enough to find new jobs, a plant closing or mass layoff often means a marked decline in their standard of living. According to Bureau of Labor Statistics data, 44% of experienced dislocated workers who had found new jobs were paid less than they had been making before their dislocation. Thirty percent of this reemployed group faced pay cuts of 20% or more. Adding the unemployed, those who have left the labor market, those who have found only part-time work, and the reemployed wage losers produces the staggering conclusion that two-thirds of experienced workers dislocated between 1981 and 1986 are now earning less than they did prior to dislocation.

Because dislocation wipes out seniority, dislocated workers face reduced opportunities to accrue pension benefits and thus provide for their eventual retirement. Most pensions are not portable and, even if vested, existing pension benefits will not continue to increase in the years prior to retirement. Dislocation also can mean the end of medical insurance coverage, as it has for one-third of the workers dislocated in the last five years. Thus dislocation not only reduces current income; it also curtails the ability of workers to prepare for the future.

In addition to squandering the productive efforts of millions of American men and women, dislocation threatens the physical and mental health of workers and their families. It is always a personal trauma and, potentially, a personal tragedy. In their 1984 report to the Joint Economic Committee, Jeanne Gordus and Sean McAlinder note that researchers have generally accepted to correlation between job loss and manifold adverse effects, including depression, anxiety, aggression, insomnia, loss of self-esteem and marital problems.³ These psychological pathologies can have serious physical corollaries. M. Harvey Brenner's work in this area has established a link between increased mortality rates and the indicia of dislocation: increased unemployment, declines in labor force participation, declines in average number of hours worked, and increases in business failures.⁴ Most disturbingly, heightened unemployment has been linked to an increased incidence of suicide.⁵

Job loss is more than a financial disaster for workers. Local officials who have appeared before this Committee have made clear

³ Jeanne Prial Gordus and Sean P. McAlinder, "Economic Change, Physical Illness, Mental Illness, and Social Deviance," study prepared for U.S. Congress, Joint Economic Committee, Subcommittee on Economic Goals and Intergovernmental Policy, 98th Cong., 2d sess. (Washington, D.C.: U.S. Government Printing Office, 1984).

⁴ M. Harvey Brenner, "Estimating the Effects of Economic Change on National Health and Social Well-Being," study prepared for the U.S. Congress, Joint Economic Committee, Subcommittee on Economic Goals and Intergovernmental Policy, 98th Cong., 2d Sess. (Washington, D.C.: U.S. Government Printing Office, 1984).

⁵ Sidney Cobb and Stanislas V. Kasl, "Some Medical Aspects of Unemployment," report prepared for the U.S. Department of Health, Education and Welfare, National Institute for Occupational Safety and Health, 1977. Cobb and Kasl's seven-year longitudinal study of plant closing victims found they had 30 times the normal suicide rate.

that a plant closing or mass layoff can have devastating effects on a community. Testifying on behalf of the United States Conference of Mayors, Mayor James Moran of Alexandria, Virginia observed that dislocated workers "are no longer able to contribute to the local economy, and in fact often must take from it to receive the help and income assistance they need to get by." Reduced purchasing power caused by dislocation can create a "ripple" effect that may lead to the closing of other businesses and further economic loss.

As workers move to other areas, patterns of social interaction and community life are disrupted. The departure of a major employer can cause a rapid and alarming erosion in the tax base of a local community. Migration also can lead to a decline in local property values. At a time when municipal services are most in demand, a locality's tax base may be withering away. Ostensibly "private" economic decisions that lead to mass layoffs or plant closings have serious social effects that extend beyond the employer and the workers.

A Labor Subcommittee hearing held in Norwood, Ohio, in January of this year illustrated the devastating impact of a plant shutdown on a local community. The decision by General Motors to close its automobile assembly plant in Norwood meant more than the loss of 4,300 jobs to this small, stable community. It meant the loss of \$2.7 million in earnings and property tax revenues, depriving the city of some 25% of its annual operating budget. The General Motors shutdown also left an annual gap of over \$2 million in property tax revenues to the Norwood school system. Such crippling blows have been administered to local educational programs and municipal services in thousands of communities across the country.

3. Experience Under Existing JTPA Program

Title III of the Job Training Partnership Act of 1982 (JTPA) has served as a valuable first step in developing assistance programs for dislocated workers. Recognizing the need to encourage innovation in the delivery of reemployment and training services, Title III sought to maximize flexibility by giving the states broad authority over the use of federal funds to aid dislocated workers. Title III programs have proven useful and have led to some significant accomplishments. A recent General Accounting Office (GAO) survey reports a 69% placement rate for participants in the Title III program, a greater success rate than that achieved by prior employment and training programs.

The success of Title III programs, however, has been far from complete. The vast majority of dislocated workers has not received reemployment assistance at all under Title III. In 1984, only 6% of the 2.2 million workers estimated by the Bureau of Labor Statistics to have lost their jobs because of business closures or permanent cutbacks were enrolled in Title III programs; in 1985, this figure rose to 7%. Title III programs have had limited success in reaching those dislocated workers who are in the greatest need of reemployment assistance. Workers who are older, less educated, women, or minorities experience the greatest difficulty in obtaining reemployment. GAO reported that workers age 55 and older and those with

less than a high school education are underrepresented in Title III programs. In addition, despite the JTPA emphasis on training, dislocated workers consistently have declined to take advantage of Title III training opportunities, a serious flaw in light of a GAO estimate that 73% of these workers go on to different occupations. GAO found that less than half of Title III participants receive remedial, classroom skills training, or on-the-job training. Although BLS found that 32% of dislocated workers are high-school dropouts, only 6% of Title III participants received remedial training.

Several factors may contribute to the failure to take adequate advantage of Title III resources. There is a limited knowledge of the availability of Title III programs. The Office of Technology Assessment (OTA) reports that the business community and organized labor are often unaware that Title III assistance even exists. A GAO survey of establishments that had closed plants or laid off large numbers of workers in 1983 and 1984 revealed that 80% of these employers claimed not to have heard of the Title III program. Title III programs also have been hampered by delayed responses to plant closings and mass layoffs. Despite the consensus that dislocated workers require rapid assistance, Title III programs generally have been slow to respond to specific situations.

Delays built into the allocation and funding procedure often are a critical reason for the slow responses. Both the federal and state processes for disbursing funds can be cumbersome and overly bureaucratic. The Secretary of Labor and the Governors have tended to point the finger at each other in this regard; in all probability, there is enough blame to go around. But whatever the reason, initial failures to expend allocated amounts have led to the accumulation of stunning unexpended balances. As of July 1, 1986, less than half the available Title III funds had been expended; some states had an unexpended balance twice as large as their actual expenditures.

Development of any rapid response capability is at times hindered by fragmentation of authority within a particular service delivery area. In a situation where numerous entities are involved in planning and administering the program, and where a project proposal might require approval by both the local and private industry council and local elected officials, it would be difficult for any one operator to develop the authority and expertise to provide rapid response along the lines of the Canadian model discussed below.

Finally, although encouragement of cooperation among management, labor and government in assisting dislocated workers is a salient feature of the theory underlying JTPA, Title III programs have had limited practical success in implementing this goal. The Department of Labor Task Force found that greater private sector effort is needed to alleviate the problems of displaced workers, and that the most effective dislocated worker adjustment programs are those where employers and workers are directly involved in the design and delivery of the program. Developing plant-specific adjustment programs is an efficient way to achieve these goals; however, only 19 percent of Title III programs are focused on specific populations or events. Moreover, Title III programs are not oriented toward educating and encouraging management and workers to help themselves. OTA reports that Title III programs usually offer

funds rather than expert help, and that JTPA agency activity at a plant often amounts to little more than an announcement of the range of services available to the dislocated workers, many of which may be regular ongoing programs such as Employment Service. In a few instances, JTPA agencies have rejected plant-specific projects on the grounds that an existing community-wide project provides sufficient assistance. A GAO finding that only 9 percent of Title III projects are operated either by unions, employers, or union/employer consortia suggests that JTPA agencies have taken too passive a role and have failed to encourage management and worker participation.

4. Elements of a Successful Readjustment Program

Worker dislocation represents a pernicious drain on the productivity of the American workforce. Minimizing the social cost of this traumatic experience is essential to preserve and enhance this nation's competitive posture in the world economy. As the Department of Labor Task Force recognized, effective readjustment programs promise reemployment that is more prompt, steady, and remunerative than would otherwise be available. OTA notes that two-thirds of blue collar workers fare worse on their job searches without labor market services; they experience longer periods of joblessness and attendance stress and often settle for lower paying full or part-time employment. Some leave the labor force altogether. Yet as the Department of Labor Task Force notes, the United States lacks a "comprehensive, coordinated strategy" to cope with this pressing problem. S. 538 represents such a comprehensive strategy, one that draws upon those elements and techniques identified as most successful by the Task Force: the provision of adequate advance notice of a dislocation; the development of a rapid response agency in the states that can promptly deliver flexible, tailored labor market services at the plant level; and the well-publicized availability of a broad range of readjustment and retraining services.

The ability to respond quickly and effectively in delivering labor market services at the worksite is generally recognized as the most effective way to reintegrate displaced workers and thereby mitigate the human suffering entailed by job loss. The cornerstone of the Task Force's recommendations is the creation of an identifiable agency with such rapid response capability. Rapid response is vital for a number of reasons. Prompt delivery of the necessary services holds the best promise of minimizing the total social costs of dislocation. Quick reintegration will lessen the stress of job loss for the worker, as well as the drain on his or her financial resources. Rapid relocation will lessen the costs borne by the local community. Prompt delivery may then stem the drain on the nation's productive capacity that is posed by prolonged unemployment. Rapid response is essential because displaced workers will naturally seek to find new jobs as soon as the layoff becomes a reality. The fact that income maintenance programs have a limited duration, generally 26 weeks, further heightens the necessity for a rapid response capability. This is especially the case if the displaced workers require additional remedial or vocational training to make a successful reentry into the work force.

Delivery of services at the plant level is also essential to an effective readjustment. The Task Force concluded that the most successful program it studied were those "where employers and workers (and their unions if they are present), are directly involved in the design and delivery [of the needed services]".⁶ As the OTA study notes, both labor and management have a personal stake in the effectiveness of the project. In addition, they can contribute resources, including staff, to the delivery effort. A strong union role also generates trust and confidence in the workforce about the overall utility of the program. These factors probably explain the results of a recent GAO study which found that the participation rate for readjustment programs conducted at the plant level was higher on average. Notably, the participation rates of groups most severely affected by closings, older and less educated workers, also were higher when services were delivered at the plant level. Plant-specific programs allow for greater flexibility in the services offered to employees. As the Task Force noted, a key element in successful readjustment programs is delivery of services that are most needed by the relevant workforce.

The Committee agrees with the conclusion of the Task Force that labor market services are not being quickly and effectively delivered at the plant level. Dislocated workers are not currently receiving timely and current information on the condition of the local labor market—clearly a prerequisite to an effective job search. Nor do they receive adequate skills assessment or vocational or remedial education. Furthermore, these workers are not receiving effective job search training, which the Task Force concluded was one of the most cost-effective techniques. In part these shortcomings are a product of the limitations of the JTPA and the fact that there is no single agency with the sole responsibility to deliver such services.

The success of the Canadian government in creating an agency capable of delivering such services is instructive given the Task Force's conclusion that of all foreign experiences the Canadian program can most easily be replicated in the United States. According to the Task Force, the focus of the Canadian Industrial Adjustment Service (IAS) on delivery of job search and job matching assistance at the plant level was extremely cost-effective. Labor-management committees set up with IAS encouragement were able to place 66% of those displaced at an average cost of \$171 per worker.

Moreover, an evaluation of the Canadian experience by Abt Associates suggests potentially significant cost savings from diminished durations of unemployment. OTA analyzed the Abt evaluation in order to estimate the potential savings in unemployment compensation payments from a nationwide advance notice/rapid response program in the United States. Multiplying the population projected to be served through rapid response (350,000 to 525,000 per year) times the average unemployment reduction found by Abt (5 weeks) and then multiplying that figure by the average level of weekly unemployment compensation benefits (\$147), OTA conclud-

⁶ Task Force on Economic Adjustment and Worker Dislocation, "Economic Adjustment and Worker Dislocation in a Competitive Society," p. 4.

ed that an advance notice/rapid response program could save anywhere from \$257 million to \$386 million per year.⁷

The essential element of the Canadian approach—the ability quickly to provide flexible expert labor market services through labor. Management committees at the plant site—clearly forms the basis of the Task Force's recommendations, as well as S. 538. The success of such a model, however, remains a function of the ability to plan service delivery before workers are actually thrown out of work. In the word of the Task Force, "advance notification is an essential component of a successful adjustment program".

While a well-developed rapid response capability is necessary for an effective adjustment program, it is not sufficient. A system of local readjustment and retraining services is needed for two groups of dislocated workers. The first group consists of workers who need services beyond those provided by rapid response teams: for example, basic literacy instruction, vocational training, and relocation assistance. The second group consists of workers whose job loss did not occur as part of a plant closing or mass layoff. Successful adjustment for these workers depends on a well-publicized local system that can deliver basic employment services, as well as retraining services. Traditionally, readjustment programs have succeeded in attracting only a small proportion of non-unionized workers dislocated in smaller scale layoffs. Both publicity and planning are essential to reaching more of these workers.

5. The Need For Advance Notification

In order to minimize the costs of worker dislocation, those affected and responsible for the delivery of services must be notified in advance of plant closings and mass layoffs. Advance notification provides service delivers with the necessary time to have programs developed and implemented before a closing or layoff becomes a reality. While prior notification cannot substitute for a comprehensive program of readjustment assistance, the success of such programs is clearly related to the lead time provided by prior notification. Advance notification minimizes the human suffering job loss occasions as well as the overall social costs of dislocation.

The Committee heard testimony reinforcing the conclusion of the Department of Labor Task Force that prior notification is essential to a successful readjustment. Governor Richard Celeste of Ohio reported that sufficient advance notice permitted state authorities to have readjustment services deployed by the time the job loss took effect in one instance and in another allowed workers enough time to purchase the plant and turn its fortunes around (that enterprise now provides more jobs in the community than it did when the State first learned of its difficulties).

The OTA Report entitled "Plant Closing: Advance Notice and Rapid Response," provides further support for the importance of advance notification. Its conclusions are important enough to be quoted at length:

⁷ Office of Technology Assessment, "Responses to Questions About Advance Notice and Plant Closings," Staff Memorandum submitted to Chairman, Subcommittee on Labor, Committee on Labor and Human Resources, United States Senate (Washington, D.C., March, 1987), pp. 24-27.

The best time to start a project for displaced workers is before a plant closes or mass layoffs begin; advance notice makes early action possible—although it does not guarantee it. Some of the advantages of early warning are: (1) it is easier to enroll workers in adjustment programs before they are laid off; (2) it is easier to enlist managers and workers as active participants in displaced worker projects before the closing or layoff; (3) with time to plan ahead, services to workers can be ready at the time of layoff, or before; and (4) with enough lead time, it is sometimes possible to avoid layoffs altogether. Knowing in advance about a coming layoff is obviously of some value to individual workers too, even if they do not get help from an organized project. They have the opportunity to adjust financial plans and get a head start on job hunting. In addition, many company managers see advance notice as a benefit to the company itself, by improving relations with the remaining workers, enhancing the company's reputation in the community, and conforming with company values of fair and ethical treatment of its employees.⁸

The Committee is in complete agreement with Governor Celeste, the Department of Labor Task Force, and OTA that advance notification is an "essential" component of any comprehensive readjustment strategy.

The Committee has concluded that notification must be legally required in large part because of the failure of employers to provide it on a voluntary basis. Considered over the whole range of layoffs and closings, the response of large employers, those with over 100 employees, has been insufficient to mount effective readjustment efforts. This failure only increases the human and social costs of decisions to close a plant or lay off employees. Employers must be required to consider the interests of their workers and the affected communities in making such decisions.

According to a recent GAO survey of employers with more than 100 employees, a full 20% of such employers provide no "general notice" to those affected that a plant will be closed or that a permanent layoff will take place (general notice is information that a closing or layoff will take place specifying neither the particular workers affected nor the date of the closure). A quarter provide between one day and two weeks general notice. Only 18% provide general notice of three months or more. Similarly, such employers have not been forthcoming with "specific notice" of a closing or mass layoff, i.e., information that specific workers will lose their jobs on a particular day. Distressingly, almost a quarter—23%—provide *no specific notice at all*. More than half—54%—provide two weeks or less. Only 9% provide specific notice of 3 months or more for a plant closing or mass layoff.

When these figures are disaggregated and the notice given blue collar workers is studied, the results are even less impressive. Thirty percent of the employers studied provide their blue collar

⁸ Office of Technology Assessment, "Plant Closing: Advance Notice and Rapid Response" (Washington, D.C., 1986), p. 13.

workers with no specific notice at all that jobs will be lost. Sixty-five percent give less than two weeks specific notice. The average non-union blue collar worker receives two days of specific notice. While unionized workers enjoy more specific advance warning because such provisions have been included in some collective bargaining agreements, the average notice for these unionized workers is still a mere 14 days, and even these unionized workers represent only 20% of the work force. In any event, the issue of advance notice is too important as a matter of public policy to be left to the vagaries of private contractual relations.

The GAO's study—based on the most comprehensive and reliable data available—reveals a state of affairs that is both tragic and disgraceful. The median length of notice provided by establishments affected by a closure or permanent layoff is 7 days for blue-collar workers and 14 days for white-collar workers. Although the GAO conclusions are based on analysis of 1983 and 1984 data, a very recent GAO update concluded that the length of notice has remained essentially unchanged since 1984.⁹

The GAO analysis and conclusion are reinforced by discussion in the OTA Plant Closing Report of conditions in California's "Silicon Valley" which has yet to become extensively organized. Workers there receive less notice than those in basic industry on average. While some "Silicon Valley" employers are small operations, it is not unusual for large corporations to discharge hundreds with no advance notification at all. Although some employers have mounted exemplary efforts to provide notice and assistance to their workers who are displaced, the "Silicon Valley" experience is typical of a distressing national phenomenon: employers simply do not provide their employees with enough prior notification to allow for a quick reintegration into the workforce.

The present experience with advance notification in the United States indicates that large corporate employers do not systematically take into account the interests of their employees in planning to wind down operations. This failure is at times grossly insensitive to the human suffering that such decisions—made without the input of those most affected—clearly cause. The Committee heard shocking testimony about the treatment of 200 employees of a multi-billion dollar communications company in Michigan. These employees received letters asking them to report to different addresses at their normal work time. The company had arranged to rent rooms at six different motels and informed workers when they appeared that they had lost their jobs. Workers received their last pay check on the spot. To add insult to injury the company arranged to have armed security guards positioned at the worksite to prevent workers from returning there. Such horror stories are entirely too common in the United States.

This country is one of the few western industrialized democracies that permits employers to close an operation or layoff employees

⁹ See U.S. General Accounting Office, "Preliminary Analysis of U.S. Business Closures and Permanent Layoffs During 1983 and 1984," presented at the OTA/GAO Workshop on Plant Closings, April 30-May 1, 1986 by William J. Gainer; U.S. General Accounting Office, "Plant Closings: Information on Advance Notice and Assistance to Dislocated Workers," Briefing Report to the Chairman, Subcommittee on Labor, Committee on Labor and Human Resources, United States Senate, (Washington, D.C.: U.S. Government Printing Office, April 1987).

en masse without some form of prior notification. Most members of the European Communities have followed the recommendation of the Communities' governing Council and require advance notification. As previously mentioned, Canada generally has some form of advance notification requirement, although not all provinces require it. Numerous Asian countries including Japan, as well as some African states, require some form of advance notification. Advance notification has been recommended by the Organization for Economic Cooperation and Development (OECD) to multi-national corporations operating in member countries.

III. HISTORY OF S. 538

S. 538, a bill to implement the recommendations of the Secretary of Labor's task force on economic adjustment and worker dislocation, and for other purposes, was introduced by Senators Metzbaum, Kennedy, and Simon on February 19, 1987 and was referred to the Committee on Labor and Human Resources. Subsequently, Senators Metzbaum and Kennedy offered an amendment in the nature of a substitute for the original bill. The substitute amendment, with additional amendments, was accepted by the Committee on Labor and Human Resources on May 15, 1987.

IV. HEARINGS

Public hearings were conducted jointly by the Subcommittee on Labor and the Subcommittee on Employment and Productivity on March 10 and March 26, 1987, in Washington, D.C. The following individuals provided testimony:

MARCH 10, 1987

The Honorable Richard C. Celeste, Governor of the State of Ohio.
The Honorable James P. Moran, Jr., Mayor of Alexandria, VA, on behalf of the U.S. Conference of Mayors.

Thomas R. Donahue, Secretary-Treasurer, AFL-CIO, Washington, D.C.

Roger Semerad, Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, Washington, D.C.

Morton Bahr, President, Communication Workers of America, Washington, D.C.

Owen Bieber, President, United Auto Workers, Detroit, MI.

Frank P. Doyle, Senior Vice President, General Electric Company, Fairfield, CT; Member of Lovell Task Force; and on behalf of the Committee for Economic Development.

Allan R. Thieme, Chairman and Founder, Amigo Sales, Inc., Bridgeport, MI, on behalf of the U.S. Chamber of Commerce, Washington, D.C.

MARCH 26, 1987

Leon Lynch, Vice President for Human Affairs, United Steelworkers of America, Pittsburgh, PA.

J. Bruce Johnston, Executive Vice President, USX Corporation, Pittsburgh, PA, accompanied by John S. Irving, Jr. representing the National Association of Manufacturers, Washington, D.C.

The Honorable James Scheibel, City Council Member, St. Paul, MN, and Chair, League of cities Human Development Committee.

Carl W. Struever, Chairman, Private Industry Council, Baltimore Metropolitan Manpower, Baltimore, MD.

Jack Klepinger, Chairman, Weber-Morgan County Chairs Association, Private Industry Council, and Chairman, National Association of Private Industry Councils, Ogden, UT.

The Honorable Eleanor Holmes Norton, Full Employment Action Council, Washington, D.C.

Donna LeClair, President-Elect, Displaced Homemakers Network, and Director, Bay State Skills Corporation, Boston, MA.

Raul Yzaguirre, President, National Council of LaRaza, Washington, D.C.

V. COMMITTEE VIEWS

This legislation replaces the current Title III of the Job Training Partnership (JTPA) with an entirely new set of provisions for assistance to dislocated workers. Although contained in discrete parts, the three components of the new Title III are interconnected and are directed towards the common end of assisting the millions of Americans who lose their jobs because of changes in the domestic and world economics.

PART A—DISLOCATED WORKERS ADJUSTMENT SERVICES

The Committee strongly believes that government has an important role to play in improving the functioning of labor market institutions. Federal, state, and local governments have long provided labor market services and various training programs. The challenge today is an economy where relatively more workers may be changing jobs several times in their working lives than have done so in the past. To meet this challenge, government at all levels must establish and maintain a capacity to deal with worker dislocation problems in a rapid and flexible fashion.

Economic dislocation is a national problem, but the problems of a particular group of dislocated workers are likely to be unique. Regional economic conditions, the demographics of the affected group, the size of the group, and other factors vary sufficiently to make a single approach to worker dislocation inadvisable. The Committee believes that state governments are best situated to combine knowledge of local circumstances with a sufficiently comprehensive program for assisting dislocated workers. The present legislation lodges substantial discretion in Governors to conceive, establish, and administer plans for dislocated worker programs. It is the Committee's hope that at least some states will take steps to coordinate these programs with their economic development programs; ultimately, dislocation problems will be mitigated only through creation of skilled, high-paying jobs.

In addition to its fundamental commitment to gubernatorial flexibility and discretion, the Committee has established certain mandatory features for a state's dislocated worker program. Some of these requirements are included to assure that the local public-private partnerships created by JTPA have a voice in determining how local adjustment services are to be provided. Others are in-

cluded to assure that each state addresses the various elements of the dislocated worker problem that have been identified by the Committee. These requirements are not intended to slow down the responsiveness of states by creating new layers of bureaucracy. They are meant only to provide an accommodation of various interests and an opportunity for responsible oversight by the Secretary and by Congress.

A final important principle of this legislation is that workers who are displaced should play an active role in planning for and achieving their own adjustment. It is only fair that those whose lives are disrupted by economic dislocation should have a voice in the implementation of adjustment programs. Beyond this norm of basic fairness, however, is the likelihood that adjustment programs will work best when workers have confidence that those programs reflect their own preferences and needs. Although they are voluntary, the labor-management committees contemplated in this legislation have the potential for achieving these ends.

1. Definitions

Most of the definitions provided in the new section 301 are self-explanatory. A few definitions deserve special note. First, the definition of "eligible dislocated worker" in section 301(a) adds displaced homemakers to the four categories of workers described in the original JTPA section 302(a). The definition of this fifth category of eligible workers is drawn from section 4(29) of JTPA. By including this category of workers, the Committee intends to ratify the current practice of some states in providing services to displaced homemakers under Title III. Displaced homemakers who meet the JTPA definition of "disadvantaged" are eligible for Title IIA services. Under the Committee bill, displaced homemakers will, regardless of income level, be eligible for services under Title III.

The Committee intends that the Secretary and the Governors give a broad construction to the definition of "eligible dislocated workers." For example, during Committee consideration of this bill the question arose whether self-employed fishermen and those who have served as crew members would be eligible for services under this Act when they have been displaced by economic conditions in their communities, or by the economic problems that result from adverse ecological conditions. If the affected workers are unlikely to return to fishing, they should certainly be eligible for services. Indeed, this is a perfect example of the kind of worker who has had a good long-term job that is disappearing, and who will most profit from dislocated worker services.

The definition of "labor-management committee" given in new section 301(2) does not include any required number or proportion of representatives from the employer and employees. Because the creation of such a committee is a voluntary act, the precise composition of the committee has been left up to the particular employer and employees. The Committee intends that each side be provided the opportunity for equal participation, but the two sides may proceed with other than equal participation if they so choose. Any committee so established, and thus eligible for assistance under section 306, would be expected to include adequate representation from all significant groups of workers affected by the plant closing

or mass layoff. Furthermore, if the committee wishes to designate a chair, rather than simply serve as a forum for the exchange of information and discussion of ideas, that chairperson must be an impartial outsider. The designation of a chair would be an indication of a more formal agenda for the committee, and it is important that neither employer nor employees feel that such an agenda is biased against them. This requirement is not meant to impugn the good faith of either side; it simply reflects the reality that the stress attending a plant closing or mass layoff raises anxieties and, potentially, mistrust among everyone involved.

The definitions of "rapid response," "rapid response capability," and "rapid response team" were intentionally written to allow states substantial flexibility in organizing their dislocated worker programs. The focus of these definitions is upon the speed and on-site nature of the state's response to information of an impending closing or layoff, rather than upon a particular organizational structure.

2. The Secretary's Role

The relationship of the Federal and State governments is a perennial and key issue in the creation and implementation of economic policy initiatives. In the present legislation, the Committee has placed principal responsibility for the creation and administration of dislocated worker programs in the hands of the Governors. Part C of the new Title III gives the Secretary of Labor special responsibilities to design and administer various demonstration programs, as well as a discretionary fund for any of the uses described in section 392. The responsibilities of the Secretary for the operation of state programs established in accordance with Part A are principally those of allocation of funds, oversight, and technical assistance.

New section 304(b) requires the Secretary to create or designate an identifiable dislocated worker unit to coordinate the functions assigned the Secretary under Title III. This section does not mean that these functions must be administered in a single office, or even in a series of offices under one assistant secretary. The requirement is intended to ensure that the problem of worker dislocation is considered as a whole by at least one office in the Department. The division of functions in the quest for administrative efficiency must not obscure the generic problems of dislocation. The creation or designation of such an office also will provide an easily identifiable source of information on the Department's dislocated worker programs.

Section 313(b) requires the Secretary to allocate 75% of the funds appropriated during any fiscal year to the states, in accordance with a formula that has been retained from original 301(b) of JTPA. Once the statistical data contemplated in JTPA section 462(e) become available, the Secretary shall report to Congress on the advisability of changing the allocation formula to reflect this new source of data. The Committee regrets that nearly five years after passage of JTPA, these data have not been made available by the Department.

The Committee has provided by-pass authority in section 314(b) to ensure that, in the event no satisfactory state plan is submitted

pursuant to section 305, the Secretary will be able to expend directly that state's allocation in that state. This course is far less desirable than a state-administered program, and the Committee would hope that the authority need never be exercised.

Under section 315, the Secretary is directed to reallocate funds not expended during a program year to the 25 states with the highest rates of unemployment. The JTPA program has been plagued since its inception with huge unexpended balances. The Committee hopes that such unexpended balances will not persist under the revised Title III; however, if they do, redistribution should then take place on the basis of need. The 25 states would qualify only if they have expended at least 90% of their original funding. In order to prevent unjust windfalls, no state would receive more than one-twenty-fifth of the total balance available for the program year. If additional surplus funds remain, the Secretary may reallocate these funds to all other states on the basis of need.

3. The State Plan

New section 305 requires that a Governor submit a plan every two years for a state dislocated worker program. The Secretary will review each plan to ensure that it satisfies the conditions set forth in section 305(a). These conditions are, in the main, designed to ensure that the state has established an integrated system for the delivery of dislocated worker services. None is more important than the requirement for a rapid response capability, which should be the centerpiece of each state's efforts. The structure, organization, and precise functions are all left up to the governor to decide, based on a particular state's circumstances.

A key feature of state plans is the requirement that each state publicize the availability of services and activities under the Act. As the Committee noted earlier, the disappointingly low participation rate under current Title III is attributable in substantial part to a lack of knowledge about the program. The Committee expects states to promote aggressively the new expanded services and intends that the Secretary closely monitor state efforts in this regard.

The requirement in section 305(a)(8) to consult with labor organizations also deserves emphasis. The Committee is disturbed by reports of situations in which employers have laid off union workers at one facility after using JTPA funds to train non-union workers to do the same work at another, nearby location. Depending upon the particular circumstances, such conduct may well be illegal under Title I of JTPA. It is imperative that labor organizations be made aware of worker adjustment services that may affect the jobs of their members and be given the opportunity to be heard before such services are initiated. The Committee expects the Secretary as well as the States to devote serious attention to this problem.

The State plan must be reviewed by the job training coordinating council prior to being transmitted to the Secretary. In addition to submitting comments on the state plan to the Governor and the Secretary, the council is to review and comment on substate plans and on programs and activities conducted under this title, and to perform general advisory functions for the Governor. The Committee intends that the council fulfill an important, expanded role in

assisting the Governor to oversee program operations. The Council's new tripartite structure (equal membership from labor and community-based organizations, government officials, and business representatives) reflects the importance of securing input from those who participate in, operate, and monitor work adjustment services.

Although section 305(b) requires the Secretary to approve each state's plan, the Committee expects that the Secretary will not attempt to impose a single model of dislocation programs upon any state. The purpose of this review provision is to assure that each state adequately addresses the various components of a successful adjustment program. Likewise, while it is important that the Secretary be able to penalize a state for failure to comply with the requirements of this legislation, as provided in section 305(d), the Committee expects that such penalties will not frequently be assessed.

4. Use of Funds

Section 306 permits states to use funds allocated under this legislation for a broad range of dislocated worker services. The lists of possible uses in subsections (b), (c), and (d) are nonexclusive; a state may thus provide other services that fit within the general category of rapid response, basic readjustment, or retraining services. The Committee fully expects that each state, and substate grantees within each state, will develop creative systems for the delivery of mixes of these services.

The rapid response services provided for in section 306(b) specifically include support for voluntary labor-management committees on the site of a mass layoff or plant closing. The Committee believes that these ad hoc efforts to involve workers in readjustment planning hold great promise and should be encouraged by state rapid response teams, which will develop experience over time to facilitate the creation of the committees. In the event a labor-management committee is not formed, for whatever reason, the Committee of course intends that rapid response capability be made available to affected employees. Where the rapid response team does not itself have the authority or expertise to commission a feasibility study for purchase of the plant, as provided for in section 306(b)(4), the team should be prepared to present this option to the workers and to provide quick contact with the appropriate state agency.

The Committee has provided for income support for dislocated workers participating in training or education programs. The decision to provide income support is left to the state or substate grantee. The requirement that an eligible dislocated worker have enrolled in training by the end of the thirteenth week of the worker's initial unemployment compensation benefit period is intended to expedite the decision to enter training. The Committee has placed caps on both the level of income support and the proportion of funds that may be expended on income support. These provisions are not intended to denigrate the importance of income support for some dislocated workers, but only to assure that adjustment remains the principal focus of programs operated under this legislation. Likewise, the presumptive requirement (which may be waived

by the Governor) that substate grantees spend at least 30 percent of their funds on training underscores the importance the Committee attaches to retraining those workers who need such a program to make a successful adjustment to worthwhile new jobs.

5. Substate Delivery of Services

In drafting the provisions on substate delivery of services the Committee has tried to balance local concerns with the imperative of gubernatorial discretion. The Committee fully expects that Governors will fashion dislocated worker programs in ways that accommodate local interests. To reassure those who feared the consequences of unlimited gubernational discretion, however, the Committee has established certain procedures for the creation of substate delivery systems, as well as a requirement for allocation of funds within states.

Section 307 requires the Governor to designate substate areas, for which substate grantees will be selected to provide for service delivery. The substate areas may consist of one or more service delivery areas (SDA), as established under section 101 of JTPA. The only limitation on the Governor's discretion in designating substate areas is that any service delivery area having a population of at least 500,000 must be designated as a substate area. At present, there are approximately 130 SDAs nationwide that meet this threshold. The Committee considers this threshold a reasonable accommodation to local concerns, but believes that any requirement for mandatory designation of smaller SDAs would diminish a Governor's capacity to design and execute an effective statewide plan.

Section 313(c) requires the Governor to re-allocate to substate areas at least 50% of the amount allocated to a state. The apportionment of this sum among substate areas rests in the discretion of the Governor, after consideration of the factors listed in section 313(c)(1). Thus, for example, a Governor may apportion substantially greater funds to areas of a state that are particularly hard hit by dislocation problems, while apportioning relatively small amounts to more affluent areas.

Substate grantees need sufficient funds to establish and maintain high-quality readjustment services and to operate an effective retraining program. At the same time, the Governor is responsible at the state level for key, costly components of the legislation, including the rapid response system and statewide or industrywide projects. In addition, because dislocation events are largely unpredictable, the success of a state program may depend on the Governor's ability to inject additional resources on short notice into substate areas that already have exceeded their anticipated number of dislocated workers. Taking all these factors into account, the Committee believes that the Governor must retain access to up to 50% of the amount allocated to the state, and this provision is included in section 313(c).

The substate grantee will be selected every two years following a negotiation among the Governor, the chief local elected official, and the private industry council in the substate area. The Governor may establish procedures for the selection of a substate grantee. Among the more important of these procedures would be one requiring entities interested in being designated to formulate a pro-

posal for the substate plan required in section 309. This will allow an informed choice of grantees, as well as assuring that the proposals of substate grantees are consistent with the Governor's overall state plan. There is no presumption that any organization, public or private, is the appropriate grantee. The Committee considers the political responsibility of the local elected official and the business expertise of the private industry council to be important capacities in evaluating proposed substate plans and selecting substate grantees. Again, however, the overriding factor must be implementation of a coherent and comprehensive state plan. For this reason, section 308(b) authorizes the Governor to select the grantee in the event agreement cannot be reached in negotiations among the three parties.

Section 309 requires the substate grantee to submit and have approved by the Governor a substate plan. As was the case with the state plan, this provision does not specify how the services will be delivered. The section does require that the substate grantee have addressed the considerations necessary for a successful delivery of services. The substate plan must be linked to the statewide plan, both generally and in several particulars. For example, section 310(b)(3) requires that the substate retraining plan (which must be incorporated into the overall substate plan) include procedures for providing any services recommended by a state rapid response team. The requirement in section 309(a)(5) again emphasizes the importance that the Committee attaches to involving worker representatives in adjustment planning.

Subsection (b) allows the Governor to direct expenditure of the funds apportioned to a substate area if the grantee fails to submit a satisfactory plan within a reasonable period after it has been designated. Although the bill does not specify a particular time period, the Committee feels that 45 days following selection should be ample time for a grantee to present a satisfactory plan. Subsection (c) permits the Governor to bypass the grantee and direct expenditure of the substate funds in cases where the grantee has failed to expend the funds in accordance with an approved plan. This provision could apply in at least two circumstances: first, where the grantee had simply failed to expend the funds available to it in an adequate and timely fashion and, second, where it had expended funds in violation of the substate plan or any provision of law. In the latter case the Governor might, after opportunity for notice and comment, recapture unexpended substate funds and direct their expenditure in accordance with the plan.

Section 310 authorizes the provision of retraining services to displaced workers. Naturally, these services may be provided immediately and directly. In addition, a substate grantee has discretion to issue certificates of continuing eligibility, if this feature has been included in the approved substate plan. Such a certificate may be issued for periods of up to two years when a slot is not immediately available in a particular training program. Each such certificate must state, however, that it is subject to the availability of substate training funds as the time the training is actually provided. In addition, a "portable" certificate may be issued. Such a certificate would permit participants to seek out similar training from the same or other providers, and could be issued when the slots gener-

ally reserved in retraining programs for JTPA participants are filled, or when it is impractical to establish a formal JTPA-sponsored program. The alternative providers must have been approved by the substate grantee. Again, use of the certificate is subject to conditions included on the face of the certificate. The provisions for certificates of continuing eligibility are intended to give substate grantees the capacity to place a higher proportion of participants in training than would be the case if training services were limited to immediately available JTPA slots in selected programs.

Section 311 gives substate grantees authority to select actual service providers to implement the substate plan. The number of services provided by the substate grantee itself will vary from area to area. The Committee intends that the substate grantee have authority both to contract for ongoing services from a provider and to contract for a one-time service, as in the case of tuition for a worker's retraining program. The Committee has not attempted to draft a requirement of formal certification for providers. Section 311(b) instructs the substate grantee to select providers based primarily on demonstrated performance in meeting the goals of the substate plan. This is not intended to preclude use of newly organized providers, but it does require the grantee to make reasonable inquiry to assure itself that the provider will in fact deliver the services in an effective fashion.

PART B—ADVANCE NOTIFICATION OF PLANT CLOSINGS AND MASS LAYOFFS

This part requires employers to give advance notification of plant closings and mass layoffs to employees, state governments, and local governments, in order to permit the effective deployment of dislocation services before dislocation actually occurs. It also requires that employers provide certain information about the planned closing or layoff upon request.

1. Notice

Section 332 requires an employer contemplating a plant closing or mass layoff to give advance notice to the employer's employees likely to be affected by the closing or layoff, and to the unit of local government having jurisdiction over the area in which the facility involved is located. Where the employees are represented by an exclusive representative, the notice is to be given to that representative.

Notice is required whenever an employer with 50 or more full time employees proposes a shutdown or reduction in force that will result in an employment loss at a particular site for 50 or more employees in any thirty-day period. The amount of advance notice is graduated on the basis of the number of employees affected, as follows:

- 50-100 employees affected—90 days.
- 101-499 employees affected—120 days.
- 500 or more employees affected—180 days.

This advance notice will allow for the earliest possible intervention to assist workers who are going to lose their jobs. It also may

afford an opportunity, during the notice period, for ameliorative measures to be considered.

To be sure, there may be cases in which unforeseeable events necessitate a plant closing or mass layoff and it is not economically feasible to require the employer to give notice and wait until the end of the notice period before effecting the plant closing or mass layoff. For example, a natural disaster may destroy part of a plant or a principal customer of the employer may suddenly and unexpectedly terminate or repudiate a major contract. In these situations, the employer is required to give notice as soon as the closing or mass layoff becomes reasonably foreseeable, but subsection (c) permits the employer to implement the proposed closing or layoff without waiting until the end of the full notice period.

Section 335 provides exemptions from the notice (and information) provisions of the bill for three carefully-defined situations in which, in practical terms, no employment loss will occur despite a closing or layoff, or in which all affected employees understood from the date of their hiring that they would be subject to a closing or mass layoff at a specific point in time.

First, where the sale of a plant technically results in the termination or layoff of all employees by the seller, but the buyer has agreed in writing, as part of the buyer's contract with the seller, promptly to hire all or substantially all of the affected seller's employees, the seller is exempted from the notice obligations.

Second, an exemption is created for situations in which work is relocated within a reasonable commuting distance from the work's original location, and all or substantially all of the employees who are technically transferred or laid off are offered transfer opportunities to equivalent positions at the new facility. The phrase "reasonable commuting distance" as used in this exemption must be defined on a case-by-case basis in light of distance, traffic and commuting patterns, the availability of public transportation and other relevant factors, but as a rule-of-thumb a relocation which is more than 30 miles or forty-five minutes from the facility to be closed is not within reasonable commuting distance.

Third, where a facility which was opened for a defined and limited period of time is closed, or where a project which had a defined and limited duration is completed, the employer is not required to give advance notice of the termination or layoff of employees if the affected employees were hired with the express understanding that their employment was temporary and time-limited. The Committee expects that this exemption will have particular application to facilities operated on a short-term basis (e.g. a Christmas tree retail operation) and to many construction projects.

2. Disclosure of Information

Section 333 requires an employer who has given notice of a proposed shutdown or mass layoff to provide certain specified information, upon request, to the representative of the affected employees or the unit of local government involved where either the representative or government desires to explore alternative ownership which would preserve plant operations. Because time is of the essence in these situations, no particular formalities are to be required of the union or local government before an employer is obli-

gated to make disclosure under this section, so long as a written request is made in some manner (by letter, telegram, or otherwise) for assistance under section 306(b)(4), and the employer is then asked for information that must be disclosed under this section.

The bill defines with specificity the type of information that must be disclosed to the union or local government. First, to the extent the employer has prepared financial statements (including income statements, cash-flow statements, balance sheets, or auditor's reports) for the facility involved, those statements must be disclosed for the current fiscal year and preceding three fiscal years, along with any supporting schedules that have been prepared that provide breakdowns or explanations of any items on any of the financial statements. Second, to the extent the employer has prepared or contracted for the preparation of projections, analyses or studies concerning the financial consequences of continuing current or related operations at the facility, those studies or projections must be disclosed. Third, the employer must provide a statement of the employer's present plans with respect to relocating the work of the facility and with respect to the disposition of capital assets of the facility (including the physical plant itself); if no document exists setting forth those plans, the employer is required to prepare a statement for the union or local government on these matters.

The information that is to be disclosed under this section is to be used by the union or local government, and any authorized agents with whom the information is shared, to explore alternatives to the closing or mass layoff. The information may not be disclosed to others, however, in situations in which such disclosure would be likely to benefit the employer's competitors at the employer's expense. The Committee intends that the Secretary issue protective orders where necessary to prevent disclosure of information that could competitively disadvantage the employer.

3. Enforcement

Section 334 provides for civil damage actions to enforce the provisions of this Part. For violations of the notice provisions, damages are to be measured by the wages and fringe benefits (including reimbursement for medical expenses) the employee would have received had the plant remained open or the layoff been deferred until the conclusions of the notice period, less any wages or fringe benefits received from the violating employer during that period. This is in effect a liquidated damages provisions, designed to penalize the wrongdoing employer, deter future violations, and facilitate simplified damages proceedings.

In addition, in recognition of the fact that private plaintiffs will be functioning as private attorney-generals in enforcing this Part, subsection 334(a) (7) provides for awards of attorneys fees to prevailing plaintiffs. The Committee intends that the standards for determining an entitlement to fees, and the method of calculating the amount of the fees, are to be those already established pursuant to the Civil Rights Attorneys Fees Awards Act of 1978, 42 U.S.C. sec. 1988.

Although the Committee believes that, as reported, the duties created by the bill are clear and easily applied, section 334(a) (5)

authorizes a court to reduce a penalty if an employer proves that he acted in complete good faith and with an objectively reasonable belief in the lawfulness of his action. This provision is modeled after section 11 of the Portal-to-Portal Act, 29 U.S.C. sec. 260 and is to be interpreted in accordance with the prevailing law under that section.

Section 334(c) provides that the remedies in this section are the exclusive remedies for any violation of this Part. The Committee intends that the rights to notice and information created by this Part not be used as the basis for an injunction to stop a plant closing or mass layoff.

As a prophylactic against attempts to evade the Act, section 334(d) provides that in determining whether an employer has effected a closing or mass layoff, all employment losses among employees of a single employer at a single site within a 90-day period presumptively should be aggregated. Thus, for example, an employer who laid off one employee per day for 50 days in a 90-day period would presumptively be deemed to have effected a mass layoff of 50 employees, as would an employer who laid off 25 employees on one day and 25 on another day within three months of the first layoff. To rebut this presumption, the employer must prove that the layoffs were implemented on separate days because they were attributable to separate and distinct causes.

4. Effect on Other Laws

The rights and remedies set out in this bill are entitled to be separate from, and are not intended to supplant, limit or otherwise adversely affect, any other rights and remedies afforded employees or other persons by other statutes, such as the National Labor Relations Act, the Labor-Management Relations Act, the Employee Retirement Income Security Act, and the state plant closing laws that touch upon the subject of plant closings and mass layoffs. The Committee has not attempted to review the above-mentioned federal laws, or the decisions interpreting those laws, and thus in reporting this bill the Committee neither approves nor disapproves of any such decisions.

PART C—DEMONSTRATION AND DISCRETIONARY PROGRAMS

Part C addresses the use of Title III funds at the federal level to assist dislocated workers. One-fourth of the annual Title III authorization is reserved to the Secretary of Labor, for expenditure in two ways. Up to 30 percent of the reserved amount may be expended on the five demonstration programs established under Part C. The remainder—at least 70 percent of the reserved amount—is to be expended by the Secretary for discretionary activities.

Demonstration Programs

Providing assistance to dislocated workers that is prompt, flexible, and effective is an enormous challenge. Traditional readjustment and retraining services are essential; innovations such as the rapid response capability also are critically important. At the same time, legislation in this area must recognize the evolving nature of the worker dislocation problem, and the need to develop new direc-

tions for the future. In this context, the Committee determined that the legislation should include a range of demonstration or model programs, to experiment on a modest scale with novel approaches which subsequently may prove beneficial to larger dislocated worker populations. It is the intent of the Committee that these demonstration programs serve as incubators for future legislation to assist dislocated workers. The programs should be exhaustively researched and evaluated, and the Secretary is to report to Congress with specific recommendations including recommendations for legislation where appropriate.

1. Worker Training Loans

The Dislocated Worker Training Loan Demonstration program is a new mechanism for providing retraining and relocation assistance. It permits workers to obtain loans of up to \$5,000 in order to pursue vocational and on-the-job training as well as basic and remedial education. The Committee intends these loans to supplement existing training programs by giving workers greater flexibility to pursue training that best suits their needs.

The program may be distinguished from many other retraining and relocation assistance programs by its focus upon subsidizing longer-term training to prepare workers for new careers and occupations, rather than emphasizing rapid placement into new employment. The Committee expects that in selecting and evaluating projects, the Secretary will attempt to isolate the conditions under which workers are likely to use borrowed funds to make major career shifts. These conditions should include varying the interest rate charged at the different individual projects in order to assess the importance of financing terms. The program may assist the Secretary and the Congress in devising worker loan programs of more general application and thus, potentially, in establishing a largely self-financing basis for this approach to retraining.

2. Self-Employment

The Self-Employment Opportunity Demonstration program is designed to offer dislocated workers the option of receiving assistance to establish their own business enterprises. No such option currently exists among federally-sponsored remedies for economic dislocation. The level of assistance would be based on applicable levels of unemployment compensation benefits. The Committee believes that self-employment is an important path to employment which workers should be able to explore with the benefit of federal assistance. It is also the view of the Committee that enterprises started with this assistance will create additional new jobs to help replace the jobs and enterprises lost in dynamic local economies.

The success of the program depends in large part upon the technical assistance and resources available to participants. Therefore, the Committee expects the Secretary to give special consideration to the degree of entrepreneurial training and support provided to participants when selecting individual demonstration projects. In particular, the Committee would draw attention to states where small business incubators—business arrangements which provide affordable multi-tenant space, onsite management consulting as-

sistance, and shared support services—or similar supports are available to participants.

Under current law, recipients of unemployment compensation benefits lose their right to benefits if they begin to employ themselves. The Committee intends that this demonstration, if successful, will lead Congress to explore alternative uses of federally established unemployment benefits for the purpose of self-employment.

3. Public Works Employment

The Public Works Employment Demonstration program provides employment as a last resort for individuals who qualify. The Secretary of Labor is to contract with private industry councils to carry out local public works projects. The goal of the demonstration program, which is modeled on S. 777, the Guaranteed Job Opportunity Act, is to provide public works employment as a bridge to a private sector position. The demonstration will provide information about the benefits of public works employment projects with education, training, and job search opportunities, the attractiveness of a minimum wage position to one who is unemployed, the transferability of job skills used in the demonstration activity to private sector employment, and the impact of this program on the employability of its participants.

The program requires and the Committee intends that to be eligible a worker must be unemployed and meet the eligibility criteria under Title II of III of the Job Training Partnership Act. The Committee intends that eligible individuals should not begin participation in employment activities until they have spent at least five weeks seeking employment in the private sector, but before they are forced into severe financial difficulty. In implementing the demonstration project, the Secretary should consider grant applications that provide testing for individual education and retraining needs, and that establish linkages to existing training, counseling, and job search opportunities during hours not spent on a job project, including activities funded under this Act. Supportive services such as child care and transportation may be provided as an employment benefit.

Before selecting sites for job projects, the private industry council must assure that proposed employment activities have been approved by appropriate business and labor representatives. Each project may include a number of activities that were selected and will be implemented by the private industry council.

4. Farmers, Farm Workers and Ranchers

This demonstration focuses on the special training and readjustment needs of farmers, farm employees, and ranchers dislocated by the farm crisis. In recognition of the fact that the needs of dislocated farmers and ranchers are oftentimes different than the needs of those who lose their employment due to mass layoffs and plant closings, the Secretary is currently funding a limited number of special farmer dislocation programs out of this discretionary authority under Title III of the Job Training Partnership Act. Subpart 4 builds upon current authority and includes policies that will

improve the quality and effectiveness of the Secretary's specialized programs.

The program provides for ongoing support to eligible states rather than the current policy of limiting the federal commitment to a one-time nonrenewable grant. This will allow states to set up support structures and undertake long-term planning. The program also recognizes that if states are going to establish the earliest possible readjustment capacity, then the eligible population should be defined as including not only farmers who are already unemployed (the definition in part A of the bill) but also farmers and ranchers who are likely or are expected to leave farming due to specified circumstances.

Significantly, the program recognizes the need to develop specialized outreach efforts if the dislocated farmers and ranchers are going to receive the retraining and readjustment services that they need to start a new life. The bill also recognizes the need to provide specially tailored services including, but not limited to: assistance in the evaluation of financial conditions and in the preparation of financial plans; assistance in managing temporary crises, including psychological and mental health counseling; credit and legal counseling, including farmer/lender mediation services; and necessary support services.

5. Job Creation

The Job Creation Demonstration Program authorizes the Secretary, in consultation with the Secretary of Health and Human Services (HHS), to make grants to non-profit community development corporations (CDCs) in order to demonstrate the effectiveness of such corporations in creating employment opportunities for individuals eligible under this bill, particularly those that are heads of low-income households. There has been substantial evidence—in New Hampshire and Vermont, in California and Indiana—that CDCs, using venture capital provided under broader authority administered by the Department of Health and Human Services, are promoting business and employment opportunities in the wake of plant closings. The demonstration seeks to expand on this experience to determine whether a pool of venture capital and technical resources, administered by non-profit CDCs exclusively committed to promoting job creation in communities with plant closings, can effectively provide dislocated workers a source of permanent employment.

As this program is based on a similar HHS program, the legislation requires consultation with the Secretary of HHS. This Committee expects the Labor Department to follow HHS rules, regulations and guidelines for application in grant-making and, to the extent practicable, jointly to fund projects with HHS.

DISCRETIONARY ACTIVITIES

In addition to the five demonstration programs, the Secretary will expend the greater part of reserved funds for discretionary activities. The Committee intends that the Secretary use these funds to support state activities in the areas of rapid response assistance, basic readjustment services, and retraining services. Of particular

importance are projects targeting aid to dislocated workers affected by mass layoffs or plant closings that transcend state boundaries. Under current Title III operations, the Secretary has used discretionary funds to support multi-state and industrywide projects, and to provide special assistance for states that experience substantial unanticipated increases in the number of dislocated workers. The Committee intends that these types of activities should continue on an expanded basis.

Section 392 gives the Secretary authority both to provide services directly and to award funding for projects proposed by States, local governments, business and labor organizations, and other entities involved in providing adjustment assistance to workers. While the Secretary may make direct expenditures for multi-State or industrywide projects under section 392(a)(2) (A) and (B) without gubernatorial approval, the Committee expects that the Secretary will notify the affected Governor or Governors. The Committee intends that the Secretary act expeditiously on requests and proposals for assistance under section 392.

The reference in section 392(a)(1) to mass layoffs caused by natural disasters is an example of the kind of sudden and unpredictable dislocation that would warrant additional funds for a State. The Committee expects that the procedures set forth in section 392(b)(1) normally would be followed in such instances. Under these procedures, the Secretary must obtain the agreement of the Governor before providing emergency services or financial assistance to a particularly distressed area or industry within a State. When proposals for funding are submitted by entities other than State governments, section 392(b)(3) requires that the proposal be submitted through the Governor of the State in which the project is located. The Governor may make recommendations to the Secretary as to whether the proposal is consistent with the State plan.

VI. COST ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 28, 1987.

HON. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 538, the Economic Dislocation and Worker Adjustment Assistance Act, as ordered reported by the Senate Committee on Labor and Human Resources on May 15, 1987.

With best wishes,
Sincerely,

JAMES BLUM
(FOR EDWARD M. GRAMLICH, *Acting Director*).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 538.
2. Bill title: Economic Dislocation and Worker Adjustment Assistance Act.

3. Bill status: As ordered reported by the Senate Committee on Labor and Human Resources, May 15, 1987.

4. Bill purpose: To implement the recommendations of the Secretary of Labor's Task Force on Economic Dislocation and Worker Adjustment and for other purposes. These grants are subject to subsequent appropriations action.

5. Estimated cost to the federal government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Dislocated worker assistance:					
Estimated authorization.....	770	812	858	907	910
Estimated outlays.....	26	631	827	853	901

The effects of this bill would fall in budget function 500.

Basis of estimate: S. 538, the Economic Dislocation and Worker Adjustment Assistance Act, would amend the Job Training Partnership Act (JTPA) to replace the current Dislocated Worker program with a three part program of adjustment assistance, advance notification and demonstration programs.

The bill would authorize \$980 billion in 1988 for the Worker Re-adjustment program. The existing Title III of the JTPA is authorized at such sums as may be necessary and currently estimated in the CBO baseline at approximately \$210 million. The additional amount authorized by this bill is estimated to be \$770 million in 1988.

The estimates assume full appropriation of authorized levels at the beginning of each year and, based on conversations with Committee staff, assumes the funds would be appropriated on a forward funding basis. Estimated outlays, therefore, reflect the spending pattern of current forward funded programs.

Seventy-five percent of the authorization would be allocated to the states and used to fund the development of state plans and systems for delivering labor market services and short term assistance to workers in need of readjustment.

Twenty-five percent of the authorization would go to the Secretary of Labor to fund discretionary and demonstration programs. Up to thirty percent of the money allocated to the Secretary would go to fund demonstrated projects to test the effectiveness of assisting dislocated workers, farmers and ranchers, through loans, self-employment support, or public-works projects. Farmers and ranchers economically endangered by the recent farm crisis would be assisted under a fourth demonstration project. The remaining money would be available for the Secretary to establish, at his discretion, specific projects in the event of a mass layoff or for worker readjustment training in the event of an emergency in a particular state or industry.

In addition, the bill would require employers to give advance notification of plant closings and mass layoffs to employees and to state and local governments. The length of notice required would vary with the number of employees losing jobs. This section of the bill would have no federal cost.

There is some limited evidence, based on one case study done in Canada, that comprehensive assistance to dislocated workers, including advance notification, rapid response and continued adjustment assistance could result in fewer weeks of unemployment. On the other hand, S. 538 could result in longer stays on unemployment insurance for workers in training programs and in demonstration projects, similar to the experience in the Trade Adjustment Assistance program. Since there is not sufficient information to estimate reliably the relative magnitudes of these two opposing effects on unemployment insurance, no change to spending on unemployment insurance is shown as a result of this bill.

6. Estimated cost to state and local government: The bill is not expected to affect state and local budgets. The bill would require states to establish better systems for assisting and training dislocated workers but allows certain percentages of the authorized amounts to be spent on these activities.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Marianne Deignan.

10. Estimate approved by : C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

VII. REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 538 is made.

A. ESTIMATED NUMBER OF INDIVIDUALS AND BUSINESSES REGULATED AND THEIR GROUPS OR CLASSIFICATIONS

S. 538 is designed to provide for the development and delivery of services to assist dislocated workers at the local, state and federal levels. As part of this effort to develop prompt and effective service delivery, the bill provides for advance notification of plant closings and/or mass layoffs.

The Act defines eligible dislocated workers as: (1) workers who have been terminated or laid off and are unlikely to return to the industry or occupation; (2) workers who have been terminated due to plant closings; (3) individuals who have experienced long-term unemployment and who have limited opportunities for reemployment in the same or similar occupation; (4) individuals who were self-employed who are unemployed due to general economic conditions or natural disasters; and (5) displaced homemakers.

Attempts have been made to estimate the number of dislocated workers in the United States today. The United States General Accounting Office estimated in a July 1986 report that approximately 2.3 million workers were dislocated annually between 1979 and 1984. This figure does not take into account displaced homemakers, self-employed individuals who lost their jobs, or long-term unemployed workers. It is not reasonably possible to estimate the exact number of individuals who would be eligible for the services provided under this Act. Nor is it possible to estimate how many of these individuals actually would take advantage of the services provided under this Act.

Businesses with 50 or more full-time employees are subject to the advance notification requirements specified in the bill in the case of a plant closing or mass layoff. A General Accounting Office survey of businesses estimated that 16,200 businesses with 50 or more employees closed or had a permanent layoff during 1983 and 1984. These closings or layoffs resulted in the dislocation of 1.3 million workers. The Committee cannot reasonably estimate the number of businesses that may experience a plant closing or mass layoff in the future.

B. ECONOMIC IMPACT ON THE INDIVIDUALS, CONSUMERS, AND BUSINESSES AFFECTED

The purpose of this Act is to assist dislocated workers in adjusting to changes in employment due to plant closings, mass layoffs or other comparable economic upheavals. If the goals of this legislation are realized, tens of thousands of displaced workers will find new employment, reducing or eliminating their need to rely on welfare payments, food stamps, or other forms of income support. The advance notification provisions of the Act will allow many of these workers to make readjustments before they are displaced; such early worker adjustment will result in savings to the unemployment compensation system. The exact savings in welfare, unemployment compensation, and related government expenditures are unknown.

Businesses generally will benefit from the availability of a trained and skilled workforce. They, and our nation as a whole, will benefit from the increased competitiveness that a workforce trained in new technologies will bring. The increased competitiveness potentially could translate into improvements in this country's trade imbalance. Furthermore, providing training to allow this nation's workers to become skilled in emerging technologies could encourage substantial new investment in this country, thereby increasing our tax base and creating thousands of new jobs.

C. IMPACT OF THE ACT ON PERSONAL PRIVACY

This legislation has no impact on personal privacy. The collection of routine data will be necessary to evaluate the effectiveness of programs provided by the Act; however, these data do not have any new personal privacy implications.

D. ADDITIONAL PAPERWORK, TIME AND COSTS

This Act is designed to complement the administrative and recordkeeping system established through the Job Training Partnership Act. The Committee estimates that no significant increase in paperwork, time, or costs will be necessitated by this Act.

VIII. TABULATION OF VOTES CAST IN COMMITTEE

Rollcall votes taken during Committee consideration of this legislation are as follows:

1. Quayle amendment to delete Part B from the substitute amendment.

Amendment rejected 5 yeas, 11 nays:

YEAS
Hatch
Quayle
Thurmond
Cochran
Humphrey

NAYS
Kennedy
Pell
Metzenbaum
Matsunaga
Dodd
Simon
Harkin
Adams
Mikulski
Stafford
Weicker

2. Kennedy motion to report the bill with an amendment in the nature of a substitute, as amended, out of the Committee favorably. Motion agreed to 11 yeas, 5 nays:

YEAS
Kennedy
Pell
Metzenbaum
Matsunaga
Dodd
Simon
Harkin
Adams
Mikulski
Stafford
Weicker

NAYS
Hatch
Quayle
Thurmond
Cochran
Humphrey

IX. SECTION-BY-SECTION ANALYSIS

Section 1 establishes the short title of the Act as the Economic Dislocation and Worker Adjustment Assistance Act.

Section 2(a) replaces Title III of the Job Training Partnership Act. [The analysis of section 2(a) of this Act uses the Job Training Partnership Act section numbers found within section 2(a) that correspond to Title III of the Job Training Partnership Act].

PART A—DISLOCATED WORKER ADJUSTMENT SERVICES

Definitions

Section 301(1) defines “eligible dislocated worker” as an individual who has been (or has received notice that he or she will be) terminated or laid off and is unlikely to return to his or her previous industry or occupation; has been terminated as a result of any permanent closure of a plant or facility; has experienced long-term unemployment (at least 15 weeks) and has limited opportunities for employment or reemployment in the same or a similar occupation in the area; was self-employed (including farmers) and is unemployed due to general economic conditions or a natural disaster; or was a full-time homemaker and no longer receives support from his or her spouse.

Section 301(2) defines “labor-management committee” as a voluntary employer-employee committee formed to assist in the adjustment of employees who are or will be dislocated.

Section 301(3) defines "local elected official" as the chief elected executive officer of a unit of general local government.

Section 301(4) defines "private industry council" as the council established pursuant to section 102 of the Job Training Partnership Act.

Section 301(5) defines "rapid response" as contact within 48 hours with employees and employers upon notification or knowledge of a plant closing or mass layoff.

Section 301(6) defines "rapid response capability" as one or more specialists designated to establish on-site contact with employer and employee representatives involved in an announced plant closing or mass layoff.

Section 301(7) defines "rapid response team" as a team established by the State unit for the purpose of providing prompt delivery of services at the site of a plant closing or mass layoff.

Section 301(8) defines "service provider" as the body that delivers educational, training or employment services.

Section 301(9) defines "State" as any of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

Section 301(10) defines "State unit" as the unit created or designated by the States to coordinate and make available services to dislocated workers.

Section 301(11) defines "substate area" as existing service delivery areas with a population greater than 500,000 or any combination of two or more existing service delivery areas with populations of less than 500,000.

Section 301(12) defines "substate grantee" as the body selected to administer dislocated worker programs pursuant to section 308.

Findings

Section 302 summarizes the findings of Congress concerning the need for a federal initiative to reemploy workers permanently displaced from employment and to provide workers and communities with the advance notification needed for a successful readjustment program.

Purposes

Section 303 states the purposes of this Act: to enhance the international competitiveness of the American economy; to facilitate the return of dislocated workers to productive employment; to establish the earliest possible readjustment capacity in each State; to provide comprehensive coverage to workers; to emphasize training and re-employment rather than income support; to provide early referral from the unemployment compensation system to adjustment services; to offer broad flexibility at all levels to try new approaches as well as use proven approaches to help dislocated workers; and to promote management, labor, and community partnerships with government in addressing worker dislocations.

Secretary's Role

Section 304(a) directs the Secretary of Labor to distribute funds to States and to exemplary and demonstration programs and to allocate discretionary funds to areas and industries most in need of assistance; to monitor performance and expenditures and certify

compliance; to conduct research and serve as a national clearing-house of information on plant closings and worker dislocation; and to provide technical assistance and training services.

Section 304(b) directs the Secretary of Labor to create or designate a dislocated workers unit to coordinate the functions of the Secretary under this Act and to employ the personnel needed to carry out its functions. This section further directs the dislocated workers unit to consult with the Assistant Secretary for Veterans' Employment and Training to ensure consideration of the needs of displaced workers who are veterans.

State Plan

Section 305(a) directs that Governors must submit State plans on a biennial basis, detailing the programs and activities to be assisted by funds under the Act, in order to receive funds under this Act.

Sections 305(a)(1)-(14) provide as follows: (1) each Governor must create or designate a State dislocated worker unit which has rapid response capability; (2) the State unit will make services available to dislocated workers through the use of rapid response teams, sub-state grantees, and other appropriate sources; (3) the State unit will operate a monitoring and reporting system to assist in the evaluation of programs and services; (4) the State unit will exchange information and coordinate programs with the appropriate agency for developing strategies to avoid plant closings; (5) the State unit will coordinate and facilitate the provisions of all available dislocated worker services; (6) the State will disseminate information regarding the availability of services; (7) all affected employees will be served equally regardless of State residency; (8) services provided to a substantial number of members of a labor organization will be established only after consultation with the labor organization; (9) the State will not disqualify any individual from receiving unemployment compensation based on work search requirements; (10) the State will not issue standards inconsistent with section 314(a)(2) of this Act; (11) the Governor will establish and provide administrative support to a State job training coordinating council to advise the Governor and State unit; (12) the State unit and coordinating council will consult with the State agency with jurisdiction over veterans' affairs and with veterans' service organizations to ensure consideration of the needs of dislocated workers who are veterans; (13) the coordinating council will comment on the State plan; and (14) delivery of services will be integrated or coordinated with services made available under chapter 2 of title II of the Trade Act of 1974.

Section 305(b) directs the Secretary of Labor to review and, if found acceptable, approve plans submitted by the States. The Secretary shall provide notice to States or any deficiencies in their plans, and no plan will be disapproved without the opportunity for a hearing.

Section 305(c) allows for modification of State plans upon the agreement of the Governor and the Secretary of Labor.

Section 305(d) establishes a mechanism by which complaints or reports of noncompliance with State plans shall be investigated and heard, and provides for the withholding of funds when violations are found.

Use of Funds Allocated to States

Section 306(a) provides that funds allocated to States may be used to provide rapid response assistance; to deliver, coordinate, and integrate basic readjustment services; to provide retraining services; to provide income support; and to provide linkage with the unemployment compensation system.

Section 306(b) directs that funds allocated to a State under section 313 shall be used to establish and maintain a rapid response capability for immediate assistance to workers affected by a plant shutdown or mass layoff. This section describes the functions that may be coordinated and performed by the rapid response capability in conjunction with other individuals, groups, or agencies.

Section 306(c) directs that funds allocated to a State under section 313 shall be used to provide basic readjustment services to eligible dislocated workers. The section describes typical services that may be provided, including job training or counseling, skills assessment, job search assistance, and supportive services.

Section 306(d) directs that funds allocated to a State under section 313 shall be used to provide retraining services to eligible dislocated workers, with an emphasis on experienced workers. The section describes typical services that may be provided, including classroom training, on-the-job training, and basic and remedial education.

Section 306(e) directs that funds allocated to a State under section 313 may be used to provide income support to eligible dislocated workers. The income support shall not exceed the available level of unemployment compensation or the poverty level, and not more than 15 percent of the funds expended under this title by a State may be used to provide income support and other supportive services.

Section 306(f) directs that funds allocated to a State under section 313 shall be used to establish programs which link the unemployment compensation system and the worker readjustment program system.

Section 306(g) directs that not less than 30 percent of the funds expended under this title by any substate grantee shall be used for retraining services under subsection (d), unless the substate grantee applies for and obtains a waiver from the Governor.

Substate Delivery of Services

Section 307(a) provides that the Governor shall, after receiving recommendations from the State job training coordinating council, designate substate areas which shall consist of one or more service delivery areas.

Section 307(b) provides that any service delivery area with a population of 500,000 or more shall be designated as a substate area; that service delivery areas with populations of less than 500,000 may, at the Governor's discretion, be deemed a substate area; but that in any case, each existing service delivery area shall be designated either as a substate area or a part thereof.

Section 308(a) provides that a substate grantee shall be designated on a biennial basis for each substate area. The substate grantee shall be responsible for providing services described in section 306

(c), (d) and (e) either directly or through arrangements with service providers.

Section 308(b) provides that the substate grantee shall be designated through an agreement among the Governor, the local elected official, and the private industry council. If no agreement is reached, the Governor shall select the substate grantee. This section authorizes the Governor to establish procedures for designating substate grantees.

Section 308(c) lists the entities eligible for designation as substate grantees.

Section 309(a) directs that no amounts be allocated to a substate area unless the Governor has approved a substate plan submitted by the substate grantee describing the manner in which services will be delivered. This section describes the information to be included in the substate plan (see section 309(a)(1) through (11)), and provides that the plan be submitted to the local elected officials and the private industry council for review prior to its submission.

Section 309(b) grants the Governor authority to expend funds allocated to a substate area if a substate grantee fails to submit a plan that is approved by the Governor, until such time as a plan is submitted and approved.

Section 309(c) provides that if a substate grantee fails to expend funds allocated to it, the Governor may, after appropriate notice and opportunity for comment, direct the expenditure of the funds.

Section 310(a) requires that any allowable training services shall be provided in accordance with a readjustment training plan that is included as part of the substate plan.

Section 310(b) enumerates the required elements of a readjustment training plan.

Section 310(c) provides that an eligible dislocated worker may receive retraining services or a certificate of continuing eligibility.

Section 310(d) authorizes a substate grantee to issue a certificate of continuing eligibility to any eligible dislocated worker who has applied for the readjustment training program, for periods not to exceed 104 weeks, subject to the availability of funds. Dislocated workers issued a certificate of continuing eligibility may seek out and arrange their own training with service providers approved by the substate grantee.

Section 311(a) directs that service providers shall be selected by substate grantees pursuant to arrangements agreed upon in the substate plan.

Section 311(b) states that service providers shall be selected on the basis of the demonstrated effectiveness of the agency or organization in delivering services.

Section 312 provides that participate by any individual in any of the programs authorized in this title shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of Federal law relating to unemployment benefits.

Allocation of Funds

Section 313(a) directs that 75 percent of the funds appropriated for any fiscal year shall be allocated in accordance with the provisions of subsection (b), and 25 percent shall be reserved for alloca-

tion under part C of this title. Not more than \$2,500,000 of the amounts appropriated and reserved for allocation under Part C shall be allocated among the Commonwealth of the Northern Mariana Islands and any other territory or possession of the United States.

Section 313(b)(1) sets criteria for the allocation of funds by the Secretary to the States under part A of this title. One-third of the amount shall be allocated among the States based on the proportion of unemployed individuals residing in each State compared to the total number of unemployed workers nationally. One-third of the funds shall be allocated among the States on the basis of the relative excess number of unemployed individuals (that is, the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the State) residing in each State as compared to the total excess number of unemployed individuals in all the States. One-third of the funds shall be allocated among the States on the basis of the relative number of long-term (15 weeks or more) unemployed individuals in each State as compared to the total number of such individuals in all the States.

Section 313(b)(2) provides that 30 days after data are available, the Secretary shall advise the Congress on the advisability of allocating funds so that 75 percent of the funds are allocated among the States based on sections 313(b)(1) above, and 25 percent of such available funds are allocated among States on the basis of the number of workers displaced by plant closings or mass layoffs in each State.

Section 313(c) directs Governors to distribute at least 50 percent of the State's allocations to substate areas within the State based on area unemployment, numbers of dislocated workers and other listed factors. The remainder of funds shall be retained by the Governor for State administration, technical assistance and program coordination, statewide or industrywide projects, rapid response activities, establishment of linkages between the unemployment compensation system and the worker adjustment program system, and additional assistance to areas that experience substantial increases in the number of dislocated workers.

Section 314(a) directs the Secretary of Labor to promulgate standards for the conduct and evaluation of programs, and provides that no standard shall count the cost of income support provided under section 306(e) as a part of the cost of enrollment and placement of participants or otherwise penalize the provision of such income support.

Section 314(b) directs the Secretary to provide services to dislocated workers in States that fail to qualify for allocations under section 313.

Section 314(c) limits carryover to 20 percent of funds allocated to a State in a fiscal year, and grants authority to the Secretary to adjust allocations in succeeding years in accordance with section 315. This section provides, furthermore, that States which have expended 95% of their allocated funds and then expend their own funds in response to a substantial increase in the number of dislocated workers may be reimbursed for such additional expenditures by the Secretary from their next year's allocation, although the Secretary may provide such reimbursement only once to a State.

Section 314(d) limits expenditures for administrative costs by Governors or substate grantees to 15 percent of the funds expended.

Section 314(e) gives State units access to labor market information collected and maintained under part E of title IV of the Job Training Partnership Act.

Section 315 allows the Secretary of Labor to reallocate funds unexpended by States to the 25 States with the highest unemployment rates for the preceding 12 months provided that these States already have expended 90% of their own allotment for the program year.

Section 316(a) instructs the State job training coordinating council to meet at least quarterly to review programs, State plans, and substate plans and submit comments concerning them to the Governor, as well as to perform other assigned functions advisory to the Governor.

Section 316(b) directs the Governor to provide sufficient funds to the State job training coordinating council.

Section 317 directs that the Secretary will provide for the continuing evaluation of programs authorized by this title and annual report to Congress on activities conducted under this title.

PART B—ADVANCE NOTIFICATION OF PLANT CLOSINGS AND MASS LAYOFFS

Definitions

Section 331(1) defines "employer" as any business enterprise that employs at least 50 full-time employees.

Section 331(2) defines "plant closing or mass layoff" as a shutdown of a facility or a reduction in force resulting in an employment loss during any 30-day period for 50 or more employees.

Section 331(3) defines "representative" as an exclusive representative of employees within the meaning of the National Labor Relations Act or Railway Labor Act.

Section 331(4) defines "affected employees" as those employees who may reasonably be expected to experience a job loss as a result of a plant closing or mass layoff.

Section 331(5) defines "employment loss" as involuntary employment termination, layoff of indefinite duration or exceeding 6 months, or a reduction of hours of more than 50 percent during any 6-month period.

Section 331(6) defines "unit of local government" to mean any political subdivision of a State having general corporate and police powers which has the power to levy taxes and spend funds.

Advance Notice Requirement

Section 332(a) directs that an employer shall not order a plant closing or mass layoff until the employer has given written notice to each representative of the affected employees, or, if none exists, to each individual employee, and to the State dislocated worker unit and the chief local elected official.

Section 332(b) provides that the notice directed by section 332(a) shall be 90 days for plant closings or mass layoffs affecting 50-100 employees, 120 days for closings or layoffs affecting 101-499 em-

ployees, and 180 days for closings or layoffs affecting 500 or more employees.

Section 332(c) allows employers to order a plant closing or mass layoff without the notice specified above if the closing or layoff is caused by business circumstances that were not reasonably foreseeable.

Duty To Disclose Information

Section 333(a) directs that in certain circumstances employers provide information, such as financial statements, feasibility studies, or statements of relocation plans, upon the request of the representative of the employees or unit of local government.

Section 333(b) prohibits disclosure of such information by the requesting party if disclosure would harm the employer's competitive position. This section requires protective orders to be issued by the Secretary upon petition by the employer.

Enforcement of Notice and Information Requirements

Section 334(a) establishes penalties for employers who fail to provide notice or information to employees, their representatives and/or the local government unit as directed by this Act: (1) Employers are liable to employees for back pay for each day of violation up to one-half the number of days the employee was employed by the employer, at the average rate of pay for the employee's last three years with the employer or the final rate of pay, whichever is higher. The employer is also liable for the cost of fringe benefits and medical expenses incurred which would have been covered during the violation period. The amount of liability is reduced by any earnings or fringe benefits received by the employee from the employer during the period of violation. (2) Employers who fail to provide notice to the unit of local government are subject to a civil penalty of \$500 per day of violation. (3) Employers who fail to provide information requested pursuant to section 333 are liable to the requesting party for a civil penalty not to exceed \$10,000. (4) The unit of local government eligible to recover for a violation is the unit with jurisdiction over the area in which the employer is located, or the unit to which the employer pays the highest taxes. (5) If the employer who violates this part proves to the court that it acted in good faith and had reasonable grounds to believe that it did not violate this part, the court may reduce the amount of liability. (6) Parties seeking to enforce the liability provisions of this section may bring suit in the district court having jurisdiction. (7) The court may award a reasonable attorneys' fee and costs to prevailing plaintiffs.

Section 334(b) provides that employee representatives or units of local government that violate the provisions of section 333(b) are liable to the employer for any financial loss suffered as a result of the violation. Actions may be brought in any United States court of competent jurisdiction. The court may award a reasonable attorneys' fee and costs to prevailing plaintiffs.

Section 334(c) directs that the remedies provided in this section are exclusive.

Section 334(d) provides that any two or more employment losses at a single site within a 90 day period that involve less than 50 em-

ployees each but that affect a total of 50 or more employees shall be considered a plant closing or mass layoff unless the employer demonstrates that the actions were separate and distinct.

Exemptions

Section 335 exempts from this part plant closings or mass layoffs which result from temporary projects, from the sale of a business if the purchaser offers to hire substantially all affected employees, or from businesses relocating within a local community if transfers are offered to substantially all employees.

Miscellaneous

Section 336 provides that the rights and remedies provided to employees in this part are in addition to, and not in lieu of, other legal rights and remedies of employees.

Section 337 expresses the sense of Congress that employers not required to provide notice pursuant to this part should attempt to notify employees about proposed plant closings and mass layoffs.

Section 338 provides that this part takes effect six months after enactment of this Act.

PART C—DISLOCATED WORKERS' DEMONSTRATION, EXEMPLARY, AND DISCRETIONARY PROGRAMS

Section 351 states that the purpose of this part is to encourage the development of demonstration and discretionary programs that increase the employability of dislocated workers.

Section 352 grants authority to the Secretary of Labor to carry out demonstration, discretionary, and exemplary programs. Not more than 30 percent of the funds reserved for this part shall be available for grants relating to the five demonstration programs created by this part, provided that not less than 10 percent be allocated to the dislocated farmers demonstration program. The remaining 70 percent (or more) shall be used for the Secretary's discretionary programs.

Subpart 1: Dislocated Workers Training Loan Demonstration Program

Section 356(a) directs the Secretary of Labor to carry out dislocated worker loan demonstration projects to determine their feasibility and cost effectiveness.

Section 356(b) allows the Secretary of Labor, in establishing these projects, to consider such factors as interest rates charged, terms of repayment, consistency with other government loan programs, and other factors. It further directs the Secretary to establish at least five projects to serve at least 2,000 dislocated workers annually.

Section 356(c) directs that loans to each dislocated worker may not exceed \$5,000, and that loans may be used only for job training, basic and remedial education, relocation expenses, and child care services. No more than 25 percent of the loans may be used for relocation expenses and child care.

Section 357 directs the Secretary of Labor to evaluate the loan programs established by this part, and lists factors to be used in the evaluation. The Secretary is directed to submit a report of the

evaluation to Congress not later than October 1, 1990, along with the Secretary's recommendations.

Subpart 2: Self-Employment Opportunity Demonstration Projects

Section 361(a) directs the Secretary of Labor to carry out, through agreements with States, demonstration projects to determine the feasibility and cost effectiveness of offering recipients of unemployment compensation assistance to establish their own businesses.

Section 361(b) lists factors to be considered by the Secretary in establishing these demonstration projects, and directs the Secretary of Labor to establish at least five demonstration projects serving at least 500 dislocated workers annually.

Section 361(c) provides that eligibility for assistance under these projects shall be comparable to eligibility for unemployment compensation, that rates of benefits shall be as equal as practicable to unemployment compensation benefits, and that the period of eligibility shall be not less than 26 weeks nor more than 39 weeks.

Section 362 directs the Secretary to evaluate the self-employment programs established by this part, and lists factors to be used in the evaluation. The Secretary is directed to submit a report of the evaluation to Congress not later than October 1, 1990, along with the Secretary's recommendations.

Subpart 3: Public Works Employment Demonstration Projects

Section 366 directs the Secretary of Labor to enter into contracts with private industry councils to carry out public works employment demonstration projects to determine their feasibility and effectiveness in assisting dislocated workers in developing marketable skills and finding private sector employment. Individuals who meet the eligibility requirements of the Job Training Partnership Act may participate in these projects.

Section 367 provides that no job project will be selected if an objection is filed by two business or two labor representatives on the private industry council. Participants employed in job projects assisted under this subpart may not be employed for more than 32 hours per week. The Secretary of Labor shall establish guidelines for the selection of projects by the private industry councils, which shall include a requirement of participation in at least 8 hours of education, training and job search activities per week. The Secretary shall conduct at least five projects under this subpart.

Section 368 directs the Secretary of Labor to evaluate the projects established by this subpart, and lists factors to be used in the evaluation. The Secretary is directed to submit a report of the evaluation to Congress not later than October 1, 1990, along with the Secretary's recommendations.

Subpart 4: Dislocated Farmers, Farm Employees, and Ranchers Demonstration Program

Section 71 directs the Secretary of Labor to allocate funds to States to carry out demonstration projects for dislocated farmers, farm employees, and ranchers, in order to determine whether substantial numbers of these individuals could benefit from specially tailored outreach and assistance.

Section 372 sets forth eligibility requirements based on declining farm equity and increases in average debt-to-asset ratio of farms. States must submit an application in order to receive funds. The Secretary of Labor shall consult with the Secretary of Agriculture to carry out this section.

Section 373 sets out factors to be utilized by the Secretary of Labor in allocating funds to eligible States. No State shall receive more than 10 percent of the funds available for this subpart. States that are unable to use their entire allocation shall repay the unused portion to the Secretary, and the Secretary will redistribute those funds.

Section 374 directs Governors of eligible States who wish to receive funds to submit an application to the Secretary of Labor describing how the State will use the funds. This section lists the required contents of the application.

Section 375 provides that eligible farmers, farm employees, and ranchers include individuals who can demonstrate that the farm or ranch operation providing their employment has terminated or is likely to terminate because of foreclosure, bankruptcy, an absence of profits or capital, or failure to make mortgage payments, and individuals who will leave farming because of an unfavorable debt-to-asset ratio.

Section 376 provides that activities and services to be provided under this subpart include specially tailored basic readjustment services, retraining services, and income support services.

Section 377 directs the Secretary to evaluate the projects established by this subpart, and lists factors to be used in the evaluation. The Secretary is directed to submit a report of the evaluation to Congress not later than October 1, 1990, along with the Secretary's recommendations.

Subpart 5: Job Creation Demonstration Program

Section 381 authorizes the Secretary of Labor, in consultation with the Secretary of Health and Human Services, to make grants to nonprofit community development corporations to demonstrate the effectiveness of these organizations in creating employment opportunities for eligible dislocated workers, particularly low-income heads of households.

Section 382 directs recipients of grants to furnish technical and financial assistance for businesses located in distressed communities in order to promote employment opportunities for dislocated workers.

Section 383 requires that an application for funds be submitted to the Secretary of Labor. The application shall describe the assistance the applicant will make available and the geographic area to be served, and shall provide assurances that the applicant will cooperate with the area substate grantees. The Secretary shall give priority to the applicants seeking to serve the highest percentage of dislocated workers who are low-income heads of households.

Section 384 directs the Secretary of Labor to evaluate the effectiveness of programs under this subpart and to submit a report of the evaluation to Congress not later than October 1, 1990, along with the Secretary's recommendations.

Section 385(1) defines "nonprofit community development corporation" to mean any such corporation described in section 681(a)(2)(A) of the Community Services Block Grant Act.

Section 385(2) defines "substate grantee" as any such grantee established under Part A of this title.

Subpart 6: Secretary's Discretionary Programs

Section 391 authorizes the Secretary to expend funds for discretionary programs and to make grants and enter into contracts as the Secretary deems appropriate. The Secretary shall establish criteria for the application for and distribution of funds.

Section 392(a) provides that funds may be used to provide services to workers dislocated due to mass layoffs (including those caused by natural disasters), and may be used to support industry-wide projects and multi-state projects.

Section 392(b) provides that funds also may be used for emergency assistance to any particularly distressed industry, for staff training and technical assistance services to entities involved in providing adjustment assistance to workers, and for financial assistance to States and areas that experience substantial increases in the number of dislocated workers.

Section 392(c) instructs the Secretary of Labor to disseminate information on the effectiveness of programs assisted under this part.

Section 2(b) of this Act amends Section 3(c) of the Job Training Partnership Act to provide \$980,000,000 for Title III for fiscal year 1988 and such sums as may be necessary for each succeeding fiscal year.

Section 2(c) of this Act amends Sections 122(a) (2) and (3) of the Job Training Partnership Act to provide that the State job training coordinating council shall be appointed by the Governor after consultation with labor organizations, business, and other affected organizations. The Governor shall designate a chairperson. Thirty percent of the membership of the State council shall be representatives of business, 30 percent shall be representatives of the State legislature, interested State organizations and agencies, and units of local government, 30 percent shall be representatives of organized labor and community-based organizations, and 10 percent of the membership shall be appointed from the general public. This section shall take effect 60 days after the enactment of this Act.

Section 2(d) of this Act amends section 106(e) of the Job Training Partnership Act to allow the Governor to prescribe variations in performance standards to substate areas designated under this Act.

Section 2(e) of this Act authorizes the Secretary of Labor to implement procedures to terminate activities under the existing Title III to provide for an orderly transition to the activities authorized by this Act.

Section 2(f) of this Act replaces the Table of Contents pertaining to the existing Title III of the Job Training Partnership Act with a Table of Contents for this Act.

X. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or

the part of section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

JOB TRAINING PARTNERSHIP ACT

AN ACT To provide for a job training program and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Job Training Partnership Act".

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AUTHORIZATION OF APPROPRIATIONS

SEC. 3. (a)(1) There are authorized to be appropriated to carry out part A of title II and title IV (other than part B of such title) such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.

(2) From the amount appropriated pursuant to paragraph (1) for any fiscal year, and amount equal to not more than 7 percent of the total amount appropriated pursuant to this section shall be available to carry out parts A, C, D, E, F, and G of title IV.

(3) Of the amount so reserved under paragraph (2)—

(A) 5 percent shall be available for part C of title IV, and

(B) \$2,000,000 shall be available for part F of title IV.

(b) There are authorized to be appropriated to carry out part B of title II such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.

[(c) There are authorized to be appropriated to carry out title III such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.]

(c) *There are authorized to carry out title III—*

- (1) \$980,000,000 for fiscal year 1988; and
- (2) Such sums as may be necessary for each succeeding fiscal year.

* * * * *

TITLE I—JOB TRAINING PARTNERSHIP

PART A—SERVICE DELIVERY SYSTEM

* * * * *

PERFORMANCE STANDARDS

SEC. 106. (a) * * *

(e) Each Governor may prescribe, within parameters established by the Secretary, variations in the standards under this subsection and subsection (g) based upon specific economic, geographic, and demographic factors in the State and substate areas and in service delivery areas within the State, and characteristics of the population to be served, and the type of services to be provided.

* * * * *

PART B—ADDITIONAL STATE RESPONSIBILITIES

* * * * *

STATE JOB TRAINING COORDINATING COUNCIL

SEC. 122. (a)(1) Any State which desires to receive financial assistance under this Act shall establish a State job training coordinating council (hereinafter in this section referred to as the "State council"). Funding for the council shall be provided pursuant to section 202(b)(4).

[(2) The State council shall be appointed by the Governor, who shall designate one nongovernmental member thereof to be chairperson. In making appointments to the State council, the Governor shall ensure that the membership of the State council reasonably represents the population of the State.

[(3) The State council shall be composed as follows:

[(A) One-third of the membership of the State council shall be representatives of business and industry (including agriculture, where appropriate) in the State including individuals who are representatives of business and industry on private industry councils in the State.

[(B) Not less than 20 percent of the membership of the State council shall be representatives of the State legislature and State agencies and organizations, such as the State educational agency, the State vocational education board, the State advisory council on vocational education, the State board of education (when not otherwise represented), State public assistance agencies, the State employment security agency, the State rehabilitation agency, the State occupational information coordinating committee, State postsecondary institutions, the State economic development agency, State veterans' affairs agencies or equivalent, and such other agencies as the Governor deter-

mines to have a direct interest in employment and training and human resource utilization within the State.

[(C) Not less than 20 percent of the membership of the State council shall be representatives of the units or consortia of units of general local government in such State (including those which are administrative entities or grantees under this Act) which shall be nominated by the chief elected officials of the units or consortia of units of general local government; and

[(D) Not less than 20 percent of the membership of the State council shall be representatives of the eligible population and of the general public, representatives of organized labor, representatives of community-based organizations, and representatives of local educational agencies (nominated by local educational agencies).]

(2) The State job training coordinating council shall be appointed by the Governor after consultation with labor organizations, business, and other organizations affected by worker dislocation, including units of local government. The Governor shall designate one member to be chairperson.

(3) The State job training coordinating council shall be composed as follows:

(A) Thirty percent of the membership of the State council shall be representatives of business and industry (including agriculture, where appropriate within the State), including individuals who are representatives of business and industry in private industry councils within the State.

(B) Thirty percent of the membership of the State council shall be—

(i) representatives of the State legislature, and State agencies and organizations, including the State educational agency, the State vocational education board, the State advisory council on vocational education, the State board of education (when not otherwise represented), State public assistance agencies, the State employment security agency, the State rehabilitation agency, the State occupational information coordinating committee, State postsecondary institutions, the State economic development agency, State veterans' affairs agencies or equivalent, and such other agencies as the Governor determines to have a direct interest in employment and training and human resource utilization within the State; and

(ii) representatives of the units or consortia of general local government in the State who shall be nominated by the chief elected officials of the units or consortia of units of general local government, and the representatives of local educational agencies who shall be nominated by local educational agencies.

(C) Thirty percent of the membership of the State council shall be representatives of organized labor and representatives of community-based organizations in the State.

(D) Ten percent of the membership of the State council shall be appointed from the general public by the Governor of the State.

* * * * *

【TITLE III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

【ALLOCATION OF FUNDS

【SEC. 301. (a) From the amount appropriated to carry out this title for any fiscal year, the Secretary may reserve up to 25 percent of such amount for use by the States in accordance with subsection (c).

【(b) The Secretary shall allot the remainder of the amount appropriated to carry out this title for any fiscal year among the States as follows:

【(1) One-third of the remainder of such amount shall be allotted among the States on the basis of the relative number of unemployed individuals who reside in each State as compared to the total number of unemployed individuals in all the States.

【(2) One-third of the remainder of such amount shall be allotted among the States on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States. For purposes of this paragraph, the term "excess number" means the number which represents unemployed individuals in excess of 4.5 percent of the civilian labor force in the States.

【(3) One-third of the remainder of such amount shall be allotted among the States on the basis of the relative number of individuals who have been unemployed for fifteen weeks or more and who reside in each State as compared to the total number of such individuals in all the States.

【(c) The Secretary shall make available the sums reserved under subsection (a) for the purpose of providing training, retraining, job search assistance, placement, relocation assistance, and other aid (including any activity authorized by section 303) to individuals who are affected by mass layoffs, natural disasters, Federal Government actions (such as relocations of Federal facilities), or who reside in areas of high unemployment or designated enterprise zones. In order to qualify for assistance from funds reserved by the Secretary under subsection (a), a State shall, in accordance with regulations promulgated by the Secretary establishing criteria for awarding assistance from such funds, submit an application identifying the need for such assistance and the types of, and projected results expected from, activities to be conducted with such funds. Such criteria shall not include any requirement that, in order to receive assistance under this subsection, the State shall provide a matching amount with funds available from one or more other sources.

【(d) The Secretary is authorized to reallocate any amount of any allotment to a State to the extent that the Secretary determines that

the State will not be able to obligate such amount within one year of allotment.

【IDENTIFICATION OF DISLOCATED WORKERS

【SEC. 302. (a) Each State is authorized to establish procedures to identify substantial groups of eligible individuals who—

【(1) have been terminated or laid-off or who have received a notice of termination for lay-off from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation;

【(2) have been terminated, or who have received a notice of termination of employment, as a result of any permanent closure of a plant or facility.

【(3) are long-term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including any older individuals who may have substantial barriers to employment by reason of age; or

【(4) were self-employed (including farmers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters subject to the next sentence. The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which clause (4) of the preceding sentence applies.

【(b) The State may provide for the use of the private industry councils established under title I of this Act to assist in making the identification established under subsection (a).

【(c)(1) Whenever a group of eligible individuals is identified under subsection (a), the State, with the assistance of the private industry council, shall determine what, if any, job opportunities exist within the local labor market area or outside the labor market area for which such individuals could be retrained.

【(2) The State shall determine whether training opportunities for such employment opportunities exist or could be provided within the local labor market area.

【(3) A State may serve any eligible individual under this part without regard to the residence of such individual.

【(d) Whenever training opportunities pursuant to subsection (c) are identified, information concerning the opportunities shall be made available to the individuals. The acceptance of training for such opportunities shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of Federal Law relating to unemployment benefits.

【AUTHORIZED ACTIVITIES

【SEC. 303. (a) Financial assistance provided to States under this title may be used to assist eligible individuals to obtain unsubsidized employment through training and related employment services which may include, but are not limited to—

【(1) job search assistance, including job clubs,

【(2) job development,

- [(3) training in jobs skills for which demand exceeds supply,
- [(4) supportive services, including commuting assistance and financial and personal counseling,
- [(5) pre-layoff assistance,
- [(6) relocation assistance, and
- [(7) programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities.

[(b) Relocation assistance may be provided if the State determines (1) that the individual cannot obtain employment within the individual's commuting area, and (2) that the individual has secured suitable long-duration employment or obtained a bona fide job offer in a relocation area in a State.

[(MATCHING REQUIREMENT

[(SEC. 304. (a)(1) In order to qualify for financial assistance under this title, a State shall demonstrate, to the satisfaction of the Secretary, that it will expend for purposes of services assisted under this title, an amount from public or private non-Federal sources equal to the amount made available to that State under section 301(b).

[(2) Whenever the average rate of unemployment for a State is higher than the average rate of unemployment for all States, the non-Federal matching funds described in paragraph (1) required to be provided by such State for fiscal year shall be reduced by 10 percent for each 1 percent, or portion thereof, by which the average rate of unemployment for that State is greater than the average rate of unemployment for all States.

[(3) The Secretary shall determine the average rate of unemployment for a State and the average rate of unemployment for all States for each fiscal year on the basis of the most recent twelve-month period prior to that fiscal year.

[(b)(1) Such non-Federal matching funds shall include the direct cost of employment or training services under this title provided by State or local programs (such as vocational education), private non-profit organizations, or private employers.

[(2) Funds expended from a State fund to provide unemployment insurance benefits to an eligible individual for purposes of this title and who is enrolled in a program of training or retraining under this title may be credited for up to 50 percent of the funds required to be expended from non-Federal sources as required by this section.

[(PROGRAM REVIEW

[(SEC. 305. Except for programs of assistance operated on a state-wide or industry-wide basis, no program of assistance conducted with funds made available under this title may be operated within any service delivery area without a 30-day period for review and recommendation by the private industry council and appropriate chief elected official or officials for such area. The State shall consider the recommendation of such private industry council and chief elected official or officials before granting final approval of such program, and in the event final approval is granted contrary to such recommendation, the State shall provide the reason there-

fore in writing to the appropriate private industry council and chief elected official or officials.

【CONSULTATION WITH LABOR ORGANIZATIONS

【SEC. 306. Any assistance program conducted with funds made available under this title which will provide service to a substantial number of members of labor organization shall be established only after full consultatin with such labor organization.

【LIMITATIONS

【SEC. 307. (a) Except as provided in subsection (b), there shall be available for supportive services, wages, allowances, stipends, and costs of administration, not more than 30 percent of the Federal funds available under this title in each State.

【(b) The funds to which the limitation described in subsection (a) applies shall not include the funds referred to in section 301(a). In no event shall such limitation apply to more than 50 percent of the total amount of Federal and non-Federal funds available to a program.

【STATE PLANS; COORDINATION WITH OTHER PROGRAMS

【SEC. 308. Any State which desires to receive financial assistance under this title shall submit to the Secretary a plan for the use of such assistance which shall include appropriate provisions for the coordination of programs conducted with such assistance with low-income weatherization and other energy conservation programs, and social services in accordance with the provisions of section 121.】

TITLE III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

PART A—DISLOCATED WORKER ADJUSTMENT SERVICES

DEFINITIONS

SEC. 301. As used in this title—

(1) The term “eligible dislocated worker” means an individual who—

(A) has been terminated or laid off or has received a notice of termination or layoff from employment, is eligible for or has exhausted his or her entitlement to unemployment compensation, and is unlikely to return to his or her previous industry or occupation;

(B) has been terminated, or has received a notice of termination of employment, as a result of any permanent closure of a plant or facility;

(C) has experienced long-term unemployment (that is, at least 15 weeks) and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individual resides, including any older individual who may have substantial barriers to employment by reason of age;

(D) was self-employed (including farmers) and is unemployed as a result of general economic conditions in the community in which such individual resides or because of natural disasters subject to the next sentence; or

(E) was self-employed or a full-time homemaker for a substantial number of years and derived a substantial share of his or her support from a spouse, and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse.

The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which subparagraph (D) of the preceding sentence applies.

(2) The term "labor-management committee" means a voluntary committee comprised of employer and employee representatives of a business enterprise, formed to assist in the adjustment of employees who are, or are expected to be, dislocated. Such committees may also include a neutral chairperson selected by the committee members.

(3) The term "local elected official" means the chief elected executive officer of a unit of general local government in a substate area.

(4) The term "private industry council" means the council established pursuant to section 102 of the Job Training Partnership Act.

(5) The term "rapid response" means contact typically within 48 hours, with employees, employers, or both, upon notification or knowledge of a plant closing or mass layoff.

(6) The term "rapid response capability" means one or more specialists or an interdisciplinary team of specialists formed to establish on-site contact with employer and employee representatives within a short period of time after becoming aware of a current or projected plant closing or mass layoff.

(7) The term "rapid response team" means a team established by the State unit for the purpose of providing prompt delivery of services at the site of the plant closing or mass layoff, as required by section 306(b).

(8) The term "service provider" means a public agency, private nonprofit organization, or private-for-profit entity that delivers educational, training or employment services.

(9) The term "State" means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(10) The term "State unit" means the unit or office created or designated under section 305(a)(1).

(11) The term "substate area" means that geographic area in a State established pursuant to section 307.

(12) The term "substate grantee" means that agency or organization selected to administer programs pursuant to section 308.

FINDINGS

SEC. 302. (a) IN GENERAL.—The Congress, in accord with the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, finds that—

(1) the ability of the United States economy and United States workers to move quickly and effectively to emerging work and new jobs is a strong competitive asset and should be supported and enhanced;

(2) some plant closings and permanent layoffs are inevitable and can be a concomitant part of achieving and maintaining a competitive, healthy economy;

(3) the loss of experienced employees from the workforce weakens overall productivity in the United States;

(4) it is in the national interest to foster, through private and public means, the reemployment of workers permanently displaced from employment;

(5) technical assistance must be made available at the local level to help employers resolve their human resource or other problems and remain economically healthy and viable; and

(6) fully meeting the needs of dislocated workers and impacted communities can only be accomplished within the framework of an economy providing an adequate number of jobs.

(b) **WORKER ADJUSTMENT.**—The Congress further finds, based on experience in the field of economic adjustment in the United States and other industrialized nations, that—

(1) adjustment efforts should begin in advance of a plant closing or mass layoff rather than after it, thus minimizing disruption in the workers' lives;

(2) time for research and planning is necessary and, therefore, advance notification is an essential component of a successful adjustment program;

(3) adjustment is best accomplished through action by those directly involved, preferably through publicly supported labor-management committees that engage in private adjustment measures;

(4) dislocated workers often do not receive good information about the jobs and wages available in local and neighboring labor markets; and in many States, the information provided to workers is neither current nor detailed enough to give an adequate picture of what occupations are in demand locally;

(5) dislocated workers need effective assessment, testing, and vocational counseling which should include an individual re-adjustment plan as the key to occupational or career change; and

(6) while the ability to engage in self-directed job search is an important skill which all dislocated workers in a dynamic economy must possess, the job search assistance currently provided to dislocated workers is uneven in quality and availability.

PURPOSE

SEC. 303. It is therefore the purpose of this title to—

(1) enhance the international competitiveness of the American economy;

(2) facilitate the return of dislocated workers to productive employment;

(3) establish the earliest possible readjustment capacity for workers and firms in each State;

(4) provide comprehensive coverage to workers regardless of the cause of their dislocation;

(5) emphasize training and reemployment rather than income support;

(6) provide early referral from the unemployment compensation system to adjustment services as an integral part of the adjustment process;

(7) offer broad flexibility at the Federal, State, and local levels to try new approaches, as well as to use approaches that have proven to be effective in helping different types of dislocated workers; and

(8) promote management, labor, and community partnerships with government in addressing worker dislocations.

FEDERAL DELIVERY OF DISLOCATED WORKER SERVICES

SEC. 304. (a) GENERAL AUTHORITY.—The Secretary shall, with respect to programs required by this title—

(1) distribute funds to States in accordance with the requirements of section 313;

(2) provide funds to exemplary and demonstration programs on plant closings and worker dislocation;

(3) otherwise allocate discretionary funds to projects serving workers affected by multi-State or industry-wide dislocations and to areas of special need in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes the effective use of funds;

(4) monitor performance and expenditures and annually certify compliance with standards prescribed by the Secretary under section 314(a);

(5) conduct research and serve as a national clearinghouse for gathering and disseminating information on plant closings and worker dislocation; and

(6) provide technical assistance and staff training services to States, communities, businesses, and unions, as appropriate.

(b) ADMINISTRATIVE PROVISIONS.—(1) The Secretary shall create or designate an identifiable dislocated workers unit or office to coordinate the functions of the Secretary under this title.

(2) The Secretary is authorized to employ such personnel as is necessary to carry out the functions of the Secretary under this title.

(3) The Secretary may secure from any Federal executive agency, including any independent establishment or instrumentality of the United States, information, estimates, and statistics required in the performance of the Secretary's function under this title.

(4) The Secretary may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, to carry out the functions of the Secretary under this title.

(5) The unit or office created or designated under subsection (b)(1) shall consult with the Assistant Secretary for Veterans' Employment and Training in order to ensure fair and appropriate consideration of the employment and training needs of displaced workers who are veterans and effective coordination with existing programs serving veterans.

STATE DELIVERY OF DISLOCATED WORKER SERVICES

SEC. 305. (a) ELIGIBILITY FOR ALLOCATIONS; STATE PLAN.—In order to receive an allocation of funds under section 313(a), the Governor of a State shall submit to the Secretary, on a biennial basis, a State plan describing in detail the programs and activities that will be assisted with funds provided under this title. The State plan shall be submitted on or before the first day of May immediately preceding the program year for which funds are first to be made available under this title. Each State plan shall contain provisions demonstrating to the satisfaction of the Secretary that—

(1) the Governor will create or designate an identifiable State dislocated worker unit or office which has rapid response capability;

(2) the State unit will make appropriate retraining and basic readjustment services available to eligible dislocated workers through the use of rapid response teams, substate grantees, and other appropriate organizations;

(3) the State unit will operate a monitoring and reporting system which provides an adequate information base for effective program management, review, and evaluation;

(4) the State unit will exchange information and coordinate programs with the appropriate economic development agency for the purpose of developing strategies to avert plant closings or mass layoffs and to accelerate the reemployment of affected individuals;

(5) the State unit will coordinate the programs conducted under this part with all other programs available to assist dislocated workers, including the Job Service and the unemployment insurance system;

(6) the State unit will disseminate throughout the State information on the availability of services and activities under this Act;

(7) the State will provide that the rapid response teams, labor-management committees and substate grantees established pursuant to this title will serve all affected employees equally regardless of State residency;

(8) any program conducted with funds made available under this title which will provide services to a substantial number of members of a labor organization will be established only after full consultation with such labor organization;

(9) the State will not disqualify any individual from continuing to receive unemployment compensation in accordance with the provisions of section 306(f)(4) and section 312;

(10) the State will not prescribe any standard for the operation of programs under this part that is inconsistent with section 314(a)(2);

(11) the Governor has established (and will provide administrative support to) a State job training coordinating council, in accordance with section 316, to advise the Governor and the State unit concerning the administration of programs under this title;

(12) the State unit and the State job training coordinating council will consult with the State agency having jurisdiction

over veterans' affairs and with representatives of veterans' service organizations to ensure that dislocated workers who are veterans receive fair and appropriate consideration for participation in programs funded under this Act;

(13) the State job training coordinating council has reviewed and commented in writing on the plan, and such comments are submitted with the plan to the Secretary; and

(14) the delivery of services with funds made available under this title will be integrated or coordinated with services or payments made available under chapter 2 of title II of the Trade Act of 1974 and provided by any State or local agencies designated under section 239 of the Trade Act of 1974.

(b) **REVIEW AND APPROVAL OF STATE PLANS.**—The Secretary shall review any plan submitted under subsection (a), and any comments thereon submitted by the coordinating council pursuant to subsection (a)(13), and shall notify a State as to any deficiencies in such plan within 30 days after submission. Unless a State has been so notified, the Secretary shall approve the plan within 45 days after submission. The Secretary shall not finally disapprove the plan of any State except after notice and opportunity for a hearing.

(c) **AMENDMENTS.**—Any plan submitted under subsection (a) may be amended at any time to describe changes in or additions to the programs and activities set forth in the plan, except that no such amendment shall be effective unless agreed to by the Governor and the Secretary.

(d) **COMPLAINT, INVESTIGATION, PENALTY.**—(1) Whenever the Secretary receives a complaint or a report that a State is not complying with the provisions of the State plan required by this section, the Secretary shall investigate such report or complaint.

(2)(A) Whenever the Secretary determines that there has been such a failure to comply, the Secretary may withhold an amount not to exceed 10 percent of the allocation of the State for the fiscal year in which the determination is made for each such violation.

(B) No determination may be made under this paragraph until the State affected is afforded adequate notice and opportunity for a hearing.

USE OF FUNDS; SERVICES TO BE PROVIDED

SEC. 306. (a) IN GENERAL.—Funds allocated to a State under section 313 may be used—

(1) to provide rapid response assistance in accordance with subsection (b);

(2) to deliver, coordinate, and integrate basic readjustment services in accordance with subsection (c);

(3) to provide retraining services in accordance with subsection (d);

(4) to provide income support in accordance with subsection (e); and

(5) to provide linkage with the unemployment compensation system in accordance with subsection (f).

(b) **RAPID RESPONSE ASSISTANCE.**—(1) Funds allocated to a State under section 313 shall be used to establish and maintain a rapid response capability, enabling the State unit to respond immediately

to plant closings and mass layoffs within the State by prompt delivery of appropriate information and necessary dislocated worker services to the site of such closing or layoff, whenever possible.

(2) The rapid response capability shall be for the purpose of assessing the need for, and initially providing, early readjustment assistance. The rapid response capability may also include, but need not be limited to—

(A) emergency assistance centers geared to individual plant closings;

(B) the development of direct service delivery teams;

(C) the development of a system for early identification of prospective plant closings, mass layoffs, or other dislocation events; and

(D) ongoing activities associated with the formation and continuing support of voluntary joint labor-management committees.

(3) A method established to promote labor-management committees may include personnel who gather information related to economic dislocation and engage in the formation and continuing support of such committees. Such personnel are authorized to—

(A) assist immediately in the establishment of the labor-management committee;

(B) provide to the committee a list of respected individuals from which the committee may select an impartial chairperson. The chairperson may provide advice and leadership to the committee and prepare a final report on its activities;

(C) serve as *ex officio* members of the committee;

(D) serve as resource persons providing the committee with technical advice as well as information on sources of assistance;

(E) facilitate the selection of worker representatives in the event no union is present;

(F) collect information on potential closings or layoffs; and

(G) assist the local community in developing its own coordinated response and in obtaining access to State economic development assistance.

(4) Where appropriate, a State may provide funds for exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation.

(c) **BASIC READJUSTMENT SERVICES.**—Funds allocated to a State under section 313 shall be used to provide basic readjustment services to eligible dislocated workers. Subject to limitations set forth in subsections (e) and (g), the services may include, but are not limited to—

(1) development of individual readjustment plans for participants in programs under this title;

(2) early readjustment assistance;

(3) job or career counseling;

(4) testing;

(5) orientation;

(6) assessment, including evaluation of educational attainment and participant interests and aptitudes;

(7) determination of occupational skills;

(8) provision of future world-of-work and occupational information;

- (9) job placement assistance;
- (10) labor market information;
- (11) job clubs;
- (12) local job search;
- (13) job development;
- (14) self-directed job search;
- (15) supportive services, including child care, commuting assistance, and financial and personal counseling which shall terminate not later than the 45th day after the participant has completed other services under this part, except that counseling necessary to assist participants to retain employment shall terminate not later than 6 months following the completion of training;
- (16) prelayoff assistance;
- (17) relocation assistance; and
- (18) programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities.

(d) **RETRAINING SERVICES.**—Funds allocated to a State under section 313 shall be used to provide retraining services to eligible dislocated workers, with special emphasis on experienced workers. The services may include, but are not limited to—

- (1) entrepreneurial training;
 - (2) classroom training;
 - (3) occupational skill training;
 - (4) on-the-job training;
 - (5) out-of-area job search;
 - (6) relocation;
 - (7) basic and remedial education;
 - (8) literacy and English for non-English speakers training;
- and
- (9) other appropriate training activities directly related to appropriate employment opportunities.

(e) **INCOME SUPPORT.**—(1) Funds allocated to a State under section 313 may be used pursuant to section 309 to provide income support to an eligible displaced worker who does not qualify or has ceased to qualify for unemployment compensation, during the period that such worker is participating in training or education programs under this title. To be eligible for such support, an eligible displaced worker who has ceased to qualify for unemployment compensation must have been enrolled in training by the end of the 13th week of the worker's initial unemployment compensation benefit period.

(2) The level of income support shall be made available at a level not greater than the higher of—

- (A) the applicable level of unemployment compensation; or
- (B) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

(3) Not more than 15 percent of the funds expended under this title by any substate grantee or by the Governor may be used to provide income support and other supportive services.

(f) **LINKAGE WITH UNEMPLOYMENT COMPENSATION.**—Funds allocated to a State under section 313 shall be used to establish programs which link the unemployment compensation system and the

worker readjustment program system for eligible dislocated workers. Such program may include financial incentives to be provided to employers through amendments to the State unemployment compensation law, but shall include—

(1) criteria for early identification of those having the most difficulty in finding employment;

(2) mechanisms for referring individuals to readjustment services early in the unemployment compensation benefit period;

(3) methods to prepare the unemployment compensation system to assume new responsibilities and to coordinate effectively with worker readjustment service providers; and

(4) measures taken to ensure that participants in readjustment assistance services are exempted from work search requirements in accordance with the provisions of section 312.

(g) **USE OF FUNDS FOR RETRAINING SERVICES.**—(1) Not less than 30 percent of the funds expended under this title by any substate grantee shall be expended for retraining services specified under subsection (d).

(2) The expenditure requirement in paragraph (1) may be waived by the Governor if a substate grantee initiates a request to the Governor for such waiver demonstrating the need for and the amount of the reduction of the expenditure of funds for retraining services.

STATE DELIVERY OF SERVICES

SEC. 307. (a) GENERAL RULE.—The Governor of each State shall, after receiving recommendations from the State job training coordinating council, designate substate areas for the State which shall consist of one or more service delivery areas.

(b) **AREAS DESIGNATED.**—(1) The Governor shall designate as a substate area any service delivery area with a population of 500,000 or more.

(2) With respect to service delivery areas having a population of less than 500,000, the Governor may designate as a substate area any service delivery area or any combination of two or more contiguous service delivery areas.

(3) All service delivery areas within a State shall be designated either as substate areas or as parts thereof.

STATE GRANTEES

SEC. 308. (a) GENERAL FUNCTION.—A substate grantee shall be designated, on a biennial basis, for each substate area. The substate grantee shall be responsible for providing, within such substate area, services described in section 306 (c), (d), and (e) pursuant to an agreement with the Governor and in accordance with the State plan provided for in section 305 and the substate plan provided for in section 309. The substate grantee may provide such services directly or through contract, grant, or agreement with service providers.

(b) **MANNER OF DESIGNATION.**—A substate grantee shall be designated for each substate area in accordance with an agreement between the Governor, the local elected official, and the private industry council. Whenever a substate area is represented by more than one such official or council, the respective officials and councils shall each designate a representative, in accordance with procedures

established by the Governor, to negotiate or consult with the Governor regarding the designation of the substate grantee. In the event agreement cannot be reached on the selection of a substate grantee, the Governor shall select the substate grantee. The Governor may establish procedures for designation, including a requirement that entities eligible for and interested in designation submit a proposal for the substate plan described in section 309.

(c) **ELIGIBILITY.**—Entities eligible for designation as substate grantees include—

- (1) private industry councils in the substate area;
- (2) service delivery area grant recipients or administrative entities (as defined in section 4 of this Act);
- (3) private nonprofit organizations;
- (4) units of general local government in the substate area, or agencies thereof;
- (5) local offices of State agencies; and
- (6) other public agencies, such as community colleges and area vocational schools.

SUBSTATE PLAN

SEC. 309. (a) GENERAL RULE.—No amounts appropriated for any fiscal year may be provided to a substate grantee unless the Governor has approved a substate plan submitted by the substate grantee. Prior to the submission to the Governor, the plan shall be submitted for review and comment to the other parties to the agreement described in section 308(b). The plan shall describe the manner in which services described in section 306 (c), (d), and (e) will be delivered within the substate area including—

- (1) the means to be used to identify and select program participants;
- (2) the means for delivering services to eligible participants;
- (3) the means for ensuring that adequate funds are available and used to provide retraining services for eligible participants;
- (4) the means for implementing the statewide linkage between payment of unemployment compensation and early participation in worker readjustment program services and activities;
- (5) the means for involving labor organizations in the development and implementation of services;
- (6) the performance goals to be achieved, including estimates of placements;
- (7) the criteria to be applied in determining and verifying program eligibility;
- (8) the coordination with other appropriate programs and systems, particularly where such coordination is intended to provide access to the services of such other systems for program participants at no cost to the worker readjustment program;
- (9) the means whereby coordination of services with other substate grantees, if any, will be effected;
- (10) the readjustment training plan specified in section 310; and
- (11) a detailed budget, as required by the State.

(b) **PLAN APPROVAL.**—If a substate grantee fails to submit a plan that is approved by the Governor within a reasonable period of time,

the Governor may direct the expenditure of funds allocated to the substate area until such time as a plan is submitted and approved.

(c) *BY-PASS AUTHORITY.*—If a substate grantee fails to expend funds allocated to it in accordance with its plan, the Governor may, after appropriate notice and opportunity for comment, direct expenditure of funds in accordance with the substate plan.

READJUSTMENT TRAINING PLANS

SEC. 310. (a) PLAN REQUIRED.—Any allowable training services authorized under section 306(d) shall be provided in accordance with a readjustment training plan developed by the substate grantee and included as part of the substate plan provided for in section 309.

(b) *CONTENTS OF PLAN.*—Such readjustment training plan shall include—

(1) procedures to assess eligible dislocated workers' current education skill levels and occupational abilities;

(2) procedures to assess eligible dislocated workers' needs, including educational, training, employment, and social services;

(3) procedures for providing services recommended by rapid response teams for eligible dislocated workers within the substate area;

(4) a description of services and activities to be provided in the substate area; and

(5) a list of goals for the substate area.

(c) *RECEIPT OF SERVICES.*—An eligible dislocated worker may receive retraining services or a certificate of continuing eligibility.

(d) *CERTIFICATE OF CONTINUING ELIGIBILITY.*—(1) The substate grantee is authorized to issue to any eligible dislocated worker who has applied for the program authorized in this part a certificate of continuing eligibility. Such a certificate of continuing eligibility may be issued for periods not to exceed 104 weeks. No such certificate shall include any reference to any specific amount of funds. Each such certificate shall state that it is subject to the availability of funds at the time that any such training services are to be provided.

(2) Any eligible dislocated worker to whom a certificate of continuing eligibility has been issued under this subsection shall remain eligible for the program authorized under this part for the period specified in the certificate and may utilize the certificate in order to receive the retraining services, subject to the limitations contained in the certificate.

(3) Retraining services described in section 306(d) may be provided through certificates of continuing eligibility that permit eligible participants to seek out and arrange their own training with service providers approved by the substate grantee. Training opportunities shall be arranged through a grant, contract, or otherwise between the substate grantee and the service provider identified in the certificate.

SELECTION OF SERVICE PROVIDERS

SEC. 311. (a) SELECTION PROCESS.—Service providers under this part shall be selected by substate grantees for designated substate

areas pursuant to the arrangements agreed upon in the substate plan described in section 309.

(b) **SELECTION CRITERIA.**—The primary considerations in the selection of service providers shall be the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance, in terms of the likelihood of meeting performance goals, cost, quality of education or training, and characteristics of participants.

APPROVED TRAINING RULE

SEC. 312. Participation by any individual in any of the programs authorized in this title shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provision of Federal law relating to unemployment benefits.

ALLOCATION

SEC. 313. (a) ALLOCATION OF FUNDS.—From the funds appropriated pursuant to section 3(c) for any fiscal year, the Secretary shall—

(1) allocate 75 percent of such funds in accordance with the provisions of subsection (b); and

(2) reserve 25 percent for allocation under part C of this title. Not more than \$2,500,000 of the amounts appropriated pursuant to section 3(c) and available under paragraph (2) for any fiscal year shall be allocated among the Commonwealth of the Northern Mariana Islands and any other territory or possession of the United States.

(b) **ALLOCATION AMONG STATES.**—(1) Subject to the provisions of paragraph (2), the Secretary shall allot the amount available in each fiscal year under subsection (a)(1) on the basis of the following factors:

(A) One-third of such amount shall be allotted among the States on the basis of the relative number of unemployed individuals who reside in each State as compared to the total number of unemployed individuals in all the States.

(B) One-third of such amount shall be allotted among the States on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States. For purposes of this paragraph, the term “excess number” means the number which represents unemployed individuals in excess of 4.5 percent of the civilian labor force in the State.

(C) One-third of such amount shall be allotted among the States on the basis of the relative number of individuals who have been unemployed for 15 weeks or more and who reside in each State as compared to the total number of such individuals in all the States.

(2) Within 30 days after satisfactory data are available under section 462(e) of this Act, the Secretary shall report to the Congress on the advisability of allotting the amounts available in each fiscal year under subsection (a)(1) to each State so that—

(A) 75 percent of such amount is allotted, among the States with approved plans, on the basis of the factors described in paragraphs (1) (A), (B), and (C) of this subsection; and

(B) 25 percent of such amount is allotted among such States on the basis of the number of workers displaced by plant closings or mass layoffs in such State in the most recent period for which satisfactory data are available under section 462(e) of this Act.

(c) *WITHIN STATE DISTRIBUTION.*—(1) The Governor shall from amounts allocated under subsection (b) distribute not less than 50 percent of such amounts to substate areas within the State. The Governor shall apportion to the substate areas the amounts so distributed. In carrying out this paragraph, the Governor shall consider all appropriate information pertaining to the State's worker readjustment needs, including, but not limited to—

(A) insured unemployment data;

(B) unemployment concentrations;

(C) plant closing and mass layoff data;

(D) declining industries data;

(E) farmer-rancher economic hardship data; and

(F) long-term unemployment data.

(2) The Governor shall retain the remainder of the amount allotted to the State under this title for—

(A) State administration, technical assistance, and coordination of the programs authorized under this title;

(B) statewide or industrywide projects;

(C) rapid response activities;

(D) establishment of linkages between the unemployment compensation system and the worker adjustment program system; and

(E) discretionary allocation for basic readjustment and retraining services to provide additional assistance to areas that experience substantial increases in the number of dislocated workers.

FEDERAL ADMINISTRATION

SEC. 314. (a) *STANDARDS.*—(1) The Secretary shall promulgate standards for the conduct and evaluation of programs under this title.

(2) No standard prescribed under this subsection or section 106(g) shall count the cost of income support provided under section 306(e) as a part of the cost of enrollment and placement of participants or shall otherwise penalize the provision of such income support.

(b) *BY-PASS AUTHORITY.*—In the event that any State fails to qualify for an allocation under section 313, the Secretary shall use the amount that would be allocated to that State to provide in that State, directly or through contract, the programs, activities, and services authorized by this title.

(c) *CARRYOVER/CARRYBACK.*—(1)(A) Not more than 20 percent of the funds allocated to a State for any program year under this part are authorized to remain available for obligation and expenditure during the succeeding program year.

(B) In carrying out the provisions of subparagraph (A) of this paragraph, the Secretary may adjust the allocation of a State in accordance with section 315.

(2) If any State which has expended at least 95 percent of the allotment of the State available for that program year, in order to respond to a substantial increase in the number of dislocated workers that is not reflected in the allocation under section 313 for a fiscal year, appropriates State funds to carry out programs under this title during that fiscal year, the Secretary may, in accordance with regulations prescribed by the Secretary, permit such State to be reimbursed for such State funds from the allocation under such section for the succeeding fiscal year. The Secretary may not grant permission under this paragraph for more than one fiscal year to any State.

(d) **ADMINISTRATIVE COST LIMITATION.**—Not more than 15 percent of the funds expended under this title by any substate grantee or by the Governor after complying with subsection (a)(2) may be expended to cover the cost of administering programs under this title.

(e) **ACCESS TO LABOR MARKET INFORMATION.**—The Secretary shall ensure that each State unit has access to information collected and maintained under part E of title IV of this Act for the purpose of identifying job skills that would improve the employment opportunities of eligible displaced workers.

RECAPTURE OF UNOBLIGATED FUNDS FOR STATES WITH HIGH RATES OF UNEMPLOYMENT

SEC. 315. (a) GENERAL REALLOTMENT AUTHORITY.—(1) The Secretary shall, for program years beginning July 1, 1988, and thereafter, reallocate the amount of each allotment of a State under this title from funds appropriated for such program year that meets the requirement of paragraph (2).

(2) The amount available for reallocation from funds appropriated for a fiscal year and available for a program year and allotted to a State under this title is equal to the amount that—

(A) the unexpended balance of the State at the end of the program year prior to the program year for which the determination under this section is made exceeds 20 percent of the allotment for that fiscal year; plus

(B) the unexpended balance of the State from any program year prior to the program year in which there is such excess.

(b) **REALLOTMENT TO ELIGIBLE STATES.**—The Secretary shall reallocate amounts available pursuant to subsection (a) of this section to eligible States based on the factors described in section 313(b).

(c) **ELIGIBLE STATE DEFINED.**—(1) For the purpose of this section, an eligible State means a State—

(A) which is among the 25 States with the highest unemployment rate for the most recent 12 months preceding the program year for which assistance is made, and

(B) which has expended at least 90 percent of its allotment for the program year.

(2) The determinations required by this subsection shall be made by the Secretary.

(d) *DISTRIBUTION OF AVAILABLE REALLOTMENT FUNDS.*—(1) No State may receive in any fiscal year more than one-twenty-fifth of the amounts available pursuant to subsection (a) of this section.

(2) In any fiscal year in which there are funds not reallocated because of the operation of paragraph (1) of this subsection, the Secretary shall, pursuant to uniform criteria established by the Secretary, reallocate such amount to other States on the basis of need.

SPECIAL STATE JOB TRAINING COORDINATING COUNCIL

SEC. 316. (a) *FUNCTIONS.*—For purposes of this title, the State job training coordinating council shall—

- (1) meet regularly, but not less than quarterly;
- (2) review, on a regular basis, the programs and activities conducted under this title within the State;
- (3) submit comments to the Governor and the Secretary on the basis of such review;
- (4) review, and submit comments on, each biennial plan (and amendment thereto) before its submission under section 305;
- (5) review, and submit comments on, each substate plan submitted to the Governor in accordance with section 309; and
- (6) perform such other advisory functions as the Governor may assign.

(b) *ADMINISTRATIVE SUPPORT.*—The Governor shall be responsible for ensuring that sufficient funds under this title are provided to the State council for the performance of the functions described in subsection (a).

ADMINISTRATIVE PROVISIONS

SEC. 317. (a) *EVALUATION.*—The Secretary shall, either directly or by way of grant or contract, provide for the continuing evaluation of the program authorized by this title. Such evaluation shall measure the success in placing dislocated workers in unsubsidized employment.

(b) *REPORT.*—The Secretary shall prepare and submit to the Congress, as part of the annual report of the Department of Labor, a report on the activities of the Unit established under this title.

PART B—ADVANCE NOTIFICATION OF PLANT CLOSINGS AND MASS LAYOFFS

DEFINITIONS

SEC. 331. As used in this part—

(1) the term “employer” means any business enterprise that employs—

(A) 50 or more full-time employees; or

(B) 50 or more employees who in the aggregate work at least 2,000 hours per week (exclusive of hours of overtime);

(2) the term “plant closing or mass layoff” means a shutdown of a facility or a reduction in force which results in an employment loss at a particular site during any 30-day period for 50 or more employees;

(3) the term “representative” means an exclusive representative of employees within the meaning of section 9(a) or 8(f) of

the National Labor Relations Act (29 U.S.C. 159(a), 158(f)) or section 2 of the Railway Labor Act (45 U.S.C. 152);

(4) the term "affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer;

(5) the term "employment loss" means (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff of indefinite duration, (C) a layoff of definite duration exceeding 6 months, or (D) a reduction in hours of work of more than 50 percent during any 6-month period; and

(6) the term "unit of local government" means any general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers.

NOTICE REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS

SEC. 332. (a) NOTICE TO EMPLOYEES, STATE DISLOCATED WORKER UNITS, AND LOCAL GOVERNMENTS.—An employer shall not order a plant closing or mass layoff until the end of a period specified under subsection (b) after the employer serves written notice of a proposal to issue such an order—

(1) to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee; and

(2) to the State dislocated worker unit (established under part A) and the chief elected official of the unit of local government within which such closing or layoff is to occur.

(b) **NOTICE PERIODS.**—For purposes of subsection (a), the periods described in this subsection shall be—

(1) a 90-day period in the case of a proposed plant closing or mass layoff involving not fewer than 50 nor more than 100 affected employees;

(2) a 120-day period in the case of a plant closing or mass layoff involving more than 100 but fewer than 500 affected employees; and

(3) a 180-day period in the case of a plant closing or mass layoff involving 500 or more affected employees.

(c) **REDUCTION OF NOTIFICATION PERIOD.**—An employer may order a plant closing or mass layoff before the conclusion of the applicable period described in subsection (b), if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required by subsection (b).

DUTY TO DISCLOSE INFORMATION

SEC. 333. (a) GENERAL.—If, within 30 working days of receiving a notice of a proposed shutdown or mass layoff under section 332 and in connection with a request for assistance under section 306(b)(4), the representative of the affected employees or the unit of local government which receives notice of a proposed plant shutdown or mass

layoff makes a request for information to the employer, the employer shall provide the following information:

(1) The most recent financial statements and audit reports available for the past 3 years for the place of employment involved, including supporting schedules.

(2) Any studies or evaluations assessing the feasibility or infeasibility of maintaining operations which the employer considered in proposing the plant shutdown or mass layoff.

(3) A statement of the employer's present plans with respect to relocating the work of the facility where the employment loss is to occur and with respect to the disposition of capital assets of that facility.

(b) **NONDISCLOSURE OF INFORMATION.**—No employee representative or unit of local government (or their authorized agents) may make any disclosure of any information received pursuant to subsection (a) which could compromise the position of the employer with respect to its competitors. On petition by an employer, the Secretary shall issue specific protective orders, which shall become binding upon issuance, to implement this section.

ADMINISTRATION AND ENFORCEMENT OF REQUIREMENTS

SEC. 334. (a) CIVIL ACTIONS AGAINST EMPLOYERS.—(1) Any employer who orders a plant closing or mass layoff in violation of section 332 of this Act shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for—

(A) back pay for each day of violation up to a maximum of one-half the number of days the employee was employed by the employer, at a rate of compensation not less than the higher of—

(i) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(ii) the final regular rate received by such employee, and

(B) the cost of related fringe benefits, including the cost of medical expenses incurred during the employment loss which would have been covered under medical benefits if the employment loss had not occurred,

less any earnings or related fringe benefits received by such employee from the violating employer for the period of the violation.

(2) Any employer who violates the provisions of section 332 with respect to a unit of local government shall be subject to a civil penalty equal to \$500 for each day of such violation.

(3) Any employer who violates the provisions of section 333 shall be liable to the party requesting the information for a civil penalty in an amount not to exceed \$10,000.

(4) The unit of local government which the employer must notify and provide information to, in accordance with sections 332 and 333 is the unit of local government having jurisdiction over the area in which the employer is located and if there is more than one such unit, the unit of local government to which the employer pays the highest taxes for the year preceding the year for which the determination is made.

(5) If an employer who has violated this part proves to the satisfaction of the court that the act or omission which violated this

part was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this part the court may, in its discretion, reduce the amount of the liability or penalty provided for in this section.

(6) A person seeking to enforce such liability, including a representative of employees or a unit of local government aggrieved under paragraph (1), (2), or (3), may sue either for such person or for other persons similarly situated, or both, in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business.

(7) In any such suit, the court may, in addition to any judgment awarded the plaintiff or plaintiffs, allow a reasonable attorneys' fee to be paid by the defendant, together with the costs of the action.

(8) For purposes of this subsection, the term, "aggrieved employee" means an employee who has worked for the employer ordering the plant closing or mass layoff and who did not receive timely notice either directly or through his representative as required by section 332.

(b) **CIVIL ACTION AGAINST REPRESENTATIVES OF EMPLOYEES OR UNITS OF LOCAL GOVERNMENT.**—Any employee representative or unit of local government which violates the provisions of section 333(b) shall be liable to the employer for the financial loss suffered by the employer as a consequence of such violation. Action to recover such liability may be maintained by the employer in any United States court of competent jurisdiction. In any such action, the court may, in addition to any judgment awarded the employer, allow a reasonable attorney's fee to be paid by the defendant or defendants together with the costs of the action.

(c) **EXCLUSIVITY OF REMEDIES.**—The remedies provided for in this section shall be the exclusive remedies for any violation of this part.

(d) **DETERMINATIONS WITH RESPECT TO EMPLOYMENT LOSS.**—For purposes of this section, in determining whether a plant closing or mass layoff has occurred or will occur, employment losses for 2 or more groups at a single site, each of which is less than 50 employees but which in the aggregate equal or exceed 50 employees, occurring within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this Act.

EXEMPTION

SEC. 335. This part shall not apply to a plant closing or mass layoff if—

(1) the closing or layoff is the result of the sale of part or all of an employer's business and the purchaser agrees in writing, as part of the purchase agreement, to hire substantially all of the affected employees with no more than a 2-week break in employment;

(2) the closing or layoff is the result of the relocation of part or all of an employer's business within a reasonable commuting distance and the employer offers to transfer substantially all of

the affected employees with no more than a 2-week break in employment; or

(3) the closing is of a temporary facility or the mass layoff is as the result of the completion of a particular project and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project.

PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES

SEC. 336. The rights and remedies provided to employees by this part are in addition to, and not in lieu of, any other contractual, statutory, or other legal rights and remedies of the employees, and are not intended to alter or affect rights and remedies available under existing laws to the extent such rights and remedies are not preempted by other laws of the United States.

PROCEDURES ENCOURAGED WHERE NOT REQUIRED

SEC. 337. It is the sense of Congress that an employer who is not required to comply with the notice requirements of section 332 should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

EFFECTIVE DATES

SEC. 338. This part shall take effect on the date which is 6 months after the date of enactment of this Act.

PART C—DISLOCATED WORKERS' DEMONSTRATION, EXEMPLARY, AND DISCRETIONARY PROGRAMS

STATEMENT OF PURPOSE

SEC. 351. It is the purpose of this part to encourage the development of demonstration programs and the support of exemplary and discretionary programs for eligible dislocated workers which are designed to increase the employability of such workers.

PROGRAMS AUTHORIZED

SEC. 352. (a) GENERAL AUTHORITY.—The Secretary shall, from amounts reserved under section 313(a)(2) in each fiscal year, carry out demonstration, exemplary, and discretionary programs in accordance with provisions of this title.

(b) RESERVATION OF FUNDS.—From amounts reserved in each fiscal year under section 313(a)(2)—

(1) not more than 30 percent shall be available for—

(A) grants under subpart 1, relating to training loan demonstration programs;

(B) grants under subpart 2, relating to self-employment opportunity demonstration grants;

(C) grants under subpart 3, relating to public works employment demonstration programs;

(D) grants under subpart 4, relating to dislocated farmer demonstration grants subject to subsection (c); and

(E) grants under subpart 5, relating to job creation demonstration projects; and

(2) the remainder, but not less than 70 percent, shall be available for the Secretary's discretionary programs under subpart 6.

(c) **SPECIAL RULE.**—Amounts available for subpart 4, relating to dislocated farmer demonstration grants, shall, for each fiscal year, be not less than 10 percent of the amount reserved under section 313(a)(2) for such year, but not more than \$20,000,000 for such year.

Subpart 1—Dislocated Workers Training Loan Demonstration Program

DEMONSTRATION PROJECTS AUTHORIZED

SEC. 356. (a) GENERAL AUTHORITY.—The Secretary shall, from amounts reserved pursuant to section 352(b)(1)(A) in each fiscal year, carry out either directly or by way of grant, contract, or agreement, dislocated worker loan demonstration projects, in order to determine their feasibility and cost effectiveness with respect to—

(1) serving as an alternative to grants for providing retraining and relocation assistance, including participation rates by dislocated workers as a function of variations in the interest rate charged for the dislocated worker training loans;

(2) serving as a means of upgrading the skills of workers who have been dislocated within firms, subject to requirements specified by the Secretary in regulation; and

(3) augmenting training and assistance provided under this Act with longer-term training intended to help participants prepare for new careers or occupations.

(b) **SELECTION PROCEDURES.**—(1) In establishing projects authorized by this subpart, the Secretary may take into account the effect of factors such as—

(A) the interest rates charged for the dislocated worker training loans;

(B) the terms of repayment for the loans;

(C) the consistency of the terms and conditions for the dislocated worker loans with those of other government loan programs; and

(D) such other factors as the Secretary deems appropriate.

(2) The Secretary shall establish at least 5 dislocated worker loan demonstration projects under this subpart. The projects assisted under this subpart shall make a good faith effort to serve at least an aggregate of 2,000 dislocated workers annually.

(c) **PROJECT CONDITIONS.**—In carrying out projects authorized by this subpart, the Secretary shall adopt the following conditions, limitations, and requirements:

(1) The aggregate amount of all direct loans made from funds available pursuant to this subpart to each dislocated worker may not exceed \$5,000.

(2) The loans made from loan funds established pursuant to this subpart may be used only for—

(A) vocational and on-the-job training;

(B) basic and remedial education;

(C) relocation expenses; and

(D) child care services.

(3) Not more than 25 percent of the aggregate amount of loans made to a single dislocated worker may be used for the activi-

ties described in clauses (C) and (D) of paragraph (2) of this subsection.

EVALUATION AND REPORT

SEC. 357. (a) EVALUATION.—(1) The Secretary shall, based on projects assisted under this part and independent research, conduct or provide for an evaluation of the success of the direct loan approach to achieving the objectives of this subpart. The Secretary shall consider—

(A) the identification of dislocated workers who take out direct loans and their pre-loan and post-loan occupations;

(B) how the loans are used;

(C) the compensation paid to such workers;

(D) the repayment schedules;

(E) the responses of the participants to the projects; and

(F) such other factors as the Secretary deems appropriate.

(2) Each recipient of a loan under this part shall furnish information requested by evaluators in order to carry out this section.

(b) **REPORT.**—The Secretary shall prepare and submit to the Congress a report of the evaluation required by this section not later than October 1, 1990, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

Subpart 2—Self-Employment Opportunity Demonstration Projects

DEMONSTRATION PROJECTS AUTHORIZED

SEC. 361. (a) GENERAL AUTHORITY.—The Secretary shall, from amounts reserved pursuant to section 352(b)(1)(B) in each fiscal year, carry out through agreements with States, demonstration projects to determine the feasibility and cost-effectiveness of offering workers early in their period of receipt of unemployment compensation, the option of being provided assistance to establish their own business enterprises.

(b) **SELECTION PROCEDURES.**—(1) In establishing projects authorized by this subpart, the Secretary may take into account the effect of such factors as—

(A) the level of self-employment allowances,

(B) the method of payment of self-employment allowances, including payment by lump-sum and periodic payment,

(C) the degree of entrepreneurial training and support provided to the participants in the self-employment demonstration project, and

(D) such other factors as the Secretary deems appropriate.

(2) The Secretary shall establish at least 5 self-employment opportunity demonstration projects under this subpart. The projects assisted under this subpart shall make a good-faith effort to serve an aggregate of 500 dislocated workers annually.

(c) **PROJECT CONDITIONS.**—In carrying out projects authorized by this subpart, the Secretary shall adopt the following conditions, limitations, and requirements:

(1) eligibility for assistance under this subpart shall be comparable to the eligibility for unemployment compensation in the State for which the project is located;

(2) rates of benefits shall be, to the extent practicable, equal to the benefits under such unemployment compensation program; and

(3) the period of eligibility shall be at least 26 weeks and not more than 39 weeks.

EVALUATION AND REPORT

SEC. 362. (a) *EVALUATION.*—(1) The Secretary shall, for any projects assisted under this part, conduct or provide for an evaluation of the success of self-employment allowances and assistance to achieve the objectives of this subpart. The Secretary shall consider—

(A) the level of utilization of this subpart by eligible individuals;

(B) the survival rates of new businesses started under the program assisted under this subpart;

(C) the job creation rates of new businesses started under the program assisted under this subpart;

(D) the extent to which self-employment allowances and program operations contributed to the success or failure of new businesses started under the program assisted under this subpart;

(E) the costs and benefits of the program to the Federal Government and participating States, including the impact on the Federal Budget and the Unemployment Insurance Trust Fund; and

(F) such other factors as the Secretary deems appropriate.

(2) Each eligible individual under this part shall furnish all information requested by evaluators to conduct this study.

(b) *REPORT.*—The Secretary shall prepare and submit to the Congress a report of the evaluation required by this section not later than October 1, 1990, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

Subpart 3—Public Works Employment Demonstration Projects

DEMONSTRATION PROJECTS AUTHORIZED

SEC. 366. (a) *GENERAL AUTHORITY.*—The Secretary shall, from amounts reserved pursuant to section 352(b)(1)(C) in each fiscal year, enter into contracts with private industry councils to carry out public works employment demonstration projects, in order to determine the feasibility and effectiveness with respect to—

(1) developing skills which are marketable in the private sector in the community in which the project is conducted;

(2) assisting eligible participants who are employed in the project to find jobs in the private sector; and

(3) the impact on unsubsidized earnings and employment as an alternative to job training and employment services.

(b) **PARTICIPATION ELIGIBILITY.**—An individual is eligible to participate in a demonstration project assisted under this subpart if the individual meets the eligibility criteria for this Act.

LOCAL JOB PROJECTS

SEC. 367. (a) PROJECT SELECTION.—No application proposing local job projects may be selected under this subpart if an objection to any project is filed by two business representatives or two labor representatives who are members of the private industry council. If there are not two members of the private industry council who are members of labor organizations, then the sole representative of labor organizations may exercise the objection authorized by this subsection for that private industry council.

(b) **EMPLOYMENT LIMITATION.**—Each eligible participant employed in a job project assisted under this subpart may not be employed on such project for more than 32 hours per week.

(c) **SELECTION PROCEDURES.**—The Secretary shall establish guidelines for the selection of local job projects by private industry councils participating in the demonstration project. The guidelines shall include requirements for the availability of education, training, and private sector job search and placement activities for participants for at least 8 hours per week in addition to the 32 hours of job project activities.

(d) **NUMBER OF PROJECTS.**—The Secretary shall conduct at least five projects under this subpart.

EVALUATION AND REPORT

SEC. 368. (a) EVALUATION.—(1) The Secretary shall, based on projects assisted under this subpart, conduct or provide for an evaluation of the success of the public works employment demonstration. The Secretary shall consider—

(A) the level of participation, by category, of the eligible participants identified in section 366(b) of this subpart;

(B) the attainment of basic skills and the acquisition of job-related skills;

(C) the development of skills which are marketable in the private sector;

(D) the additional private sector jobs created as a result of the public sector job project;

(E) the extent to which participants who are employed in the project find jobs in the private sector;

(F) the impact on unsubsidized earnings and employment as an alternative to job training and employment services; and

(G) such other factors as the Secretary deems appropriate.

(2) Each participant shall furnish information requested by evaluators in order to carry out this section.

(b) **REPORT.**—The Secretary shall prepare and submit to the Congress a report of the evaluations required by this section not later than October 1, 1990, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

**Subpart 4—Dislocated Farmers, Farm Employees, and Ranchers
Demonstration Program**

DEMONSTRATION PROGRAM AUTHORIZED

SEC. 371. *The Secretary shall, from amounts reserved pursuant to section 352(b)(1)(D) in each fiscal year, allocate funds to eligible States in accordance with section 372 to carry out demonstration projects for farmers, farm employees, and ranchers, in order to determine whether a substantial number of eligible dislocated farmers, farm employees, and ranchers, who do not currently participate in programs for dislocated workers, could benefit from specially tailored outreach, readjustment, and retraining assistance.*

DETERMINATION OF STATE ELIGIBILITY

SEC. 372. (a) ELIGIBILITY REQUIREMENTS.—*Subject to the provisions of subsection (b), a State is eligible for assistance under this subpart if such State is—*

(1) among the 40 per centum of States most adversely affected by declining farm equity as measured by the percent change in farm equity between 1981 and the most recent year for which data is officially published by the Department of Agriculture, Economic Research Service;

(2) a State in which the percent increase in the average debt-to-asset ratio of all farms between 1981 and the most recent year for which data is officially published by the United States Department of Agriculture, Economic Research Service exceeds 40 per centum; and

(3) a State which meets the requirements of paragraph (3) of section 373(a).

(b) APPLICATION REQUIRED.—*No State may receive a grant under this subpart unless the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.*

(c) CONSULTATION REQUIRED.—*The Secretary shall consult with the Secretary of Agriculture in carrying out subsection (a).*

ALLOCATION OF AVAILABLE FUNDS TO ELIGIBLE STATES

SEC. 373. (a) ALLOCATION.—*In allocating funds available for this subpart to eligible States, the Secretary shall provide that—*

(1) 47.5 per centum of funds reserved in accordance with the provisions of section 352(b)(1)(D) are allocated among all States eligible under section 372(a)(1) such that each such eligible State is allocated an amount equal to the ratio of that State's total farm population divided by the total farm population of all States eligible under section 372(a)(1);

(2) 47.5 per centum of funds reserved in accordance with the provisions of section 352(b)(1)(D) are allocated among States eligible under section 372(a)(2) such that each such eligible State is allocated an amount equal to the ratio of the State's farm population divided by the total farm population of all States eligible under section 372(a)(2); and

(3) 5 percent of the funds reserved in accordance with the provisions of section 352(b)(1)(D) are allocated among States which

do not qualify under paragraph (1) or (2) of section 372(a) but which the Secretary determines have areas of significant farmer dislocation or potential dislocation.

(b) *STATE MAXIMUM.*—The amount available to each eligible State shall be the sum of amounts calculated in accordance with paragraphs (1) and (2), or amounts calculated in accordance with paragraph (3), as the case may be, except that no State shall receive more than 10 per centum of funds available for this subpart.

(c) *UNEXPENDED BALANCES.*—The Secretary shall, at the end of the first quarter of the fiscal year succeeding the fiscal year in which a grant is made to an eligible State, determine if the eligible State is able to use all of its allocation under this subpart. Each eligible State unable to use all of its allocation under this subpart, as determined pursuant to the first sentence of this subsection, shall pay to the Secretary the amount of the unused portion of its allocation. The Secretary shall use the payments received under this subsection for other eligible States under this subpart or for other programs authorized by this part.

STATE APPLICATION REQUIREMENTS

SEC. 374. (a) APPLICATION REQUIRED.—Upon notification by the Secretary of the availability of funds, the Governor of each eligible State may submit an application to the Secretary describing how the State will use the available funds to meet the basic readjustment and training needs of eligible farmers, farm employees, and ranchers.

(b) *CONTENTS OF APPLICATION.*—The application shall include—

(1) a description of the basic readjustment and training services to be provided;

(2) a description of the classes of eligible recipients who will be served and an estimate of the numbers of such individuals expected to be served;

(3) an explanation of the linkages and coordination which will be developed between the service delivery system for basic readjustment and training services established by the Governor under this subpart and the service delivery system established under part A to assist dislocated workers; and

(4) such other information as the Secretary may require.

ELIGIBLE RECIPIENTS OF SERVICES

SEC. 375. Individuals eligible to receive services under the State application may include the following farmers, farm employees, and ranchers:

(1) *Individuals who can certify or demonstrate that the farm or ranch operations which provide their primary occupation have terminated or are likely to terminate because of circumstances which may include one or more of the following events:*

(A) *Receipt of notice of foreclosure of intent to foreclose.*

(B) *Failure of the farm to return a profit during the preceding 24 months.*

(C) *Entry of the farmer into bankruptcy proceedings.*

(D) *Failure or inability of the farmer to obtain operating capital necessary to continue operations.*

(E) Failure or inability to make payments on loans secured by mortgages on agricultural real estate.

(2) Individuals who may reasonably be expected to leave farming or ranching as their primary occupation because of unfavorable debt-to-asset ratio as defined by the Department of Agriculture.

ELIGIBLE ACTIVITIES

SEC. 376. *Activities and services which may be provided under an approved application to meet the unique needs of farmers, farm employees and ranchers include specially tailored basic readjustment services, retraining services, and income support services authorized under subsections (c), (d), and (e) of section 306 and subject to the limitation pertaining to income support in section 306(e)(3).*

EVALUATION AND REPORT

SEC. 377. (a) *EVALUATION STUDY.*—*The Secretary shall, based upon the projects assisted under this subpart and independent research, conduct or provide for an evaluation of the success of the special program for dislocated farmers, farm employees, and ranchers in achieving the objectives of this subpart.*

(b) *REPORT.*—*The Secretary shall prepare and submit to the Congress a report on the success of the special program for dislocated farmers, farm employees, and ranchers authorized by this subpart not later than October 1, 1990, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.*

Subpart 5—Job Creation Demonstration Program

DEMONSTRATION PROGRAM AUTHORIZED

SEC. 381. (a) *GENERAL AUTHORITY.*—*The Secretary, in consultation with the Secretary of Health and Human Services shall, from amounts reserved and transferred pursuant to section 352(b)(1)(E), in each fiscal year carry out demonstration programs in accordance with the provisions of this subpart.*

(b) *GRANT AUTHORITY.*—*The Secretary is authorized to make grants to nonprofit community development corporations to carry out the provisions of this subpart, to demonstrate the effectiveness of nonprofit community development corporations in creating employment opportunities for eligible dislocated workers, particularly such workers who are heads of low-income families.*

USES OF FUNDS

SEC. 382. *Each community development corporation shall use grants made under this subpart to furnish technical and financial assistance for business concerns and other enterprises located in distressed communities which are designed to promote employment opportunities for eligible dislocated workers, particularly such workers who are heads of low-income families.*

APPLICATION

SEC. 383. (a) APPLICATION REQUIRED.—No grant may be made under this subpart unless an application is made to the Secretary. Each such application shall—

(1) describe the technical and financial assistance which the applicant will make available with assistance sought under this subpart;

(2) describe the geographic area to be targeted with such assistance, together with a description of the percentage of dislocated workers who are heads of low-income families in the targeted area; and

(3) provide assurances that the nonprofit private corporation has or will have a cooperative relationship with the appropriate substate grantees in the targeted area.

(b) **APPROVAL OF APPLICATIONS.**—In approving applications under this section, the Secretary shall give priority to applications with the highest percentage of dislocated workers who are heads of low-income families to be served.

EVALUATION

SEC. 384. (a) EVALUATION.—(1) The Secretary shall, based on the projects assisted under this subpart, conduct and provide for an evaluation of the success of the job creation demonstration program authorized by this subpart.

(2) Each recipient of a grant under this subpart shall furnish information requested by evaluators in order to carry out this section.

(b) **REPORT.**—The Secretary shall prepare and submit to the Congress a report on the evaluations required by this subsection not later than October 1, 1990, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

DEFINITIONS

SEC. 385. As used in this subpart—

(1) the term “nonprofit community development corporation” means any such corporation described in section 681(a)(2)(A) of the Community Services Block Grant Act; and

(2) the term “substate grantee” means any such grantee established under part A of this title.

Subpart 6—Secretary’s Discretionary Programs

PROGRAM AUTHORIZED

SEC. 391. (a) GENERAL AUTHORITY.—From the sums reserved pursuant to section 352(b)(2), the Secretary is authorized to expend amounts for activities authorized in this subpart, subject to any other applicable provision contained in this title.

(b) **ADMINISTRATIVE PROVISION.**—(1) In carrying out this subpart, the Secretary is authorized to make such grants and enter into such contracts or other agreements as the Secretary deems to be appropriate.

(2) The Secretary shall annually establish criteria for the application for and disbursement of amounts appropriated for this subpart.

ALLOWABLE ACTIVITIES

SEC. 392. (a) GENERAL RULE.—Amounts available for this subpart may be used to provide services described in section 306 whenever—

(1) mass layoffs caused by natural disasters, when the workers are not expected to return to their previous occupations; and

(2) other mass layoffs,

occur, and for—

(A) industry-wide projects; and

(B) multi-State projects.

(b) SPECIAL RULES.—(1) Amounts reserved for this subpart may also be used to provide services described in section 306 whenever the Secretary, with agreement of the Governor, determines that an emergency exists with respect to any particular distressed industry or any particularly distressed area to provide emergency financial assistance to dislocated workers. The Secretary may make arrangements for the immediate provision of such emergency financial assistance for these purposes with any necessary supportive documentation to be submitted at a date agreed to by the Governor and the Secretary.

(2) Amounts reserved for this subpart may be used to provide staff training and technical assistance services to States, communities, business and labor organizations, and other entities involved in providing adjustment assistance to workers.

(3) In addition to any financial assistance provided under this section, the Secretary is authorized to provide services described in section 306 under proposals for financial assistance. Proposals for financial assistance under this subsection shall be submitted to the Secretary, through the Governor of the State in which the project described in the proposal is to operate, and may be used to provide additional assistance to States and areas that experience substantial increases in the number of dislocated workers.

(c) DISSEMINATION.—The Secretary shall disseminate information on the effectiveness of programs assisted under this part.

XI. MINORITY AND ADDITIONAL VIEWS

MINORITY VIEWS OF SENATOR STROM THURMOND ON S. 538, THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

This so-called "plant closing" proposal is a major concern because of the potential for extensive economic harm and employment disruption. It also raises fundamental questions regarding the appropriate roles of government and labor in the basic decision making process of employers concerning the economic well-being of their businesses.

While I recognize the problems plant closings and relocations can cause, the additional problems created by inappropriate legislative "solutions," such as S. 538, are too onerous.

I strongly encourage employers' voluntary efforts to provide meaningful and timely assistance to workers who lose their jobs as a result of layoffs as soon as it is practical, and to facilitate placement, readjustment, retraining, and relocation efforts. Furthermore, I support the readjustment programs and services available through the Job Training Partnership Act (JTPA) Title III program. Title III provides service to thousands of dislocated workers annually. I supported the JTPA in 1982 and remain committed to the principles of public-private partnership embodied in this legislation.

Management's ability to make judgments on workplace closings and relocations in the same manner as on other economic issues—without burdensome and unwarranted government interference—is essential. Federal, state, or local governments' involvement in these fundamental business decisions increases regulation at a time when more flexibility and less regulation is necessary.

Often what is at stake is survival of the company. Whether attempts to survive economically center on layoffs, however reluctantly imposed; discontinuation of an unprofitable product line; or relocation of operations to another facility; such decisions are never made lightly and are always made in the interests of maintaining competitiveness. Furthermore, pre-notification provisions such as those included in S. 538 could hasten the termination of an operation or become a self-fulfilling prophecy. Suppliers, creditors, key employees, and customers will adjust their relationships with the firm in a manner that may disadvantage the operation. Such pre-notification may jeopardize attempts to sell the plant, attract new investments, refinance debts, or merge with other companies. It also may jeopardize bids for new contracts.

Mandatory pre-notification—while well intentioned—is impractical. It would impose an involved and technical government mandated processes to delay and supplant rational business practices. As each plant closing or layoff is unique, both in cause and effect,

broad federal legislative attempts to provide artificially managed solutions which are punitive and costly in nature serve only to reduce the employer's ability to compete in a global economy.

In many basic industries there is customarily a direct and immediate effect between a production level change by plant customers and a similar change in levels of production and resulting employment. Moreover, especially in present times of intense foreign and domestic competition, many industries do not maintain any appreciable inventory buffer to stabilize employment levels. Therefore, a restrictive, non-market oriented notice provision, such as that proposed in this measure, may serve only to punish basic industry without any real benefit to employees in the form of continued employment.

Provisions allowing a closing before the applicable period if "unforeseeable circumstances" arise is not satisfactory. This provision is too ambiguous. For instance, an employer may not succeed in shortening the period, where their financial resources or the resources of their parent companies would permit postponement of the closing or layoff order for the entire notice period. Even if waiting would mean financial ruin, it could be argued that ruin was "foreseeable" and that the notice should have been given earlier. At great expense, what is "foreseeable" and what is not would have to be decided through litigation.

This drain of resources into inefficient operations will not help America compete. Furthermore, the employer had better be right about whether an event was "unforeseeable" given the substantial liabilities and penalties authorized by the bill. Why should businesses be penalized for taking action to keep operations afloat?

To handcuff employers—delaying, impeding, sometimes effectively blocking management action—would result in industrial immobility. The result would be institutionalization of lower productivity, imbalance in our collective bargaining system, and, ultimately, loss of many jobs—some of which could have been preserved, many of which might have been relocated.

Legislation such as S. 538 would have just such results. S. 538 represents an assault on our economic system, on our collective bargaining system, on our legal precedents, and on our competitive way of doing business. It is "special interest" legislation that ostensibly benefits some regions of the country in the short run. However, it also clearly disadvantages other regions of the country in the short run and all regions of the country in the long run. It puts government where government should not be—in the boardrooms of America, usurping management's prerogatives to make fundamental economic decisions regarding the well-being of their companies.

Ultimately, the issue is jobs. Plant closing legislation does not mean more jobs; it means fewer jobs.

Worker dislocation clearly is a significant problem in our country; one that needs to be addressed responsibly by all affected parties. The proposals of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, as incorporated into the Reagan Administration's legislative budgetary proposals, would represent a positive and effective step forward within the context of voluntary business responses. The sponsors of this legislation

recognized the merit of the recommendations proposed by the Task Force by incorporating many of them into Parts A and B of this measure. Those recommendations would not impede America's ability to compete.

Plant closing legislation would create industrial paralysis by giving vast new powers to local governments, labor unions, and nonunion employee representatives—powers that correspond to what may be their incentive to impose impediments and delay fundamental management decision-making that disadvantage them. Such legislation would vitiate the freedom and flexibility necessary to economic decisions that most often are made of necessity and in a time-sensitive context. Plant closing legislation would handcuff employers' efforts to maintain profitability and, ultimately, would result in additional business failures with a corresponding permanent loss of jobs.

There are a number of proposals being considered by Congress which would significantly add to the cost of doing business in the country. Increased minimum wages, partental leave, mandated health benefits, and high risk disease notification would be imposed on American business.

It would appear that Congress—not being satisfied with virtually bankrupting the Federal Government—now turns its attention to American business. We can not, and must not, put America out of business. Accordingly, I oppose this measure, and urge my Senate colleagues to do likewise.

STROM THURMOND.

MINORITY VIEWS OF SENATOR HATCH

Although I completely subscribe to the dissenting views of the distinguished ranking member of the Labor Subcommittee, Senator Quayle, I wish to elaborate on several of the aspects of this bill and my reasons for opposing it in its present form.

First, however, several observations concerning the nature of worker dislocation are in order. Worker dislocation is not a new phenomenon. Various factors, including technology, changes in consumer preferences, international competition, and even population growth, have contributed both to America's growth and America's growing pains.

It is obvious that the buggy whip manufacturer is no longer in business; it is equally obvious, however, that our standard of living has improved considerably since the assembly line made automobiles generally affordable. This kind of change must be acknowledged to be a natural result of progress, and Congress must not attempt to interfere with it.

Such change, however, will necessarily mean the shifting of economic resources into new uses. Less productive facilities will be streamlined or eliminated in order to recapture capital for new ventures and investments. This process will effect just over one percent of our labor force each year. About one-third of these workers will be caught unprepared to make the transition to a new occupation, and will need the guidance and assistance provided by Parts A and C of this measure.

Parts A and C concentrate on the task of helping workers adapt to change through job search, job counseling, referral services, temporary income support, and, if necessary, retraining. I believe these programs are essential to assisting those workers who have been affected adversely by economic change. The provision of such services through state-local and public-private partnerships is imperative if we are to fulfill the on-going, day-to-day requests for economic adjustment and training assistance and not simply respond to the few incidents of major plant closings or mass layoffs.

Unfortunately, I was compelled to vote against this bill in committee because it contains provisions I believe are injurious not only to American business, but are ultimately to American workers as well. I refer to Part B, the requirements for mandatory advance notice of plant closings and for disclosure of a firm's financial data.

The premise for requiring advance notice is that state and local governments, if they are alerted to an impending dislocation ahead of time, can provide affected workers with the appropriate services such that those employees will not become unemployed at all, or that their duration of unemployment will be limited. I certainly concur that this is a valid outcome of advance notice. I join my colleague, Senator Quayle, in encouraging businesses to give their employees as much notice as practicable if confronted with an eco-

conomic situation that dictates permanent layoffs or a facility's closure.

COVERAGE

S. 538, however, in mandating advance notice and disclosure, overlooks many technical, legal, and economic downsides to such requirements. S. 538 covers anyone employed by the employer, full time, part time or temporary workers, even if they have only been on the job for a few days. Further the bill defines the term "plant closing nor mass layoff" as any layoff of 50 or more employees during any 90-day period. Such a broad definition classifies the layoff of 50 employees for two or three weeks at a 5,000 person assembly plant as a plant closing or mass layoff. Layoffs of this type occur regularly as employers adjust their productive inputs to account for fluctuations in consumer demand or swings in customer orders. Though these are not permanent job loss situations in which employees are terminated with no hope of ever returning to their former positions, these temporary layoffs would trigger the bill's notice and information disclosure requirements. Part B of S. 538 is not solely concerned with worker dislocations; its extensive coverage provides a regulatory entree into routine business decisions.

NOTICE

S. 538 requires an employer to give employees and the local community 90 to 180 days of layoffs and plant closings. While many employers already provide notice voluntarily, virtually all employers object to legislation making notice mandatory for several key reasons.

1. *Companies often cannot predict a layoff three to six months ahead.*—Customers do not have to provide three to six months notice or order cancellations. Unions representing the employee of a supplier of a key component in a production process do not have to provide 90 to 180 days notice of a strike. The federal government is not required to give 90 to 180 days notice of major contract cancellation. These sudden economic changes often leave the employer with no alternative but to lay off employees. Further, there are many economic circumstances that are beyond the employer's control. To an increasing degree, companies are operating in world markets and have become highly susceptible to fluctuations in currency and commodities prices. In commodity-based industries in particular (i.e., wood products, aluminum and oil), abrupt shifts in world market prices, sudden changes in governmental attitudes regarding distribution and availability, or the outbreak of wars cutting off supplies can mean the difference between shutdown and startup of production lines.

2. *Notice of a closure becomes a self-fulfilling prophecy.*—Once notice is given, particularly in the case of a small company, it would be difficult if not impossible for the business to survive. A myriad of problems occur when a possible plant closing is made public: suppliers go to a "cash only" policy, no new loans are made by banks, credit is cut off, clauses in existing loan agreements are exercised that allow the lender to call in the loan whenever con-

cerns develop regarding the ability of the lender to collect on the loan, and customers drift away. The possibility of selling or merging the business is severely diminished. The procedural restrictions placed on an employer's ability to make necessary layoffs inhibits the flexibility an employer needs to make opportune financial deals in order to keep the company alive and when back business opportunities.

3. *The bill raises the risk threshold for small business.*—The growth in employment in the U.S. is occurring primarily in small to medium sized firms, legislation which affects the ability of small businesses to exit from the market, or cut their costs will have an adverse effect of future employment prospects. Especially for those businesses in which a great deal of risk is involved, even three month notice requirement can be an onerous requirement when it is continually faced with cash flow problems and the prospect of insufficient resources to insure the survival of the business for 90 days. Typically, one of the most difficult problems facing smaller companies in cash flow; once it is interrupted, the business is immediately in jeopardy.

DISCLOSURE

Perhaps the most objectionable element of S. 538, as introduced, was the provision requiring businesses to "consult" with worker representatives and local government prior to a plant closing. This provision was interpreted to be a euphemism for the requirement that firms negotiate with unions and local governments over decisions to close per se. The bill as reported by the Committee does not contain this specific provision.

However, the bill does require employers to release certain records and information to worker representatives and to local government officials. This requirements has the effect of moving the "consultation" over the decision to close into the public arena.

There is no question that plant closings and large layoffs create severe anxieties not only for workers, but for the communities in which the plant is located. No matter how sound the decision to close the facility or reduce its workforce, the company still becomes the object of scorn and susceptible to certain pressures from the public. Most enterprises try to foster goodwill in the community; the disclosure provision is designed to take advantage of this corporate characteristic by exposing the company's mistakes and weaknesses.

There is also reason to question the constitutionality of the disclosure provision. If we accept the premise that the financial books, audits and feasibility studies are, in fact, the private property of the firm, the bill violates a basic tenet of our country—the right to privacy. While the bill requires the Secretary of Labor to issue protective orders upon request, such action cannot guarantee the confidentiality of an employer's records.

Under S. 538, information demands can be made whenever 50 or more employees are laid off by any company anywhere in the United States. Hundreds of layoffs occur every day; the Labor Department would be inundated with employer petitions for protective orders. There is simply no way the Labor Department would

be able to make timely rulings on the vast majority of these petitions.

Additionally, the bill's prohibition on the public disclosure of information by the worker representative or the local official is limited only to those instances when disclosure "could compromise the position of the employer with respect to its competitors" (Sec. 333 (b)).

While the bill also provides for penalties against unions and local governments who improperly disclose information, the employer is entitled only to damages equal to "the financial loss suffered," a subjective standard and one difficult to prove. More importantly, the damage to the employer is done once the information is made public. Significantly, the bill contains no sanctions against individual employees who improperly disclose company information which they have obtained from unions or the local government.

Conversely, the penalties for an employer's refusal to disclose information are explicit and severe. Employers who refuse to turn over the requested information are liable for civil penalties of up to \$10,000. If departmental enforcement of OSHA's record-keeping sanctions is any indication, this could mean a \$10,000 penalty for each document requested.

THE EUROPEAN EXPERIENCE

The United States Congress has frequently cited European policies and standards as models for American domestic policies. In this context, it is important to note that European nations currently suffer from an alarming stagnation in employment growth. According to statistics prepared by the Organization of Economic Co-operative Development (OECD), the United States gained almost eighteen million jobs between 1973 and 1983. The European Economic Community, in contrast, had a net loss of almost a million jobs. Unemployment rates tell the same story. While U.S. unemployment is well below 7 percent, unemployment in several Western European countries in June 1986, ranged from a low of 9.9 percent in France to 18.1 percent in Ireland.

In large part, Western European laws and practices which restrict labor market flexibility and the ability of firms to react quickly to changing conditions are responsible for this trend.

Mandatory notice periods in Europe range from 14 days to several months, though many industry-wide collective bargaining agreements require far longer notice. Employees, unions and public authorities must be notified, and "consulted", and information disclosed.

Perhaps the best evidence that the mandatory period called for in this bill will not work can be found in the recent experience of French chemical companies and their employees. There, unions representing workers in the chemical industry agreed to major changes in their termination policies. As part of the package, the required advance notice period was rolled back from six months to 80 days. This action illustrates the harm to workers from government mandates which reduce flexibility for employers; these workers have already experienced it.

In conclusion, there is no disagreement that legislation which helps workers adjust to new labor market situations is desirable. But there is a difference between helping people adjust to change and trying to deter the change. The latter implies that government can intervene effectively in the marketplace without adverse consequences. Government may intervene, but the results of such action will be labor market rigidities, increased regulatory compliance costs, and the inability to transfer resources to more productive uses—all of which lead to sluggish job growth.

Our nation has thrived on the spirit of entrepreneurship. It is hard to believe that the United States, the nation that wrote the book on economic prosperity, is considering legislation which is so antithetical to its own character. It is equally hard to believe we are considering this legislation when our standing in international markets is so much at issue.

I fear that Part B of S. 538 will so discourage risk-taking that would-be entrepreneurs will give up—aborting countless future jobs. I believe Congress itself should be more risk averse, and not jeopardize our nation's continued economic growth. And, as Senator Quayle has pointed out, we certainly should not push forward legislation which forces employers to break one federal statute in order to comply with another. Parts A and C are bipartisan, well reasoned initiatives designed to remedy a known problem. Unfortunately, Part B in its current form, will cause more problems than it addresses and should not have been reported from the Committee.

ORRIN G. HATCH.

MINORITY VIEWS OF SENATORS QUAYLE, THURMOND,
AND COCHRAN ON PART B OF S. 538

WORKER ADJUSTMENT AND PLANT CLOSING

We strongly support Parts A and C of S. 538 which provide for comprehensive worker adjustment programs to assist workers who have been displaced from their jobs. We strongly oppose Part B regarding plant closing and we even more strenuously oppose the joining of the sound bipartisan worker adjustment program with a divisive and controversial provision whose only effect will be to preclude rapid enactment and funding of the vitally needed adjustment program.

Parts A and C of S. 538 are accurately labelled as implementing the recommendations of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation. We commend and endorse the Task Force's recommendations as we also commend and endorse the Committee's Report on those two parts. The Report accurately describes both the process of economic dislocation and the public policy choices that must be made to ease the transition of workers to new employment opportunities.

The Report is correct in quoting from the Task Force Report that advance notice is essential to an effective adjustment program. However, the Report is disingenuous by not continuing to state that the Task Force did not endorse mandatory advance notice—and a bill that is labelled as carrying out the Task Force's recommendation should not include provisions which were emphatically not recommended by the Task Force.

Unfortunately, Part B of this bill is inconsistent with the spirit of cooperation in Secretary Brock's Task Force on Worker Readjustment Assistance. The Task Force recognized that plant closings are likely to occur. It recommended an array of actions designed to promote worker adjustment, including rapid response capabilities and improvements in service delivery. The spirit of these recommendations is embodied in the Administration's proposed \$980 million Worker Readjustment Assistance Program (WRAP) that was submitted to Congress as part of the "Trade, Employment and Productivity Act of 1987." That program and its funds are being held hostage to Part B of S. 538, an extremely controversial proposal for mandatory notification and disclosure of information for layoffs and business closures.

In the same context, it deserves note that the National Governors' Association has also adopted a policy on worker readjustment—and that policy also does not include any recommendation regarding mandatory advance notice.

MANDATORY NOTICE

There are a few, simple but compelling arguments against a new Federal law requiring advance notice of plant closings and layoffs and mandating the disclosure of certain information. The objections to Part B can be summarized as follows:

1. It is another new Federal control of business that will engender the normal cycle of bureaucratic regulation, litigation and additional costs that impede our capacity to compete in world markets;
2. It is designed to impede plant closings rather than promote the necessary adjustments to economic change;
3. It is another intrusion into the free collective bargaining process;
4. It amends the Taft-Hartley Act *sub silentio* and will engender more labor management disputes at a time when we need more labor management cooperation;
5. It is based on the European model of the labor markets at a time we should be building on the American experience of dynamic job growth rather than the European model of job stagnation.

NEW FEDERAL REGULATION

Under present Federal law, the decision to start a business or to close it is a matter for the entrepreneur. This proposal would put the Federal government in the position of second-guessing that decision. If the employer closes a business "too quickly" fines and penalties can be levied because of that decision. This is, indeed, the camel's nose under the tent—because the Federal government, rather than the businessman, will decide when a business may close. We do not believe the Federal government is smart enough to make those decisions.

This is not just the natural hyperbole of dissenting views. Under the bill, an employer must give from 3 to 6 months' notice of an impending layoff. Violations are subject to civil penalties. An employer may layoff with less notice if the layoff is caused by "business circumstances that were not reasonably foreseeable." By whom? Not by the businessman but rather by the court that will decide whether a violation has occurred. To make the point even more clear, the bill provides that "if an employer . . . proves to the satisfaction of the court that the act or omission which violated this part was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this part the court may, in its discretion, reduce the amount of the liability or penalty . . ." Every business decision that results in a layoff will be subject to scrutiny by a court—and even good faith of the businessman is not a defence. Is this the way to stimulate the dynamism of a free-enterprise economy?

IMPEDES PLANT CLOSINGS

Part B calls for mandatory disclosure of information to unions or local governments before a closing or a layoff takes effect. These provisions demonstrate that the drafters have not abandoned the obvious intent of the original bill which was to delay closings and layoffs or thwart them altogether. The information which the sub-

stitute requires to be disclosed, is not pertinent to retraining or re-adjustment. Instead, all of the information has to do with testing the employer's reasons for the closing or layoff, with the obvious intention of pressuring the employer to change his mind.

The report of the majority states, "The information that is to be disclosed under this section is to be used by the union or local government, and any authorized agents with whom the information is shared, to explore alternatives to the closing or mass layoff." This is a thin veil for the "consultation" provisions in the original S. 538. Clearly, audit reports, studies or evaluations assessing the feasibility of "maintaining operations," and plans with respect to the relocation of work and the disposition of facility assets are provided to unions and units of local government for the purpose of holding the employer at bay. Presumably, a facility's parent company could be subject to the same requirements, and a failure to supply but one relevant document could mean that the entire notice period was tainted and the closing or layoff which follows would be unlawful.

The purpose of this bill should be to ease the painful transitions that are inevitable in a dynamic economy—not to stifle the changes that are essential if we are to be competitive in the current international environment.

INTRUSION INTO FREE COLLECTIVE BARGAINING

The question of notice is currently a subject of collective bargaining between labor and management. Under Part B, however, we determine by statute what is currently decided by the free choice of the parties. Is notice more important than health, or pensions or all the other matters currently subject to free collective bargaining? Or should the all-wise federal government determine those matters, too? We do not believe the federal government should; assume that role—and we further question whether union members select their union as their bargaining agent in order to let the federal government make decisions for them.

TAFT-HARTLEY AMENDMENTS

Under the Taft-Hartley Act, as interpreted by the Supreme Court in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, (1981), an employer is already required to give notice of a plant closing and must enter into collective bargaining with its union representatives about the closing's effects on the displaced employees. That duty includes disclosure of appropriate information. In other words, what Part B of this bill does is to expand on statutory rights that a union already has under Taft-Hartley—but not by amending the Taft-Hartley Act. In effect, this bill says that the notice now required under Taft-Hartley is lengthened and disclosure is expanded.

Taft-Hartley amendments are simply too controversial to bring to a vote. Part B is a way of bringing a Taft-Hartley amendment to a vote, without alerting members to its inherently controversial nature. It is our strong belief that, if the majority want to amend the Taft-Hartley Act, they should do so openly.

When an employer seeks to counter an organizing drive, he is not permitted to threaten the employees with the closing of his

plant if he doesn't get his way. In *NLRB v. Gissell Packing Co.*, 395 U.S. 575, 620, the Supreme Court drew a fine line between "so-called permitted predictions and proscribed threats" of plant closings. That distinction will need to be reconsidered or relitigated because, under this proposal, the employer must give employees notice of plant closing if the closing is reasonably foreseeable regardless of his motive for the closing. In other words, under Part B, we are requiring the employer to make the threat that is forbidden under labor relations law. We all know that the latter statute prevails over the former—so we are again amending the Taft-Hartley Act.

We note with surprise, tinged with amusement, that the majority claims not to have "attempted to review those [other] Federal laws [including Taft-Hartley], or the decisions interpreting those laws . . ." We suggest that this claimed ignorance reveals the complexity of the interrelationship between these statutes and the inability to solve the problems raised thereby.

Part B of S. 538 will also drastically upset the balance struck by the National Labor Relations Act, leaving unions with the upper hand. Thus, there is nothing in Part B which excludes closings or layoffs which result from a labor dispute. Up to six months notice is required for layoffs of "indefinite duration." This could include bargaining lockouts which are the lawful employer counterpart of the employee right to strike.

Moreover, an employer whose business is seriously harmed by the effects of a strike, would have to give up to six months notice before closing or permanently reducing the size of his workforce. During the notice period, unions could end their strike, and the employer would be required to reinstate strikers for the duration of the notice period. The "escape clause" would be of no help to the employer because, as the union would argue, his economic predicament brought on by the strike was a "reasonably foreseeable" consequence of the employer's refusal to agree to the unions bargaining demands.

It is inconceivable that the drafters of this provision did not exclude closings and layoffs which occur during or as a result of a labor dispute, unless, they were pellucidly aware of its impact.

Good worker adjustment programs must be cooperative, not confrontational. However, Part B of S. 538 will exacerbate the very adversarial and confrontational dimension of labor-management relations that are so anti-competitive and unproductive. It will drive a wedge between labor and management.

EUROPEAN MODEL

Part B of S. 538 is a hodge-podge of European and Canadian laws on plant closings. These laws, without exception, are designed to delay layoffs and business closures. In Belgium, Canada, Denmark, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom, West Germany and Sweden these "plant closing" laws are coupled with laws regulating and restricting termination of employment of individuals. We believe the federal government should not dictate the terms of employment in the private sector. This bill ignores that tenet.

The high unemployment and stagnant economy in Europe should tell us something about why we do not want to emulate their laws. In 1985, Europe had two-thirds of the industrial world's unemployment. More than 19 million men and women were out of work. Youth unemployment was modestly estimated at over 25%. There has been no net job creation in Europe since 1975.

The reasons for Europe's plight are many, but one is that there are powerful barriers to reducing or even moving European workforce. For example, in France, legally mandated "consultations" to lay off workers can take up to a year. In Germany, a firm must give up to six months' notice that it intends to declare bankruptcy. Costly court battles are not uncommon. Do we really want to follow down that path?

CONCLUSION

Unfortunately, the proponents of Part B have one argument that does not need to be taken seriously. They point to the fact that business has not put its own house in order—that while all agree that advance notice should be given, it frequently is not. The figures contained in the GAO report on the extent of notice are distressing. Is the answer to pass a new law with all its attendant disadvantages? We do not believe so; but we do believe that business has a social and moral obligation to change its practices and that is why we endorse the attached letter to the business community sent by Senator Quayle.

See attached letter.

We all say that it is important to have voluntary notice. This is the opportunity for the business community to demonstrate the sincerity of its request to let them do it themselves. We intend to follow up on this request to see whether the business community takes vigorous action so that the current best practice becomes the common practice.

DAN QUAYLES.
STROM THURMOND.
THAD COCHRAN.

U.S. SENATE,
Washington, DC, May 19, 1987.

To the Business Coalition Against Plant Closing Legislation:

I know you share my concern that plant closing legislation such as that contained in Part B of S. 538 may stifle the growth of our economy by imposing yet more burdensome Federal regulation on our dynamic free-enterprise economy.

But I am sure that you also share my view that advance notice of plant closings is essential to assist both workers and communities to adjust to the dislocations that are inherent in the transition to a post-industrial economy. The best way to reconcile these propositions is for the American business community to adopt, promote and comply with voluntary standards of business ethics that provide for adequate notice of plant closing and permanent layoffs.

I am therefore asking you, as a coalition, and each of your member associations and companies to adopt, promote and comply with such standards.

It is imperative for the business community to take positive steps and to encourage early notification of mass layoffs and plant closing. This effort and voluntary standards are far preferable to mandatory actions.

Would you please send me a report by June 8 on your willingness to undertake this assignment and on steps that you have taken, and plan to take, to carry it out.

Sincerely,

DAN QUAYLE, *U.S. Senator.*

ADDITIONAL VIEWS OF SENATOR GORDON J. HUMPHREY
REGARDING PART B OF S. 538

I fully endorse the separate views of Senators Hatch and Quayle regarding part B of S. 538, the advance notification of plant closings and mass layoffs section. It is beyond belief that the Senate Labor and Human Resources Committee is advocating economically burdensome changes to U.S. labor law, under the guise of helping dislocated workers, at the very time European governments are taking steps to dilute their plant closing laws: laws that are often less stringent than the requirements of part B.

Since 1970, the U.S. economy has created some 25 million jobs. This growth stands in stark contrast to European economies, which have actually suffered a net loss exceeding 1 million jobs during the same period. The reasons for this difference are easily understood. Our managers have flexibility to deal with nonproductive plants or products. European managers, on the other hand, are placed in a statutory straightjacket where it is next to impossible to cut their losses. Consequently, they do not take any risks associated with expanding job opportunities.

Does anyone really believe that the requirements of part B will grant our managers the necessary degree of flexibility to deal with the demands of an ever-changing economy? Plant closings and mass layoffs are indeed disruptive for workers and communities. But, unfortunately, yesterday's widgets are often today's antiques and efforts to preserve the status quo will prove even more disruptive in the long run. Had our economy been subject to European style mandatory notice requirements during the past 10 years or so, would millions of new jobs have been created, thus mitigating the loss of marginal jobs in the first place? Just ask the Europeans.

Part B should be stricken in its entirety. It is special interest legislation which taxes the credibility of its proponents when they suggest that it will aid the competitive position of the U.S. economy.

Unfortunately, the Labor and Human Resources Committee chose not to study the results of plant closings laws in other nations. Nor did the committee seek out the thoughts of any eminent economists on the subject. Finally, the committee ignored the independent judgement of the editorial boards of the New York Times, the Wall Street Journal, and other newspapers.

GORDON J. HUMPHREY.

